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 PETITIONER

TIMOTHY H. LEE
KING & SPALDING LLP
1180 Peachtree St., NE
Atlanta, GA 30309
(404) 572-4600

JEFFREY S. BUCHOLTZ
Counsel of Record
DANIEL S. EPPS
CAROLYN M. SWEENEY
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006
jbucholtz@kslaw.com
(202) 737-0500

Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether due process permits a court to exercise personal jurisdiction over a defendant whose sole "contact" with the forum State is his knowledge that the plaintiff has connections to that State.

2. Whether the judicial district where the plaintiff suffered injury is a district "in which a substantial part of the events or omissions giving rise to the claim occurred" for purposes of establishing venue under 28 U.S.C. § 1391(b)(2) even if the defendant's alleged acts and omissions all occurred in another district.

PARTIES TO THE PROCEEDING

Petitioner Anthony Walden was the defendant-appellee in the court below. Respondents Gina Fiore and Keith Gipson were plaintiffs-appellants in the court below. In the district court, respondents also asserted claims against "three unknown agents/attorneys with the United States Drug Enforcement [Administration]." Those defendants were never served and thus were not parties, but they were nonetheless listed in the caption in the court of appeals as appellees.

TABLE OF CONTENTS

Opinions below 1
Jurisdiction 1
Constitutional and statutory provisions involved 1
Statement 1
Summary of argument 11
Argument 16
I. To be haled into court based on an intentional tort, a defendant must have expressly aimed conduct at the forum state, not merely at a person with known connections to the forum state 16
A. Due process requires conduct expressly aimed at the forum state itself 17
1. An out-of-state defendant must have purposefully directed conduct at the forum state 17
2. In the intentional-tort context, purposeful direction means conduct expressly aimed at the forum state 20
3. The Ninth Circuit ignored the distinction between aiming at the plaintiff and aiming at the forum state 22
B. Basic principles of state judicial authority also support requiring contacts with the forum state itself 31
C. The Ninth Circuit's approach is unfair to defendants 34

II. The place where a plaintiff feels the effects of a tort is not a proper venue under 28 U.S.C. § 1391(b)(2) if the defendant's conduct all occurred elsewhere 41
A. The Ninth Circuit's conclusion that venue was proper has no basis in § 1391(b)(2)'s text 42
1. The place where a plaintiff merely feels the consequences of an alleged tort occurring elsewhere is not a proper venue under § 1391(b)(2) 43
2. The other facts on which the Ninth Circuit relied do not support its venue holding 49
3. Petitioner's conduct is the only relevant factor here 51
B. Congress did not intend venue under § 1391(b)(2) to lie wherever the plaintiff feels effects of a tort 54
Conclusion 59
Statutory Appendix—28 U.S.C. § 1391 ..... 1a

TABLE OF AUTHORITIES

Cases

Albright v. Oliver,
510 U.S. 266 (1994) 9, 50

Asahi Metal Indus. Co. v. Super. Ct. of Cal.,
480 U.S. 102 (1987) 18

Brunette Mach. Works, Ltd. v. Kockum Indus.,
406 U.S. 706 (1972) 44

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) .....*passim*

Burnham v. Super. Ct. of Cal.,
495 U.S. 604 (1990) 17

Calder v. Jones,
465 U.S. 783 (1984) .....*passim*

Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.,
529 U.S. 193 (2000) 53

Cottman Transmission Sys., Inc. v. Martino,
36 F.3d 291 (3d Cir. 1994) 48, 55

Daniel v. Am. Bd. of Emergency Med.,
428 F.3d 408 (2d Cir. 2005) 52

Dudnikov v. Chalk & Vermilion Fine Arts, Inc.,
514 F.3d 1063 (10th Cir. 2008) 19, 21, 22, 28

ESAB Grp., Inc. v. Centricut, Inc.,
126 F.3d 617 (4th Cir. 1997) 40

Goodyear Dunlop Tires Operations, S.A. v. Brown,
131 S. Ct. 2846 (2011) 26

Hanson v. Denckla,
357 U.S. 235 (1958) 18, 19, 27, 34

Heck v. Humphrey,
512 U.S. 477 (1994) 51
Helicopteros Nacionales de Colombia, S.A. v. Hall,
466 U.S. 408 (1984) 19
Imo Indus. v. Kiekert AG,
155 F.3d 254 (3d Cir. 1998) 24
Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee,
456 U.S. 694 (1982) 16
Int'l Shoe Co. v. Washington,
326 U.S. 310 (1945) 11, 17, 18, 24
J. McIntyre Mach., Ltd. v. Nicastro,
131 S. Ct. 2780 (2011) .....*passim*
Jenkins Brick Co. v. Bremer,
321 F.3d 1366 (11th Cir. 2003) 52, 55
Johnson v. Arden,
614 F.3d 785 (8th Cir. 2010) 21, 28, 39
Keeton v. Hustler Magazine, Inc.,
465 U.S. 770 (1984) .....*passim*
Kulko v. Super. Ct. of Cal.,
436 U.S. 84 (1978) 18, 19, 24, 25, 28, 33
Leroy v. Great W. United Corp.,
443 U.S. 173 (1979) 14, 42, 43, 44, 48
McGee v. Int'l Life Ins. Co.,
355 U.S. 220 (1957) 17, 19, 21, 27
Millennium Enters. v. Millennium Music, LP,
33 F. Supp. 2d 907 (D. Or. 1999) 39
Mobile Anesthesiologists Chi., LLC v. Anesthesia Assocs. of Hous. Metroplex, P.A.,
623 F.3d 440 (7th Cir. 2010) 22, 29, 31, 40

Myers v. Bennett Law Offices,
238 F.3d 1068 (9th Cir. 2001) 8
Pennoyer v. Neff,
95 U.S. 714 (1878) 17
Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985) 33
Richards v. United States,
369 U.S. 1 (1962) 46
Rush v. Savchuk,
444 U.S. 320 (1980) 12, 20, 24, 25, 26
Shaffer v. Heitner,
433 U.S. 186 (1977) 19
Sinochem Int'l Co. Ltd. v.
Malaysia Int'l Shipping Corp.,
549 U.S. 422 (2007) 16
Sosa v. Alvarez-Machain,
542 U.S. 692 (2004) 52
Stafford v. Briggs,
444 U.S. 527 (1980) 37, 57
State Farm Mut. Auto. Ins. Co. v. Campbell,
538 U.S. 408 (2003) 33
Stewart Org., Inc. v. Ricoh Corp.,
487 U.S. 22 (1988) 58
Uffner v. La Reunion Francaise, S.A.,
244 F.3d 38 (1st Cir. 2001) 53
Wallace v. Herron,
778 F.2d 391 (7th Cir. 1985) 24, 27
Woodke v. Dahm,
70 F.3d 983 (8th Cir. 1995) 45, 52, 53
World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 26, 32, 34

Young v. New Haven Advocate,
315 F.3d 256 (4th Cir. 2002) 38

Statutes

28 U.S.C. § 1254(1) 1
28 U.S.C. § 1346(b) 46
28 U.S.C. § 1391(a) (1988) 55
28 U.S.C. § 1391(a)(2) (2006) 55
28 U.S.C. § 1391(b)(2) ..... *passim*
28 U.S.C. § 1391(b)(2) (2006) 55
28 U.S.C. § 1391(e)(1)(C) 57
28 U.S.C. § 1402(b) 57
28 U.S.C. § 1404(a) 58
28 U.S.C. § 2680(k) 53
Federal Courts Jurisdiction and
Venue Clarification Act of 2011,
Pub. L. No. 112-63, 125 Stat. 758 (2011) 55
Nev. Rev. Stat. § 14.065 ..... 5, 16

Regulations

28 C.F.R. § 50.15 37
28 C.F.R. § 50.16 37

Rules

Fed. R. Civ. P. 4(k)(1)(A) 5, 16

Other Authorities

14D Wright, Miller & Cooper,
Federal Practice and Procedure
(3d ed. 2007) 56
H.R. Rep. No. 101-734 (1990),
reprinted in 1990 U.S.C.C.A.N. 6860 55

Merriam Webster's Collegiate Dictionary
(10th ed. 1994) 50
Random House Webster's Unabridged Dictionary
(2d ed. 1998)..... 45, 50
Report of the Federal Courts Study Committee
(Apr. 2, 1990)..... 56
Restatement (Second) of Conflict of Laws (1971).... 33
Robertson,
The Inextricable Merits Problem in Personal Jurisdiction,
45 U.C. Davis L. Rev. 1301 (2012) 36

OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 1a–64a) and the order denying rehearing (Pet. App. 75a–95a) are reported at 688 F.3d 558. The order of the district court granting petitioner's motion to dismiss (Pet. App. 65a–74a) is unreported.

JURISDICTION

The court of appeals issued its opinion on September 12, 2011. Pet. App. 1a. That court amended its opinion and denied rehearing on August 8, 2012. Pet. App. 75a. The petition for a writ of certiorari was timely filed on November 6, 2012, and granted on March 4, 2013. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

Section 1391(b)(2) of Title 28 of the United States Code, governing venue, provides 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." Section 1391 is reproduced in full in the appendix to this brief.

STATEMENT

Respondents sued petitioner Anthony Walden in Nevada alleging wrongdoing occurring entirely in

Georgia. The Ninth Circuit held that *respondents'* connections to Nevada entitle them to sue petitioner there without violating either the Fourteenth Amendment's limitations on personal jurisdiction or the venue restrictions in 28 U.S.C. § 1391(b)(2).

1. Petitioner is a police officer employed by the City of Covington, Georgia. J.A. 40. Between 2002 and 2006, petitioner was a deputized agent for the Drug Enforcement Administration (DEA) assigned to duty at Atlanta's Hartsfield-Jackson International Airport as part of a federal/state anti-narcotics task force. *Ibid.*

This case arises out of events that took place at the Atlanta airport on August 8, 2006.[1] That day, respondents Gina Fiore and Keith Gipson arrived in Atlanta on a flight from San Juan, Puerto Rico. J.A. 15, 19. Respondents are professional gamblers who had spent time at casinos in San Juan and in Atlantic City, New Jersey, and were flying from San Juan through Atlanta on the way to Las Vegas, Nevada. J.A. 14–15.

Between them, respondents were carrying approximately $97,000 in cash. J.A. 15. Security screeners at a Transportation Security Administration checkpoint in the San Juan airport searched respondents' bags and discovered the money. J.A. 17. Three DEA agents questioned respondents. *Ibid.*

---

[1] Because the district court did not hold an evidentiary hearing, respondents' allegations are taken as true for purposes of petitioner's motion to dismiss. See Pet. App. 2a n.2, 68a. Petitioner disputes many of respondents' allegations.

Respondents told the agents that they obtained the cash legally through gambling. J.A. 18. The agents in San Juan allowed respondents to board their flight with the cash and told them that they might face additional questioning later. J.A. 19.

When respondents arrived in Atlanta, they were approached and questioned in the gate area by petitioner and another DEA agent. *Ibid*. Respondents again asserted that the money was obtained from gambling. J.A. 20. They showed petitioner their driver's licenses, which were issued by California. J.A. 18, 42. Respondents allege that they maintain residences in Nevada as well as California. J.A. 18. A third DEA agent arrived with a narcotics-detecting dog. J.A. 21. The dog pawed at Gipson's bag. *Ibid*. The agents informed respondents that the dog's reaction indicated the presence of contraband and seized the cash. *Ibid*. Petitioner told respondents that they could recover the money by producing documentation showing that it was legitimately obtained. J.A. 22.

Respondents then boarded their flight to Las Vegas. *Ibid*. Over the next few weeks, they sent documents to petitioner in an effort to show the legitimacy of the funds. J.A. 23–24. Respondents claim that, despite receiving this information, petitioner assisted in drafting a false affidavit that he submitted to the Office of the United States Attorney for the Northern District of Georgia to attempt to show probable cause for forfeiture of the funds. J.A. 25–30. An Assistant United States Attorney in that District concluded that there was not probable cause for forfeiture. J.A. 30–31. Respondents were never arrested or prosecut-

ed, no forfeiture complaint was filed, and their cash was returned on March 1, 2007. J.A. 35.

2. Respondents filed this *Bivens* suit against petitioner in the United States District Court for the District of Nevada. J.A. 1.[2] After petitioner moved to dismiss, respondents amended their complaint. J.A. 2–3. Respondents' amended complaint alleged that petitioner violated respondents' Fourth Amendment rights by: seizing the cash without probable cause; retaining the cash after receiving proof that it had been obtained legitimately; knowingly preparing a false or misleading probable cause affidavit; and referring the matter for forfeiture based on false or deficient information while withholding exculpatory information. J.A. 23–36; Pet. App. 7a–8a.[3]

Petitioner, represented by the United States Department of Justice, moved to dismiss on both personal-jurisdiction and venue grounds. J.A. 3. In support of his personal-jurisdiction argument, petitioner declared that he has never traveled to Nevada, owned property in Nevada, or conducted any personal business in Nevada; that he never contacted

---

[2] Respondents also sued "three unknown [DEA] agents/attorneys." J.A. 14. Those defendants were never served. Pet. App. 7a n.8.

[3] There was disagreement below over whether respondents asserted one claim or multiple distinct claims. Compare Pet. App. 43a–44a (majority opinion) with Pet. App. 54a–56a (Ikuta, J., dissenting). The panel majority read the complaint as containing a distinct claim related to the allegedly false probable cause affidavit. Pet. App. 43a–44a. Petitioner does not challenge that reading here. See Pet. 4 n.2.

anyone in Nevada or directed anyone to take action in Nevada in connection with respondents; that respondents provided him with California, not Nevada, driver's licenses; and that he lacked the authority to return the cash after it was seized. J.A. 41–43. Petitioner also argued that the District of Nevada was not a proper venue under 28 U.S.C. § 1391(b)(2) because the alleged "events and omissions giving rise to" respondents' claims occurred exclusively in Georgia. Dist. Ct. Dkt. No. 14, at 19–23 (Aug. 1, 2008).

The district court granted petitioner's motion to dismiss on personal-jurisdiction grounds. Pet. App. 66a–74a. Because respondents relied on state law for service of process on petitioner, see Fed. R. Civ. P. 4(k)(1)(A), and because Nevada law authorizes personal jurisdiction up to the limits of due process, Nev. Rev. Stat. § 14.065, the district court analyzed whether the Fourteenth Amendment would permit a Nevada court to exercise personal jurisdiction over petitioner. Pet. App. 68a. Respondents conceded that due process required them to allege that petitioner had "purposeful[ly] direct[ed]" his actions toward Nevada. Pet. App. 70a. The district court explained that to make this showing, respondents needed to satisfy what many lower courts call the "effects test" derived from *Calder v. Jones*, 465 U.S. 783 (1984). Under that test, a plaintiff must show (1) that the defendant committed an intentional act (2) that was "expressly aimed" at the forum state and (3) that the defendant knew that harm would be suffered in the forum state. Pet. App. 70a.

The district court concluded that respondents could not satisfy the "express aiming" requirement:

> Walden's intentional act—the search of Plaintiffs' luggage and seizure of their currency—was expressly aimed at Georgia, not Nevada. Walden's search of Plaintiffs' luggage took place in Georgia. Walden's questioning of Plaintiffs took place in Georgia. Walden's seizure of Plaintiffs' currency took place in Georgia. It may be true, as Plaintiffs allege, that Walden's intentional acts committed in Georgia eventually caused harm to Plaintiffs in Nevada, and Walden may have known that Plaintiffs lived in Nevada. But this alone does not confer jurisdiction.

Pet. App. 71a–72a. Because the district court concluded that personal jurisdiction was lacking, it did not address venue. Pet. App. 73a.

3. A divided panel of the Ninth Circuit reversed.

a. In an opinion by Judge Berzon, the majority held that personal jurisdiction over petitioner was proper in Nevada. In the majority's view, the district court had erred by "not consider[ing] the false probable cause affidavit aspect of the case." Pet. App. 17a. The majority reasoned that "'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"—was sufficient to establish express aiming. Pet. App. 17a–18a. The requirement was thus satisfied here because the "allegations indicate that at the time the assertedly false affidavit was composed and filed, Walden recognized that the plaintiffs had significant connections to Nevada, particularly with

respect to the funds for which forfeiture was being sought." Pet. App. 22a. Nor did it matter "whether Fiore and Gipson were legal residents of Nevada or whether they simply had a significant connection to the forum," Pet. App. 22a–23a; it was enough that, according to the complaint, petitioner "necessarily recognized, at least by the time he wrote the probable cause affidavit, that the plaintiffs had a connection to Nevada," Pet. App. 24a.

The court of appeals then found the other requirements of due process satisfied. Pet. App. 27a–36a. Accordingly, it held that "the district court erred in concluding that it lacked personal jurisdiction over Walden, at least as to the portion of Fiore and Gipson's complaint pertaining to the false probable cause affidavit and resulting delay in returning the funds." Pet. App. 38a.[4]

Having concluded that the district court had jurisdiction over at least one of respondents' claims, the court of appeals directed the district court to determine whether to exercise "pendent personal jurisdiction" over the remaining claims. Pet. App. 38a–39a. The majority made no secret of its desire that the district court rely on this doctrine (which no party had raised in the appeal) to exercise jurisdiction over the entire case, stating that "the same facts will have

---

[4] Notwithstanding its holding that personal jurisdiction could be based on petitioner's conduct that allegedly caused "delay in returning the funds," Pet. App. 28a, the panel majority acknowledged that, as a local police officer deputized as a temporary DEA agent, petitioner had no authority to release the seized funds. Pet. App. 11a n.11.

to be developed with regard to the search and seizure and false affidavit claims" and that this "weigh[ed] strongly in favor of the exercise of pendent personal jurisdiction." Pet. App. 39a.

The court of appeals also held, in response to petitioner's argument that the judgment could be affirmed on the alternative ground that venue was improper, that venue over respondents' suit properly lay in the District of Nevada. Pet. App. 40a–42a. Relying on circuit precedent holding that "the locus of the injury" is a "relevant factor" in determining whether venue is appropriate under 28 U.S.C. § 1391(b)(2), Pet. App. 41a (quoting *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1076 (9th Cir. 2001)), the majority reasoned that venue was proper because respondents "suffered harm in Nevada." *Ibid.* As the court of appeals explained:

> All the economic injuries suffered by Fiore and Gipson were realized in Nevada, including their loss of use and interest on the funds for nearly seven months. . . . Walden fabricated a fraudulent probable cause affidavit to institute forfeiture proceedings against Fiore and Gipson after they had returned to their residences in Nevada, which affected them there; the documentation of the legitimacy of the money was sent from Nevada; and the funds eventually were returned to Fiore and Gipson in Nevada . . . . 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. See *Albright v. Oliver*, 510 U.S. 266, 280 (1994) (Ginsburg, J., concurring).

Pet. App. 41a–42a.

Judge Ikuta dissented, arguing that the majority erred in reading the complaint as containing multiple claims; on her reading, "the plaintiffs allege[d] one simple claim: a violation of their Fourth Amendment rights to be free of unreasonable searches and seizures." Pet. App. 54a. Under that reading, personal jurisdiction was lacking because "[t]he complaint does not even hint that Walden learned of plaintiffs' ties to Las Vegas until *after* the seizure was complete." Pet. App. 53a–54a (emphasis in original). The majority's ruling was problematic, Judge Ikuta explained, because it required courts to take jurisdiction over a suit whenever the plaintiffs "assert that the defendant knew their home state and subsequently engaged in some wrongful act." Pet. App. 57a–58a.

b. Represented by present counsel for purposes of seeking further review, petitioner filed a petition for rehearing. J.A. 9–10. The court of appeals denied that petition over eight noted dissenting votes. Pet. App. 76a, 77a, 91a.

Judge O'Scannlain, joined by four other judges, dissented, arguing that the panel's decision "conflict[ed] with cases in other circuits over how to interpret and to apply *Calder*'s express-aiming requirement. The majority of circuits have held that, under *Calder*, a defendant must expressly aim the conduct forming the basis of the claim *at the forum*

state—not just at a known forum resident—before the courts of that state may exercise jurisdiction over the defendant." Pet. App. 84a (emphasis in original).

Judge McKeown also dissented, joined by six other judges. In her view, the panel had, "[w]ith the stroke of a pen," returned the Ninth Circuit "to a discredited era of specific personal jurisdiction, where foreseeability reigns supreme and purposeful direction is irrelevant." Pet. App. 91a. The panel had "broaden[ed] the specific jurisdiction test from one requiring targeted 'express aiming' to one where any attenuated foreign act with foreseeable effects upon a forum resident confers specific jurisdiction." Pet. App. 94a. "If due process limitations on personal jurisdiction are to retain any guiding force," Judge McKeown argued, "purposeful direction may not be collapsed into a diluted version of foreseeability." Pet. App. 95a.

The panel majority added a "post-script" to its opinion to respond to the dissents from denial of rehearing. The majority defended its holding that an intentional act taken with knowledge of the eventual plaintiff's connections to the eventual forum is sufficient: "Walden intentionally targeted persons and funds with substantial connections to Nevada. He thus expressly aimed his conduct at that state, providing a sufficient basis for personal jurisdiction." Pet. App. 47a.

Judge Ikuta also added a post-script to her dissent. Under the panel's opinion, she lamented, "federal officials working in a transportation hub who are sued by disgruntled travelers can now be forced to litigate in any traveler's home state." Pet. App. 63a.

That approach "not only flouts common sense, but also ignores the Supreme Court's recent recognition that personal jurisdiction continues to play a vital role in defending basic fairness and due process." Pet. App. 64a (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2786–87 (2011) (plurality opinion)).

4. Petitioner sought a stay of the Ninth Circuit's mandate pending this Court's review, which the court of appeals granted on August 10, 2012. J.A. 12. This Court granted certiorari on March 4, 2013. 133 S. Ct. 1493 (mem.).

SUMMARY OF ARGUMENT

Petitioner's alleged conduct occurred entirely in Georgia, and he has no connections to Nevada. The Ninth Circuit erred by concluding that Nevada possessed personal jurisdiction over petitioner and that the District of Nevada was a proper venue under 28 U.S.C. § 1391(b)(2).

I. In the Ninth Circuit's view, because petitioner "intentionally targeted persons and funds with substantial connections to Nevada," he "thus expressly aimed his conduct at that state, providing a sufficient basis for personal jurisdiction." Pet. App. 47a. That holding is inconsistent with the Fourteenth Amendment's Due Process Clause, which requires that a defendant have contacts with the forum state itself—not merely with a plaintiff who has contacts with the forum state.

A. Since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court has repeatedly stressed the requirement that the defendant have purposefully directed his conduct at the forum in

some way. In the context of intentional torts, *Calder v. Jones* held that this purposeful-direction requirement is satisfied if the defendant "expressly aimed" his conduct at that state, such that the state was the "focal point" both of the tortious conduct and of the harm suffered by the plaintiff. 465 U.S. 783, 789 (1984).

Although the Ninth Circuit purported to follow the express-aiming requirement, the court drained the requirement of all meaning by equating conduct aimed at a *plaintiff* who has known forum-state "connections" with conduct aimed at the forum state itself. See Pet. App. 47a. That holding finds no basis in *Calder*, which stressed numerous facts, beyond the plaintiff's residence, showing that California was the "focal point" of the tort. 465 U.S. at 789–90. And it is inconsistent with this Court's repeated admonition that the plaintiff's contacts with the forum state cannot be "decisive" in determining whether the defendant has the constitutionally required contacts. *E.g.*, *Rush v. Savchuk*, 444 U.S. 320, 332 (1980).

Petitioner did not expressly aim his alleged conduct at Nevada. His conduct occurred entirely in Georgia, and he never reached into Nevada, either literally or figuratively. The Ninth Circuit held it sufficient that respondents felt in Nevada the economic effects of the alleged tortious conduct that occurred in Georgia. But a plaintiff will always feel an injury like the loss of the use of seized cash wherever the plaintiff happens to be, which ordinarily will include where the plaintiff resides. That respondents have connections with Nevada and felt harm there is purely incidental to petitioner's alleged conduct.

Transforming respondents' connections with Nevada into connections between *petitioner* and Nevada is unconstitutional alchemy. The Ninth Circuit's use of the plaintiff's forum-state contacts against the defendant achieves, in a roundabout way, the result that a plaintiff's home state can exercise personal jurisdiction over tort defendants who, themselves, have no contacts with that state. The Court should reject the Ninth Circuit's approach and reaffirm that express aiming at the forum state itself is required.

B. The Ninth Circuit's approach is also impossible to reconcile with basic principles of state judicial power. See *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2786–87 (2011) (plurality opinion). Respondents' loss of the use of the seized cash did not occur in Nevada in any meaningful sense. Although a state has legitimate power over a defendant who enters the state either literally or figuratively to cause harm there, a state does not have free-ranging authority over all whose conduct elsewhere is alleged to cause harm that its residents feel wherever they happen to be.

C. The Ninth Circuit's approach imposes serious and unfair burdens on defendants. If a plaintiff's mere allegation that an out-of-state defendant committed an intentional tort elsewhere, but with knowledge of the plaintiff's "significant connections" to the forum state, suffices to hale the defendant into court there, then many defendants will be forced to defend in distant forums with which they lack any real contacts. Law-enforcement officers like petitioner may be the most obvious victims of a rule like the Ninth Circuit's, but a broad swath of other types of

defendants—including journalists and other media and business defendants—will suffer as well if the Court affirms.

II. The Ninth Circuit also erred by concluding that the District of Nevada was a proper venue under § 1391(b)(2) on the rationale that respondents "realized" their "economic injuries" there.

A. The Ninth Circuit's venue holding is contrary to § 1391(b)(2)'s plain text. The statute requires focusing on where "the events or omissions giving rise to the claim occurred." All of petitioner's alleged acts and omissions that gave rise to respondents' claims occurred in the Northern District of Georgia. The Ninth Circuit thought it was sufficient that respondents allege that they felt the loss of the use of the seized cash in Nevada where they reside. Pet. App. 41a. This harm, however, extended throughout the time the cash was in the government's custody and was felt by respondents wherever they happened to be during that time period; it is far too amorphous to qualify as an "event[]" that "occurred" in Nevada.

The Ninth Circuit's error is clear given this Court's holding in *Leroy v. Great West United Corp.* that a cause of action does not "arise" in a district simply because the "impact" of the defendant's conduct is felt there. 443 U.S. 173, 186 (1979). As the Court emphasized, Congress intends venue provisions to protect defendants, so it is "absolutely clear" that an interpretation allowing venue to lie wherever the plaintiff resides, even though the defendant's conduct all occurred elsewhere, cannot be correct. See *id*. at 185, 186.

Perhaps recognizing the infirmity of its reliance on respondents' feeling the loss of the use of the cash in Nevada, the Ninth Circuit pointed to other facts supposedly making venue proper in Nevada, such as the "arrival" of the cash in Nevada when the government returned it to respondents. Pet. App. 42a. The return of the cash is beside the point under § 1391(b)(2), however, because it did not give rise to respondents' claims—the seizure and allegedly wrongful *failure* to return the cash sooner did. The only "events or omissions giving rise to [respondents'] claim[s]" are petitioner's alleged acts and omissions, and they all occurred in the Northern District of Georgia.

B. The context of Congress's enactment of the current version of § 1391(b)(2) confirms that Congress did not intend the reading adopted by the Ninth Circuit. To the contrary, in amending § 1391, Congress removed a provision that made venue for diversity cases proper in the plaintiff's home district. Moreover, other statutes make clear that Congress knows how to make venue dependent on the plaintiff's residence in the unusual circumstances where it desires that result. That Congress did not follow that course in § 1391(b)(2) shows that this Court's admonition in *Leroy* that venue statutes are meant to protect defendants applies fully here and that the Ninth Circuit erred by reading § 1391(b)(2) to permit venue wherever the plaintiff feels the impact of a tort committed elsewhere.

ARGUMENT

The Ninth Circuit concluded, first, that Nevada had personal jurisdiction over petitioner and, second, that venue was proper in the District of Nevada. Because both holdings are necessary for respondents' suit to proceed, and because there is no "mandatory sequencing" for judicial consideration of preliminary, non-merits issues, *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (internal quotation marks omitted), this Court could reverse on either ground. Both holdings were erroneous.

I. TO BE HALED INTO COURT BASED ON AN INTENTIONAL TORT, A DEFENDANT MUST HAVE EXPRESSLY AIMED CONDUCT AT THE FORUM STATE, NOT MERELY AT A PERSON WITH KNOWN CONNECTIONS TO THE FORUM STATE

Although this case arises in federal court, because service of process was based on state law, see Fed. R. Civ. P. 4(k)(1)(A), and Nevada's long-arm statute goes to the limits of due process, see Nev. Rev. Stat. § 14.065, respondents have the burden of establishing that the State of Nevada may assert personal jurisdiction over petitioner consistent with the Fourteenth Amendment's Due Process Clause. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464, 468 n.10 (1985); see also *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 712 (1982) (Powell, J., concurring in the judgment). Respondents cannot satisfy their burden.

A. Due Process Requires Conduct Expressly Aimed At The Forum State Itself

A long line of precedent from this Court makes clear that a defendant must have actual contacts with the forum state before it can exercise jurisdiction over him—which in the intentional-tort context means the defendant must have expressly aimed his conduct at the forum state. Petitioner's conduct, as alleged by respondents, was aimed at them. They happen to have Nevada connections. But petitioner does not.

1. An Out-Of-State Defendant Must Have Purposefully Directed Conduct At The Forum State

As this Court originally understood personal jurisdiction, a state could not exercise jurisdiction over people or property located outside the state. See *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878). In the twentieth century, after the "fundamental transformation of our national economy," *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 222 (1957), this Court abandoned those strict geographic restrictions and held that "due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); see also *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 618 (1990) (opinion of Scalia, J.) ("[T]he defendant's litigation-related 'minimum contacts' may take the

place of physical presence as the basis for jurisdiction.").

Despite the Court's conclusion that jurisdiction need not depend on actual physical presence, it has adhered to the view that minimum-contacts requirements 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 v. Denckla*, 357 U.S. 235, 251 (1958). For this reason, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *Int'l Shoe*, 326 U.S. at 319. Instead, there must be "a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum." *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978).

The key question is thus whether the defendant has "purposefully directed" his conduct at the forum. See *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); *Burger King*, 471 U.S. at 472; see also *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 112 (1987) (plurality opinion) (plaintiff must point to "an act of the defendant purposefully directed toward the forum State"); *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (plurality opinion). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson*, 357 U.S. at 253.

This requirement "can appear in different guises" depending on the type of case at issue, but whatever the label, "the shared aim of 'purposeful direction' doctrine" is "to ensure that an out-of-state defendant is not bound to appear for merely 'random, fortuitous, or attenuated contacts' with the forum state." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1071 (10th Cir. 2008) (Gorsuch, J.) (quoting *Burger King*, 471 U.S. at 475). Thus, as this Court's cases have repeatedly made clear, courts must assess "the relationship among the defendant, *the forum*, and the litigation" to determine whether the purposeful-direction requirement is satisfied. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) (emphasis added); accord *Keeton*, 465 U.S. at 775; *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984); *J. McIntyre*, 131 S. Ct. at 2793 (Breyer, J., joined by Alito, J., concurring in the judgment).

In the context of contract-related claims, for example, an out-of-state defendant may be haled into court if "the suit [is] based on a contract which had substantial connection with that State." *McGee*, 355 U.S. at 223. Personal jurisdiction is not proper, however, where the suit "involves the validity of an agreement that was entered without any connection with the forum State." *Hanson*, 357 U.S. at 252. Similarly, a state cannot exercise jurisdiction over an out-of-state parent in a child-support case unless he has "purposefully derive[d] benefit from . . . activities relating to" that state; that the child resides there is insufficient. *Kulko*, 436 U.S. at 96. Likewise, in a personal-injury action, a plaintiff cannot obtain jurisdiction over an out-of-state defendant simply

because the defendant's insurer does business in the forum state; instead, the plaintiff must establish that "the *defendant* engaged in . . . purposeful activity related to the forum." *Rush v. Savchuk*, 444 U.S. 320, 329 (1980) (emphasis in original).

2. In The Intentional-Tort Context, Purposeful Direction Means Conduct Expressly Aimed At The Forum State

Calder v. Jones, 465 U.S. 783 (1984), shows how the purposeful-direction requirement applies in the context of intentional torts. In *Calder*, the plaintiff, a California resident whose acting career was based in California, alleged that the defendants, a reporter and an editor who resided in Florida, had libeled her in an article in the *National Enquirer*. The Court held that personal jurisdiction was proper in California.

Several facts were critical to that holding. First, "[t]he allegedly libelous story concerned the California activities of a California resident," one whose "career was centered in California"; second, the story "was drawn from California sources"; and third, "the brunt of the harm, in terms both of [plaintiff's] emotional distress and the injury to her professional reputation, was suffered in California." *Id*. at 788–89. California was thus "the focal point both of the story and of the harm suffered." *Id.* at 789.

The Court also stressed that the defendants were "not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California." *Ibid*. That is, they "knew [their actions] 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.

Lower courts have distilled *Calder*'s holding into a three-part test, sometimes referred to as the "*Calder* effects test." *E.g., Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir. 2010); Pet. App. 16a. Under that test, a plaintiff must allege that the defendant committed "(a) an intentional action . . . that was (b) expressly aimed at the forum state . . . with (c) knowledge that the brunt of the injury would be felt in the forum state." *Dudnikov*, 514 F.3d at 1072.

The express-aiming requirement is critical, for it serves to ensure that the conduct in question has a "substantial connection with th[e] State" hosting the lawsuit, *McGee*, 355 U.S. at 223. Intentional-tort claims by their nature allege that the defendant targeted the plaintiff. If that alone were a sufficient "connection" to the plaintiff's home state, personal jurisdiction would collapse into the merits and would cease to play its constitutionally important role of protecting defendants from having to appear in distant courts based on "random, fortuitous, or attenuated contacts" with the forum state. *Burger King*, 471 U.S. at 475 (internal quotation marks omitted). For this reason, the Seventh Circuit has suggested that the phrase "express aiming test" would be more faithful to *Calder*, for "[i]t properly focuses attention on whether the defendant intentionally aimed its conduct at the forum state, rather than on the possibly incidental and constitutionally

irrelevant effects of that conduct on the plaintiff." *Mobile Anesthesiologists Chi., LLC v. Anesthesia Assocs. of Hous. Metroplex, P.A.*, 623 F.3d 440, 445 n.1 (2010).

Whatever label is given to the test, the point is that a 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. *Dudnikov*, 514 F.3d at 1072. That much is clear from *Calder*, and no court appears to have questioned it. Tellingly, that includes the Ninth Circuit, which purported to follow the same three-part test that other lower courts use, reciting the requirement that the defendant's conduct be "expressly aimed at the forum state" in addition to *Calder*'s two other prongs. Pet. App. 16a (internal quotation marks omitted).

3. The Ninth Circuit Ignored The Distinction Between Aiming At The Plaintiff And Aiming At The Forum State

Although the Ninth Circuit purported to follow the express-aiming requirement, it erred by equating conduct aimed at the forum state with conduct aimed at a *plaintiff* who has forum-state "connections." See Pet. App. 47a. Under the correct standard, Nevada lacks personal jurisdiction over petitioner, because petitioner has no meaningful contacts with Nevada. That *respondents* have contacts with Nevada does not give Nevada personal jurisdiction over petitioner.

a. The Ninth Circuit reasoned that there is no difference between aiming at the eventual plaintiff and aiming at the state in which the plaintiff files suit: "Walden intentionally targeted persons and funds with substantial connections to Nevada. *He thus expressly aimed his conduct at that state*, providing a sufficient basis for personal jurisdiction." Pet. App. 47a (emphasis added). Respondents have endorsed this holding, arguing that "'individual targeting' of forum residents" is all the express aiming that is required. BIO 24; see Pet. App. 17a–18a.[5]

That is not the law. *Calder* requires a court to assess the "defendant's contacts with the forum State," *Calder*, 465 U.S. at 790—not merely the defendant's contacts with *the plaintiff*. In conducting that inquiry, *Calder* emphasized that 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." *Id.* at 789. If targeting of a known forum resident were all that due process required, most of these facts would have been irrelevant.

---

[5] Respondents have elided the detail that, even under their allegations, petitioner did not know that respondents were Nevada *residents*, because they presented California driver's licenses. For that reason, the Ninth Circuit had to craft its holding to include not just known forum residents but also those known to have "substantial connections" to the forum state. Pet. App. 47a. Whatever "substantial connections" may mean, this distinction is immaterial because even if respondents had alleged that petitioner knew they were Nevada residents, that would not mean that petitioner aimed his conduct at Nevada.

Likewise, if where the plaintiff felt the harm were all that mattered, the Court would not have stressed that "California [was] the focal point *both of the story and of the harm suffered*," *ibid.* (emphasis added); that California was the focal point of the harm alone would have sufficed. For this reason, lower courts have concluded that, to satisfy *Calder*, the forum state must be "the focal point of the harm suffered by the plaintiff as a result of the tort" *and* "the focal point of the tortious activity." *Imo Indus. v. Kiekert AG*, 155 F.3d 254, 256 (3d Cir. 1998).

Moreover, for the *Calder* Court to have established that targeting a known forum resident is all that due process requires, it would have had to discard a long line of precedent emphasizing that a defendant must have a connection with the forum state itself. See, *e.g.*, *Int'l Shoe*, 326 U.S. at 319; *Kulko*, 436 U.S. at 91; *Rush*, 444 U.S. at 329. Yet the opinion contains no hint that the Court meant to do any such thing; that it was unanimous further confirms that *Calder* did not effect such a silent revolution. See *Wallace v. Herron*, 778 F.2d 391, 395 (7th Cir. 1985) ("*Calder* did not make the type of dramatic change in the due-process analysis of in personam jurisdiction advocated by the plaintiff. Rather, the so-called 'effects' test is merely another way of assessing the defendant's relevant contacts with the forum State.").

If it were a plausible interpretation of this Court's precedent that aiming at a state is unnecessary, common sense suggests that some court, somewhere, sometime in the 29 years since *Calder*, would have said so. Yet even the court below felt compelled

to acknowledge that the express-aiming requirement is distinct from the other two prongs of the test—namely, that the defendant took intentional action and knew that the plaintiff would suffer harm in the forum state. Pet. App. 16a. Instead of openly dispensing with the requirement, the Ninth Circuit drained it of all meaning by redefining aiming at the plaintiff as aiming at the state. Pet. App. 47a.

This Court's other personal-jurisdiction cases provide additional confirmation that the Ninth Circuit's approach is wrong. The Court has repeatedly 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*, 444 U.S. at 332 (emphasis added). Instead, the defendant must have "judicially cognizable ties with [the] State." *Ibid.*; see also *Kulko*, 436 U.S. at 93–94 (holding that jurisdiction over defendant parent could not depend on plaintiff parent's decision to reside in forum state).

"The plaintiff's residence is not, of course, completely irrelevant to the jurisdictional inquiry." *Keeton*, 465 U.S. at 780. But the plaintiff's residence is relevant only insofar as it bears on *the defendant*'s ties with the state, for the latter are the irreducible "minimum contacts" required by the Due Process Clause. As *Keeton* explained:

> [T]hat inquiry focuses on the relations among the defendant, the forum, and the litigation. Plaintiff's residence may well play an important role in determining the propriety of entertaining a suit against the defendant in the forum. That is, plaintiff's res-

> idence in the forum may, because of defendant's relationship with the plaintiff, enhance defendant's contacts with the forum. Plaintiff's residence may be the focus of the activities of the defendant out of which the suit arises. See *Calder* . . . .

Ibid.

Similarly, this Court explained in *Goodyear Dunlop Tires Operations, S.A. v. Brown* that "[w]hen a defendant's act outside the forum causes injury in the forum . . . a plaintiff's residence in the forum may strengthen the case for the exercise of specific jurisdiction." 131 S. Ct. 2846, 2857 n.5 (2011) (emphasis omitted) (citing *Calder*, 465 U.S. at 788). If targeting a known forum resident were enough, the plaintiff's residence would not merely "enhance" or "strengthen" defendant's contacts, *Keeton*, 465 U.S. at 780; *Goodyear*, 131 S. Ct. at 2857 n.5, but would instead be "decisive"—a notion this Court has explicitly rejected. *Rush*, 444 U.S. at 332.

The Ninth Circuit's approach is also flawed because it makes personal jurisdiction dependent entirely on the extent to which the defendant foresaw that his actions would harm the plaintiff in the forum state. "Although it has been argued [in dissent] that foreseeability of causing injury in another State should be sufficient to establish such contacts there . . . the Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction." *Burger King*, 471 U.S. at 474 (quoting *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 295 (1980)); see also *J. McIntyre*, 131 S. Ct. at 2789 (plurality opinion) ("[I]t is the

defendant's actions, not his expectations, that empower a State's courts to subject him to judgment."); Pet. App. 91a (McKeown, J., dissenting from denial of reh'g) ("With the stroke of a pen, our circuit returns to a discredited era of specific personal jurisdiction, where foreseeability reigns supreme and purposeful direction is irrelevant.").

For these reasons, rather than merely alleging that the defendant targeted a plaintiff with forum-state connections, the plaintiff must point to "actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King*, 471 U.S. at 475 (emphasis in original) (quoting *McGee*, 355 U.S. at 223). Courts must consider "the quality and nature of the defendant's activity," *Hanson*, 357 U.S. at 253, and determine whether it is sufficiently targeted at the forum state. The relevant question is whether the forum state is the "focal point" of the tort. *Calder*, 465 U.S. at 789. An intent to harm a known resident is relevant, but "the key to *Calder* is that the effects of an alleged intentional tort are to be assessed *as part of the analysis of the defendant's relevant contacts with the forum*"—not as a free-standing ground for jurisdiction based on the plaintiff's contacts with the forum. *Wallace*, 778 F.2d at 395 (emphasis added).[6]

---

[6] Indeed, because the constitutionally critical focus is the relationship between the defendant and the forum state—not between the defendant and the plaintiff or between the plaintiff and the forum state—an intent to harm someone with known forum connections is not necessary if the defendant expressly aims his conduct at the forum state. A person who fires a bullet

b. Applying that analysis to the facts here, it is clear that petitioner did not expressly aim his conduct at the State of Nevada. Nevada was certainly not the focal point of petitioner's alleged conduct that the court below relied on (preparing a false affidavit). That conduct occurred (if at all) in Georgia. It grew directly out of the seizure of the cash in Georgia. And it was performed to assist in forfeiture proceedings that would have occurred in Georgia.

Although the Ninth Circuit found it dispositive that petitioner allegedly intended to cause respondents harm knowing of their Nevada connections, Pet. App. 47a, respondents' affiliations with Nevada were irrelevant to *petitioner's* alleged conduct. There is no allegation that petitioner targeted respondents *because of* their Nevada connections or that petitioner's actions were "performed for the very purpose of having their consequences felt in [Nevada]." *Johnson*, 614 F.3d at 796 (internal quotation marks omitted); cf. *Dudnikov*, 514 F.3d at 1075 (concluding that defendants expressly aimed conduct at Colorado by contacting company in California in order to cancel an auction in Colorado).

And while respondents claim to have suffered harm in Nevada from the loss of the use of their money, that harm was purely economic and was not tied to Nevada in any meaningful way. Respondents

---

across a state border may be haled into the target state's courts even if he did not aim at a specific individual or aimed at an individual who happened to be in the target state at that moment but lacked any "substantial connections" to it, Pet. App. 47a. See *Kulko*, 436 U.S. at 96.

felt the loss of the use of their money wherever they happened to be during the time before it was returned; how much of that time respondents spent in Nevada, and how much time they spent traveling to wherever they chose to travel to, cannot remotely be described as "the focal point" of the alleged tort. That respondents may have been present in Nevada during some or even most of that time is, instead, "incidental" and therefore "constitutionally irrelevant." *Mobile Anesthesiologists*, 623 F.3d at 445 n.1. Thus, even if petitioner "intentionally targeted persons . . . with substantial connections to Nevada," Pet. App. 47a, he did not target Nevada itself.

The Ninth Circuit also emphasized that petitioner allegedly targeted "*funds* with substantial connections to Nevada." *Ibid.* (emphasis added). But cash is fungible and portable personal property; although its *owner* can have connections to a state, the cash itself cannot have an independent or meaningful "connection" to a state. Cash is thus at the opposite end of the spectrum from real property. Had petitioner tried to forfeit real property located in Nevada, or perhaps even a bank account located there, petitioner's conduct could be said to have a connection to the State of Nevada. Or if the cash had been buried in respondents' yard in Nevada, petitioner would have expressly aimed at Nevada if he had directed agents to go there and dig it up for forfeiture. Here, however, the allegations are merely that petitioner seized cash physically located in Georgia and tried to obtain forfeiture of that cash in Georgia. Accordingly, that some of the

cash "originated" in Nevada, Pet. App. 45a, cannot support the Ninth Circuit's ruling.[7]

Respondents have complained that petitioner has not "explain[ed] what would be involved in 'aiming conduct at the state itself.'" BIO 25. As an initial matter, the discussion above provides examples of conduct that could be said to be expressly aimed at a state. In all events, while the inquiry into express aiming—like any fact-specific inquiry—may be difficult in some cases at the margins, there is no difficulty here. Nevada has nothing to do with respondents' dispute with petitioner other than the fact that respondents claim to reside there. Nor, indeed, did the Ninth Circuit seriously contend otherwise. Rather than mustering an argument that petitioner's alleged conduct was aimed at Nevada itself, the court of appeals instead stressed that petitioner "targeted *persons* and *funds* with substantial connections to Nevada." Pet. App. 47a; see also Pet. App. 20a (emphasizing that petitioner "must have known and intended that his actions would have impacts *outside Atlanta*" and that he "expressly aimed his actions at people and property he knew from the outset were *not* local" (first emphasis added)).

---

[7] The Ninth Circuit's erroneous reliance on the seized cash's "connections" to Nevada is especially puzzling given that most of the cash did *not* leave Nevada with respondents at the beginning of their gambling trip but rather was obtained in New Jersey and Puerto Rico before respondents arrived in Atlanta. See Pet. App. 3a, 21a (noting respondents' allegations that $30,000 of the $97,000 came from Nevada and that "the seized funds included at least $30,000.00 in cash received from legal gaming win[nings] in Puerto Rico").

This amounts to holding that petitioner has the required minimum contacts with Nevada because *respondents* have connections to Nevada and respondents allege that petitioner committed an intentional tort aimed at them. The Ninth Circuit's plaintiff-focused approach does not satisfy due process. It is the defendant who must have connections with the forum state, and that constitutional requirement cannot be redefined out of existence by attributing the plaintiff's forum connections to the defendant. See *Keeton*, 465 U.S. at 780 (because due process inquiry focuses on defendant, plaintiff's lack of contacts with forum state "will not defeat jurisdiction established on the basis of defendant's contacts"). "To find express aiming based solely on" petitioner's alleged intent to harm respondents after learning of their Nevada connections "would make any defendant accused of an intentional tort subject to personal jurisdiction in the plaintiff's home state as soon as the defendant learns what that state is. *Calder* requires more." *Mobile Anesthesiologists*, 623 F.3d at 447.

B. Basic Principles of State Judicial Authority Also Support Requiring Contacts With The Forum State Itself

As explained above, the decision below is inconsistent with a long line of this Court's precedent because it abandons any requirement that the defendant himself have contacts with the forum state. That is more than enough to require reversal. But a further reason to reject the Ninth Circuit's approach is that it is impossible to reconcile with the basic notions of the territorial limits on state judicial

power that, as the plurality opinion in *J. McIntyre* recently reiterated, underlie the minimum-contacts doctrine. Although the Court need not endorse this understanding of personal jurisdiction in order to reverse the Ninth Circuit, it provides strong additional support for petitioner's position.

"[J]urisdiction is in the first instance a question of authority." *J. McIntyre*, 131 S. Ct. at 2789 (plurality opinion). Although endorsed only by a plurality in *J. McIntyre*, this understanding finds support in this Court's precedent. See *Hanson*, 357 U.S. at 251 (due process restrictions on personal jurisdiction "are a consequence of territorial limitations on the power of the respective States"); *World-Wide Volkswagen*, 444 U.S. at 291–92 ("The concept of minimum contacts . . . acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.").

Under this theory, "[t]he question" in a personal-jurisdiction case "is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *J. McIntyre*, 131 S. Ct. at 2789 (plurality opinion). States certainly have authority to punish some intentional torts committed by out-of-state defendants. As the *J. McIntyre* plurality explained, "with an intentional tort, the defendant might well fall within the State's authority by reason of his attempt to obstruct its laws." *Id.* at 2787.

For example, a state would surely have legitimate authority over a defendant who fired a "bullet from one State into another." *Kulko*, 436 U.S. at 96 (citing Restatement (Second) of Conflict of Laws § 37, cmt. a (1971)). Such conduct would be both literally and figuratively aimed at the forum state. A defendant should not be able to use the Due Process Clause to shield himself from a state's power to call him to account when, though remaining outside the state, he has for all intents and purposes entered the state to cause harm there in violation of its laws.

But states do not have free-ranging authority over all who are alleged to cause harm to their residents. They have authority only over those who literally or figuratively enter the state in some way. Where all that is alleged is that the defendant intended to harm an individual who happens to have forum-state connections, the state lacks legitimate authority over the defendant. A state "has a significant interest in redressing injuries that actually occur within the State," *Keeton*, 465 U.S. at 776, but that interest does not extend to situations where the alleged harm did not occur within the state in any meaningful sense but instead was simply harm that—like respondents' loss of the use of their $97,000 in cash—the plaintiff would feel wherever he happened to be present. Cf. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003) (noting that a state has no "legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction"); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 819 (1985) (holding that although "Kansas certainly has an interest in regulating . . . conduct in Kansas," it

lacked power to apply its substantive law to adjudicate disputes that arose in other states).

Here, there is no allegation that petitioner made any "attempt to obstruct [Nevada's] laws" or did anything else to submit to the authority of the State of Nevada. *J. McIntyre*, 131 S. Ct. at 2787 (plurality opinion). The alleged harm did not "actually occur within the State" of Nevada in any meaningful sense, and petitioner thus cannot be said to have entered Nevada or to have "commit[ted] torts within its territory." *Keeton*, 465 U.S. at 776 (quotation omitted). Nor do respondents allege that petitioner targeted them *because of* their Nevada connections as a way of attacking Nevada's sovereignty. As a result, the State of Nevada lacks any legitimate authority to hale petitioner from Georgia into Nevada to answer for his alleged conduct in Georgia.

C. The Ninth Circuit's Approach Is Unfair To Defendants

Although minimum-contacts "restrictions are more than a guarantee of immunity from inconvenient or distant litigation," *Hanson*, 357 U.S. at 251, "protect[ing] the defendant against the burdens of litigating in a distant or inconvenient forum" is nonetheless an important practical purpose of that doctrine, *World-Wide Volkswagen*, 444 U.S. at 292. The serious and unfair burdens that the Ninth Circuit's approach places on defendants reinforce the conclusion that it is inconsistent with due process.

1. The personal-jurisdiction rules in this intentional-tort context effectively sweep in not only wrongdoers, but also all those falsely or incorrectly

accused of wrongdoing. In many areas, the facts that support personal jurisdiction will be either uncontested or, at least, distinct from the underlying merits of the case. For example, in a case like *Burger King*, there was no dispute that the parties had a contractual relationship; that relationship having been established, the Florida courts had jurisdiction to decide which party was in the right under the contract. 471 U.S. at 479–80.

The intentional-tort context is different. Here, for example, the basis on which the Ninth Circuit found jurisdiction is petitioner's supposed preparation of a false affidavit. But petitioner disputes drafting any affidavit at all—let alone a false one. The Ninth Circuit's finding that respondents can drag petitioner to Nevada to defend depends entirely on the assumption that their allegation that he intended to harm them is correct. If that allegation is not correct, respondents would not even have the flimsiest of bases to seek personal jurisdiction over petitioner in Nevada; petitioner would not have expressly aimed at respondents *or* Nevada.

For these reasons, the rule that the Court adopts here will govern personal jurisdiction for fictional intentional torts as well as real ones, for innocent defendants as well as actual tortfeasors. If a mere allegation of an act aimed at the plaintiff while knowing of the plaintiff's connections to the eventual forum state is sufficient, many defendants will be subjected to the burdens of defending in distant forums even though that allegation is untrue and the forum state in effect never properly had personal

jurisdiction in the first place. See generally Robertson, *The Inextricable Merits Problem in Personal Jurisdiction*, 45 U.C. Davis L. Rev. 1301 (2012).

2. Affirming the Ninth Circuit's ruling would have pernicious effects on many types of potential defendants who could be accused of intentional torts and forced to litigate far from home.

a. *Law-enforcement officers*. As the facts here illustrate, the Ninth Circuit's ruling has obvious and dangerous consequences for law-enforcement officers. Any officer who interacts with out-of-state individuals and has opportunities to learn of their residence would be subject to suit all over the country. For example, a Transportation Security Administration officer who checks a traveler's driver's license and refuses to allow him access to a secure area or requires him to undergo heightened security screening could be sued anywhere. By virtue of examining the plaintiff's driver's license, the officer will know his state of residence and will thus know that any emotional distress she causes him will be felt in that state.

The Ninth Circuit brushed aside these concerns, reasoning that the burden on petitioner of having to defend this suit thousands of miles from home is minimal because he initially received free representation by the U.S. Department of Justice, "the world's largest law firm with offices in all fifty states." Pet. App. 33a (internal quotation marks omitted). As this case illustrates, however, *Bivens* defendants do not necessarily receive DOJ representation at all stages of a case or for all purposes, and DOJ representation

is never an entitlement, see 28 C.F.R. §§ 50.15, 50.16. In all events, that DOJ representation is sometimes available cannot mean that *Bivens* defendants are not entitled to the protections of the Due Process Clause. *Bivens* claims, after all, are personal-capacity claims against the officer as an individual, not against the United States or the officer's employing agency. Suits like respondents' threaten officers' personal finances and their good names. See *Stafford v. Briggs*, 444 U.S. 527, 544 (1980).

Moreover, the Ninth Circuit's interpretation of express aiming is in no way limited to *federal* law enforcement officers. If this Court agrees with the Ninth Circuit, state and local officers who interact with travelers will be haled into distant forums in suits brought under 42 U.S.C. § 1983, which are far more numerous than *Bivens* suits. For example, a state trooper accused of wrongful conduct after pulling over a car on the New Jersey Turnpike could be sued in Texas if the car has Texas license plates or the driver shows a Texas driver's license. Those who keep our nation safe deserve more protection than that.

b. *Journalists and publishers.* Adopting the Ninth Circuit's approach would also require journalists, editors, publishers, and other media defendants to travel to a plaintiff's home state to defend whenever the subject of a story sues for defamation. Lower courts that apply the express-aiming requirement more rigorously than the Ninth Circuit have relied on *Calder* to reject personal jurisdiction over defamation suits based on stories that, while aimed at a forum-state resident, were not

aimed at the forum state itself. For example, in *Young v. New Haven Advocate*, the Fourth Circuit confronted the argument that "two Connecticut newspapers and certain of their staff . . . subjected themselves to personal jurisdiction in Virginia by posting on the Internet news articles that, in the context of discussing the State of Connecticut's policy of housing its prisoners in Virginia institutions, allegedly defamed the warden of a Virginia prison." 315 F.3d 256, 258 (4th Cir. 2002). The defendants targeted the plaintiff and knew of his Virginia connections, but the Fourth Circuit explained that the key question under *Calder* was "whether the defendant[s] ha[d] expressly aimed or directed [their] conduct toward the forum state." *Id.* at 262. The answer to that question was no, because the defendants did not "manifest an intent to target and focus on Virginia readers." *Id.* at 263.

Under the Ninth Circuit's reasoning, cases like *Young* would come out the other way. Subjects of unflattering stories will be able to sue in their home states, even if the stories were not distributed in that state or otherwise targeted towards readers in that state and even if the stories were not drawn from sources in that state; writing a story about a forum-state resident would be sufficient, even if the forum state was not the focal point of the story. But see *Calder*, 465 U.S. at 788–89. A ruling here will apply to media defendants with full force, given that the Court has "reject[ed] the suggestion that First Amendment concerns enter into the jurisdictional analysis." *Id.* at 790.

c. *Internet users.* Adopting the Ninth Circuit's approach also would pose serious concerns in the digital realm. Because material posted on the internet can be read anywhere in the world, the prospect of "overreaching jurisdiction" is particularly troubling in this context. *Millennium Enters. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 923 (D. Or. 1999). If the Ninth Circuit's view prevails, a blogger, bulletin-board poster, or Twitter user who writes something that is allegedly defamatory or who allegedly infringes on someone's intellectual property rights could be sued in the plaintiff's home state, just like the traditional media defendants discussed above.

Courts have repeatedly relied on *Calder* to dismiss such suits where there is no evidence that the internet poster targeted the plaintiff's home state in any meaningful way. See, *e.g.*, *Johnson*, 614 F.3d at 796 (dismissing defamation suit based on bulletin-board postings where there was no evidence that allegedly defamatory statements "specifically targeted" forum state, even though defendant knew plaintiff resided in forum state); *Millennium*, 33 F. Supp. 2d at 922 (dismissing trademark-infringement claim in absence of any showing that defendant's website was "aimed intentionally at" forum state). Those cases would come out the other way under the Ninth Circuit's approach, thereby "dramatically chilling what may well be the most participatory marketplace of mass speech that this country—and indeed the world—has yet seen." *Id.* at 923.

d. *Business defendants.* Business defendants, too, will feel the effects of a ruling in respondents' favor. If the Ninth Circuit is right, an individual or

firm can sue an out-of-state competitor in the plaintiff's home state, alleging trademark infringement or another business tort—even if neither the defendant nor the tort had any connection to the forum state other than the alleged injury to the plaintiff. Courts have rightly concluded that express aiming was absent in such cases.

For example, in *ESAB Group, Inc. v. Centricut, Inc.*, the plaintiff, a company headquartered in South Carolina, accused a New Hampshire-based competitor of tortiously conspiring with one of the plaintiff's employees in Florida to take sales leads from the plaintiff for customers "located across the United States and Canada." 126 F.3d 617, 625 (4th Cir. 1997). The Fourth Circuit found no express aiming at South Carolina; although the lost sales "were ultimately felt in South Carolina at the [plaintiff's] headquarters," this was "too unfocused to justify personal jurisdiction." *Ibid.* Similarly, in *Mobile Anesthesiologists*, the Seventh Circuit concluded that a Texas-based corporation accused of trademark infringement by an Illinois-based company had not expressly aimed its conduct at Illinois, even though the plaintiff alleged that the defendant knew of the plaintiff's trademark and Illinois residence. 623 F.3d at 446. Affirming the decision below would upend these eminently sensible results.

* * * * *

The Ninth Circuit concluded that petitioner expressly aimed his conduct at the State of Nevada solely because respondents allege that he targeted them while knowing that *they* had connections to Nevada. The Due Process Clause requires, however,

that petitioner himself have connections to Nevada. A plaintiff's forum-state connections cannot substitute for the constitutionally required minimum contacts by the defendant. Because petitioner has no contacts with Nevada, this Court should reverse the Ninth Circuit's ruling.

II. THE PLACE WHERE A PLAINTIFF FEELS THE EFFECTS OF A TORT IS NOT A PROPER VENUE UNDER 28 U.S.C. § 1391(b)(2) IF THE DEFENDANT'S CONDUCT ALL OCCURRED ELSEWHERE

In addition to ruling that Nevada could exercise personal jurisdiction over petitioner, the court below ruled that the District of Nevada was a proper venue under 28 U.S.C. § 1391(b)(2), which, as relevant here, provides 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." Focusing on where respondents felt the effects of petitioner's alleged conduct, the Ninth Circuit held that venue was proper because "[a]ll the economic injuries suffered by [respondents] were realized in Nevada." Pet. App. 41a.

The Ninth Circuit's plaintiff-focused approach to venue is contrary to § 1391(b)(2)'s text, which instructs courts to determine where the "events or omissions giving rise to the claim occurred"—not where the effects of those events were felt. The Ninth Circuit also lost sight of the fundamental point that venue provisions like § 1391(b)(2) are intended to protect defendants—not to allow plaintiffs to lay venue wherever they reside, which is the import of the decision below.

A. The Ninth Circuit's Conclusion That Venue Was Proper Has No Basis In § 1391(b)(2)'s Text

Under the Ninth Circuit's approach, venue is proper in a district if the plaintiff "suffered harm" there or was otherwise "affected" there by an alleged tort, even if the tort occurred elsewhere and the only harm alleged, as in this case, is the economic consequences of the tort. Pet. App. 41a–42a. This approach is impossible to reconcile with § 1391(b)(2)'s plain text, which requires the court to look to where "the events or omissions giving rise to the claim occurred," especially given the normal purpose of venue provisions—namely, "protect[ing] the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183–84 (1979) (emphasis in original). Instead, 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. Neither respondents' loss of the use of their cash during the period before the government returned it, nor any of the other facts on which the Ninth Circuit relied, can be described as "events or omissions giving rise to [their] claim[s]." The statute thus requires focusing on petitioner's alleged conduct giving rise to their claims, all of which occurred in the Northern District of Georgia.

1. The Place Where A Plaintiff Merely Feels The Consequences Of An Alleged Tort Occurring Elsewhere Is Not A Proper Venue Under § 1391(b)(2)

a. Section 1391(b)(2) restricts venue to districts in which "the events or omissions giving rise to the claim occurred." This Court made clear in *Leroy* that a claim does not arise in a district simply because the plaintiff alleges that he felt the impact of the defendant's actions there. 443 U.S. at 185–86. There, the Court confronted an earlier version of § 1391(b) that permitted venue in the district "in which the claim arose." *Id*. at 178 n.8. The plaintiff wanted to initiate a tender offer in Texas. An Idaho statute arguably precluded the tender offer. The plaintiff filed suit in the Northern District of Texas against the Idaho officials in charge of enforcing the statute, seeking a declaration that it was unconstitutional. *Id.* at 177, 183. The plaintiff argued that its claim arose in Texas, because that is where the statute had its "impact" in terms of precluding the tender offer. *Id.* at 186. The Court rejected that argument; because the case involved "action that was taken in Idaho by Idaho residents," it had only "one obvious locus—the District of Idaho." *Id.* at 185.

In reaching this conclusion, the Court relied heavily on the fact that "[i]n 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." *Id.* at 183–84 (emphasis in original). This important purpose of venue provisions dates to the founding: As this Court has observed, "[t]he first restrictions on venue in the

federal courts," which "were set forth in the Judiciary Act of 1789," required civil suits against non-aliens to be brought in the district where the defendant resided or could be found at the time the lawsuit commenced. *Brunette Mach. Works, Ltd. v. Kockum Indus.*, 406 U.S. 706, 708 (1972) (citing 1 Stat. 79).

The Court in *Leroy* did not dispute that the plaintiff suffered injury in Texas, but given the defendant-protective purpose of the venue provision it was "absolutely clear" that "Congress did not intend to provide for venue at the residence of the plaintiff or to give that party an unfettered choice among a host of different districts." 443 U.S. at 185. A reading that would have "subject[ed] the Idaho officials to suit in almost every district in the country" simply could not be right. *Id.* at 186.

The venue statute has been amended since *Leroy* to allow for venue in the district or districts "in which a substantial part of the events or omissions giving rise to the claim occurred," rather than requiring the court to pinpoint the single district "in which the claim arose." But *Leroy*'s reasoning continues to apply with full force. At least in a case alleging only economic harm like the loss of the use of money, the alleged tort does not arise in the plaintiff's home district merely because the plaintiff feels the "impact" of the alleged tort there. *Ibid.* Instead, what matters is where the relevant "action[s]" occurred. *Ibid.*

If anything, it is all the more clear under § 1391(b)(2)'s current text that the place where the plaintiff merely feels the impact of a tort occurring elsewhere is not a proper venue. The statute now

permits venue only in districts where "events" or "omissions" giving rise to the claim "occurred." Although a plaintiff may feel the economic impact of a seizure of funds in the district where he resides or where he is otherwise present, such effects cannot be described as either "events" or "omissions" that "occur[]" in that place.

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). Having less money to spend during the months that seized cash is in the government's custody is not a discrete occurrence that can be situated in a certain place at a particular time. Rather, it is simply an effect that continues indefinitely as a consequence of an earlier "event"—the seizure of the cash—and that the plaintiff will feel wherever he happens to be during the time the cash remains in the government's hands.

Nor can this economic impact be described as an "omission." As the Eighth Circuit noted, "it is not easy to know how *a plaintiff's* 'omissions' could ever be relevant to whether a claim has arisen." *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995) (emphasis added). Indeed, the statute's use of "omissions" is strong evidence that Congress intended the focus to be on the defendant's conduct; when an "omission" gives rise to a civil claim, it is because *the defendant* has failed to do something he was obligated to do. Thus, in a case like this one, where the alleged injury consists of feeling negative effects of tortious conduct that occurred elsewhere, the only "events" and "omis-

sions" for a court to consider are the alleged actions or failures to act by the defendant.

This Court's decision in *Richards v. United States*, 369 U.S. 1 (1962), provides strong support for this approach. The question in that case was what state's law applies under the Federal Tort Claims Act, which creates liability for certain harms "caused by the negligent or wrongful act or omission" of government employees, depending on "the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b). The Court rejected "the argument that Congress intended the words 'act or omission' to refer to the place where the negligence had its operative effect," 369 U.S. at 10, and concluded instead that the statute referred to "the place where the negligence occurred." *Id*. at 9.

So too with § 1391(b)(2). Where the alleged tortious conduct is an "event" or an "omission," and where the economic impact on the plaintiff is too amorphous and unfocused to be described as an "event," the plain language of the statute requires the court to consider only where the defendant's alleged conduct occurred and not where that conduct had its "operative effect."

b. The Ninth Circuit's conclusion that venue was proper in Nevada is thus contrary to the plain language of § 1391(b)(2). The Ninth Circuit stated that petitioner's alleged tortious conduct caused respondents to suffer the "loss of use and interest on the funds for nearly seven months" and found it critical that respondents felt that loss in Nevada. Pet. App. 41a. As explained, however, a plaintiff will *always* feel certain consequences of tortious con-

duct—such as the loss of the use of money, emotional distress, or pain and suffering—wherever the plaintiff happens to be. Those effects are simply not "events or omissions giving rise to the claim" under any plausible reading of the statutory text. As a result, that respondents experienced the loss of the use of their cash in Nevada, as opposed to somewhere else, is beside the point under § 1391(b)(2).

If, for example, respondents had moved to Alaska the week after their cash was seized, they would have experienced harm in Alaska by virtue of having less money to spend there—making venue proper there if the Ninth Circuit is correct that the place where a plaintiff feels harm from conduct occurring elsewhere is a proper venue. Respondents' presence in Nevada during the time the government had custody of their funds was just as incidental to their claims against petitioner. No matter where respondents happened to reside, or where they traveled to, they would have felt the same impact from not having their $97,000 to spend.

In short, the only "events" and "omissions" that gave rise to respondents' claims are petitioner's alleged acts: petitioner's seizure of respondents' cash and his subsequent preparation of the supposedly false affidavit. That conduct occurred (if at all) entirely in the Northern District of Georgia.[8]

---

[8] Even if feeling the effects of the loss of the use of their money could somehow be thought an "event[] . . . giving rise to [respondents'] claim[s]" that "occurred" in Nevada, Nevada would fail § 1391(b)(2)'s requirement that "a substantial part of the

This analysis is clear under the text of § 1391(b)(2), so there is no need to go further. As in *Leroy*, however, the overarching defendant-protective purpose of the statute makes it all the more clear that the Ninth Circuit's holding is wrong. Although the Ninth Circuit phrased its conclusion in terms of the locus of respondents' injury rather than holding openly that venue lies in the district where the plaintiff resides, the practical effect is largely the same. Plaintiffs will feel the effects of torts wherever they happen to be, which usually will include where they reside. On this plaintiff-focused approach, § 1391(b)(2) provides no protection to defendants at all. Defendants like petitioner could be sued in "every district in the country"—precisely the result that the Court in *Leroy* recognized that Congress could not have intended. 443 U.S. at 186; see also *id.* at 185 (stating that "the convenience of the defendant (but *not* of the plaintiff)" is relevant for venue) (emphasis in original; footnote omitted).

---

events or omissions giving rise to the claim [have] occurred" in that district. "Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship with the dispute." *Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 294 (3d Cir. 1994). Nevada has "no real relationship" with this dispute, which concerns whether petitioner was justified in allegedly seizing respondents' funds in Georgia and pursuing the forfeiture of those funds in Georgia. In the face of actual "events" occurring in Georgia that gave rise to respondents' claims, their amorphous feeling in Nevada of effects of those events in Georgia cannot justify venue in Nevada.

2. The Other Facts On Which The Ninth Circuit Relied Do Not Support Its Venue Holding

In addition to relying on respondents' loss of use of their funds in Nevada, the Ninth Circuit sought to justify its venue holding by pointing to several "facts concerning the origin and legitimacy of the $97,000" that were "connected to Nevada." Pet. App. 41a. The court noted that "the $30,000 'bank' originated in Nevada," "the documentation of the legitimacy of the money was sent from Nevada," and "the funds eventually were returned to Fiore and Gipson in Nevada." Pet. App. 41a–42a. None of these facts is sufficient to support venue in Nevada.

As an initial matter, the fact that some of the seized money "originated" in Nevada is neither an "event" nor an "omission." It is therefore irrelevant for purposes of § 1391(b)(2). And why the "origin" of cash should ever be relevant for venue purposes is difficult to understand. Cash is a portable physical object and a fungible good; although the cash's *owner* may have "substantial connections" (Pet. App. 47a) to a particular district or districts, the cash itself has no meaningful connection to any particular place and no physical connection to any place other than wherever it happens to be stored.

Some of the other facts enumerated by the Ninth Circuit (such as respondents' mailing of documentation) can be described as "events," unlike respondents' feeling the effects of the loss of the use of their cash. But none establishes venue under § 1391(b)(2), because none gave rise to respondents' claims.

Section 1391(b)(2) does not speak of events that are merely "related to the claim." Instead, it makes venue depend on the location of the events that "giv[e] rise to the claim." Without addressing this plain language, the Ninth Circuit and respondents seemingly take the position that listing facts that are somehow associated with the claim is enough. See Pet. App. 41a–42a; BIO 31–32. It is not. To "giv[e] rise to the claim," an event or omission must form a necessary component of the claim itself. See Random House Webster's Unabridged Dictionary 1660 (defining "give rise to" as "to originate; produce; cause"); Merriam Webster's Collegiate Dictionary 493 (10th ed. 1994) (defining "give rise to" as "to be the cause or source of").

None of the events to which the Ninth Circuit pointed satisfies this standard. Respondents' mailing of documentation of the legitimacy of the money did not give rise to their claims; petitioner's alleged refusal to recognize that proof and persistence in pursuing forfeiture did. Pet. App. 6a–7a; J.A. 34–36. As for the "arrival" of respondents' funds in Nevada, the Ninth Circuit asserted that it "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." Pet. App. 42a (citing *Albright v. Oliver*, 510 U.S. 266, 280 (1994) (Ginsburg, J., concurring)). This badly misses the point. First, Justice Ginsburg's concurring opinion in *Albright* says nothing about ripeness, but instead suggests that the statute of limitations on a Fourth Amendment claim does not begin to run until a seizure ends. See 510 U.S. at 280. Even assuming that the limitations period did not start to run until

the seizure ended, it does not follow that respondents' claims did not "arise" until then. Cf. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994) (explaining the difference between a claim arising and accrual for limitations purposes). But more fundamentally, the government's return of the cash is the *opposite* of what respondents are complaining about. The seizure and delay in returning the funds gave rise to their claims; the return of the funds did not.

And even if (contrary to fact) "abandonment" of the potential forfeiture case gave rise to respondents' claims, that would not justify the decision below. That abandonment occurred in the Northern District of Georgia, where the AUSA decided not to pursue forfeiture, not in Nevada, J.A. 30–31. Once the government decided not to seek forfeiture, respondents' funds would have been returned to them wherever they—or their lawyer—happened to be. The happenstance that respondents received their cash in Nevada has nothing to do with respondents' claims against petitioner.

3. Petitioner's Conduct Is The Only Relevant Factor Here

As explained above, § 1391(b)(2) requires focusing on "the events or omissions giving rise to the claim," and here the only events or omissions giving rise to respondents' claims were petitioner's alleged actions. The only relevant factor under the statute in this case is therefore petitioner's conduct, all of which occurred in the Northern District of Georgia.

Several courts of appeals have suggested that the defendant's conduct is the only relevant factor

under § 1391(b)(2): "by referring to 'events or omissions giving rise to the claim,' Congress meant to require courts to focus on relevant activities of the defendant, not of the plaintiff." *Woodke*, 70 F.3d at 985; see *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408 (2d Cir. 2005); *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371–72 (11th Cir. 2003). In intentional-tort cases like this one, that approach is correct. In such cases, the only events and omissions giving rise to the claim are acts and omissions by the defendant, and the defendant's conduct thus should be the exclusive focus of the § 1391(b)(2) inquiry.

Nonetheless, the Court need not decide that the defendant's conduct must be the exclusive focus in *every* case governed by § 1391(b)(2). That provision governs federal civil cases of every stripe, and its text may apply in different ways to different situations.

For example, in a product-liability case, venue might be appropriate in the district where the product malfunctions and causes physical injury. See, *e.g.*, *J. McIntyre*, 131 S. Ct. at 2798 (Ginsburg, J., dissenting) ("[T]he State in which the injury occurred would seem most suitable for litigation of a products liability tort claim." (citing, *inter alia*, § 1391(b)(2)'s predecessor provisions)). Contrary to the Ninth Circuit's approach, however, that district would be proper not because it is the locus of the injury *qua* injury, see Pet. App. 41a, but rather because the malfunction and immediately resulting physical injury can be fairly described as an "event[] . . . giving rise to the claim" that "occurred" there. Cf. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 704–12 (2004) (holding that a personal-injury claim "arising in a foreign country,"

28 U.S.C. § 2680(k), is one where the physical injury occurs in a foreign country).

Similarly, in a dispute over an insurer's duty to pay for an accident, the location where the accident occurred may be a proper venue. See *Uffner v. La Reunion Francaise, S.A.*, 244 F.3d 38, 43 (1st Cir. 2001). Again, venue would not be proper there on the ground that the injury occurred there; indeed, the vessel owner's economic injury would likely be felt where the owner resides and not necessarily where the accident occurred. But the accident could be understood as an "event" that is "the source of" the lawsuit. See *supra* at 50. In other words, "an event" can give rise to a claim without being "a point of dispute between the parties." *Uffner*, 244 F.3d at 43.[9]

However the Court may resolve the application of § 1391(b)(2) in other types of cases in the future, in

---

[9] For similar reasons, an event need not necessarily be "wrongful" to give rise to a claim. The Eighth Circuit's suggestion that § 1391(b)(2) requires focusing on the "events or omissions" alleged to be "wrongful," *Woodke*, 70 F.3d at 986, makes sense in an intentional-tort case where by definition the plaintiff is alleging that the defendant's conduct giving rise to the claim was wrongful. Not all claims involve wrongful conduct, however. In *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, for example, the plaintiff was seeking to vacate or modify an arbitral award, not alleging an intentional tort. 529 U.S. 193 (2000). The Court stated that § 1391(b)(2) permitted venue in the district where the underlying construction contract was performed and where, accordingly, "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 [was] situated." *Id*. at 198.

the present case the analysis is straightforward and dictated by the plain language of the statute. As explained above, respondents' ongoing inability to use their seized cash during the time it was in the government's custody cannot be described as an "event[]" or an "omission[]" that "occurred" in Nevada (or anywhere else). An injury that the plaintiff feels wherever she happens to be cannot justify laying venue in the plaintiff's home district on the theory that she felt the injury there while ignoring that all of the allegedly tortious events and omissions occurred elsewhere.

B. Congress Did Not Intend Venue Under § 1391(b)(2) to Lie Wherever the Plaintiff Feels Effects of a Tort

Although § 1391(b)(2)'s text provides reason enough to reject the Ninth Circuit's reading, evidence of Congress's intent makes it even clearer that the Ninth Circuit erred. Far from suggesting that Congress amended § 1391(b) to create the current version because it was unhappy with *Leroy* or sought to break with the normal defendant-protective purpose of statutory venue provisions, all evidence confirms that Congress did not intend § 1391(b)(2) to allow venue wherever the plaintiff feels the impact of a tort occurring elsewhere.

Congress amended § 1391(b) because "it was oftentimes difficult to pinpoint the *single* district in which a 'claim arose,'" as the prior version seemingly required; Congress therefore authorized venue in multiple districts in cases where "a substantial part of the events or omissions giving rise to the claim" occurred in multiple districts. *Jenkins Brick*, 321

F.3d at 1371 (emphasis added); see also H.R. Rep. No. 101-734, at 23 (1990), reprinted in 1990 U.S.C.C.A.N. 6860, 6869 (amendment "avoids the problem created by the frequent cases in which substantial parts of the underlying events have occurred in several districts"). In the Third Circuit's words, the amendment "was based on the underlying aim of simplifying litigation rather than displacing the existing policy that showed due consideration for the defendant." *Cottman*, 36 F.3d at 294. Thus, "[t]he new language . . . does not mean . . . that the amended statute no longer emphasizes the importance of the place where the wrong has been committed." *Jenkins Brick*, 321 F.3d at 1371.[10]

It is in fact quite clear from the context of § 1391(b)(2)'s enactment that Congress did not intend the approach adopted by the Ninth Circuit. Before 1990, § 1391 allowed venue in diversity actions "in the judicial district where all plaintiffs . . . reside." 28 U.S.C. § 1391(a) (1988). In amending the statute, Congress largely adopted the views of the Federal Courts Study Committee, which had argued that the

---

[10] Before 2011, § 1391 contained separate venue provisions for diversity and federal-question cases that both authorized venue in a district "in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(a)(2) (2006) (diversity); *id.* § 1391(b)(2) (federal question). Congress's 2011 amendment eliminated other separate requirements for the two types of cases but did not change the text, now contained in § 1391(b)(2), that governs this federal-question case. See Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, § 202, 125 Stat. 758, 763 (2011).

old statute "perversely favor[ed] home-state plaintiffs in diversity cases." Report of the Federal Courts Study Committee 94 (Apr. 2, 1990); see also *ibid.* ("[I]f a litigation has a significant relation to a plaintiff's home state, it may be brought there; if it has no such relation, the plaintiff's residence alone should not suffice for venue.").[11]

It would be strange indeed if Congress, while removing a provision that allowed diversity plaintiffs to sue in their home states, at the same time allowed *both* diversity and federal-question plaintiffs to sue wherever they claimed to feel the consequences of the defendant's conduct—which will ordinarily include their home state. Had Congress intended that result, it could simply have revised the old statute to remove its limitation to diversity suits. For this reason, the leading civil procedure treatise explains that "the suffering of economic harm within a district is not sufficient without more to warrant transactional venue in that district . . . because otherwise venue almost always would be proper at the place of the plaintiff's residence, an option that Congress explicitly removed with the 1990 amendments to the diversity portion of the statute." 14D Wright, Miller & Cooper, *Federal Practice and Procedure* § 3806.1 (3d ed. 2007).

Moreover, other statutes make clear that Congress knows how to make venue dependent on the plaintiff's residence in the rare circumstances where

---

[11] Available at www.fjc.gov/public/pdf.nsf/lookup/repfcsc.pdf/$file/repfcsc.pdf.

it so desires. See, *e.g.*, 28 U.S.C. § 1402(b) (providing for venue for certain claims against the United States "in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred"); 28 U.S.C. § 1391(e)(1)(C) (providing for venue for official-capacity suits against officers of the United States "in any judicial district in which . . . the plaintiff resides if no real property is involved in the action"). That Congress did not follow that course in § 1391(b)(2) is strong evidence that it did not intend to permit venue wherever the plaintiff feels the impact of a tort that occurred elsewhere.

It is also notable that the provisions in which Congress has authorized venue where the plaintiff resides govern suits against the United States.[12] The federal government feels no inconvenience from being sued anywhere in the United States, but individual defendants do. That was the very reason why the Court held in *Stafford v. Briggs*, 444 U.S. 527 (1980), that § 1391(e) applied only to official-capacity suits against the government and not individual-capacity suits like this one against law-enforcement officers sued personally. The Court recognized that Congress

---

[12] An additional example of a provision laying venue at the plaintiff's residence is 18 U.S.C. § 2334(a), which permits suits based on injuries resulting from international terrorism to be brought in a "district where any plaintiff resides." Many defendants sued under this statute will be aliens, for whom no particular district is a natural or convenient venue. And in any event, it would be unsurprising for Congress to be less solicitous of the need to protect defendants from inconvenient venue in the unique context of claims for injuries caused by international terrorism.

could not have intended § 1391(e) to be "the master key which would unlock the door to nationwide venue for money damages actions brought against an official as an individual." *Id.* at 539.

Given *Stafford*, and given that Congress traditionally enacts venue statutes "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 (emphasis in original), it would have been highly anomalous for Congress to intend § 1391(b)(2) to be just such a "master key." There is not a shred of evidence that Congress so intended.[13]

* * * * *

Section 1391(b)(2) allows venue in a district only if "a substantial part of the events or omissions

---

[13] The Ninth Circuit's venue holding, like its personal-jurisdiction holding, would have pernicious consequences for many types of defendants if accepted by this Court. See *supra* Part I.C. Respondents have suggested that the possibility of transfer for convenience under 28 U.S.C. § 1404(a) makes it unnecessary to be concerned about the Ninth Circuit's reading of § 1391(b)(2). BIO 33. But plaintiffs who opt to file suit in their home district against distant defendants will oppose transfer; defendants will have to devote substantial resources to litigating transfer motions in the very forum where they should not have to defend in the first place; and such motions are largely committed to the district court's discretion and thus of uncertain benefit. See *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). More fundamentally, the possibility that some defendants may obtain discretionary transfer is hardly a reason to construe § 1391(b)(2), contrary to its text and to all indications of Congress's intent, to permit venue wherever the plaintiff feels the effects of tortious "events or omissions" occurring elsewhere.

giving rise to the claim occurred" there. The only events and omissions giving rise to respondents' claims were petitioner's alleged actions and omissions, all of which occurred in the Northern District of Georgia. The Ninth Circuit erred by holding that venue was proper in the District of Nevada.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

JEFFREY S. BUCHOLTZ
Counsel of Record
DANIEL S. EPPS
CAROLYN M. SWEENEY
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

TIMOTHY H. LEE
KING & SPALDING LLP
1180 Peachtree St., NE
Atlanta, GA 30309

Counsel for Petitioner

May 28, 2013

APPENDIX

STATUTORY APPENDIX

28 U.S.C. § 1391 provides:

Venue generally

(a) APPLICABILITY OF SECTION.

Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) VENUE IN GENERAL.

A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) 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; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) RESIDENCY.

For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

(d) RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE DISTRICTS.

For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal

jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(e) ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES.

(1) IN GENERAL.

A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which

(A) a defendant in the action resides,

(B) 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, or

(C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

(2) SERVICE.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that

the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) CIVIL ACTIONS AGAINST A FOREIGN STATE.

A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any 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;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(g) MULTIPARTY, MULTIFORUM LITIGATION.

A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.