No. __-____

IN THE
# Supreme Court of the United States

TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V.,
*Petitioners*,

v.

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF A MINOR CHILD, A.G.J.T., AND ARMANDO ISMAEL GOMEZ MARTINEZ,
*Respondents*.

**On Petition for a Writ of Certiorari to the Supreme Court of Texas**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The Texas Supreme Court held that petitioners – a Mexican national broadcasting company, one of its news anchors, and a Mexican corporation affiliated with the network's Monterrey, Mexico, television stations – can be haled into a Texas state court to defend against defamation claims brought by Mexican citizens, based on extremely limited in-state activities that had no causal relationship to respondents' defamation claims. The decision below raises two questions:

1. Can a defendant's general business contacts or sporadic and involuntary contacts in the forum state that have no causal connection to the plaintiff's cause of action establish specific personal jurisdiction consistent with the Due Process Clause?

2. Under the "effects test" described in *Calder v. Jones*, 465 U.S. 783 (1984), and *Walden v. Fiore*, 134 S. Ct. 1115 (2014), must the forum state be the "focal point" of the alleged defamatory statements and the injury suffered, or are the defendant's more general efforts to "serve the market" sufficient to establish specific jurisdiction?

## CORPORATE DISCLOSURE STATEMENTS

Pursuant to Rule 29.6 of the Rules of this Court, petitioners TV Azteca, S.A.B. de C.V., and Publimax, S.A. de C.V., state the following:

TV Azteca, S.A.B. de C.V., is a Mexican corporation with its principal place of business in Mexico City. TV Azteca does not have a parent company, and no publicly held company owns 10% or more of its stock.

Publimax, S.A. de C.V., is a Mexican corporation located in Monterrey, Mexico. Publimax does not have a parent company, and no publicly held company owns 10% or more of its stock.

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TV Azteca, S.A.B. de C.V., Patricia Chapoy, and Publimax, S.A. de C.V., respectfully petition for a writ of certiorari to review the judgment of the Texas Supreme Court.

## INTRODUCTION

This case presents two important questions about due process limitations on the exercise of specific personal jurisdiction. Each question raises acknowledged splits among the federal circuits and state courts of last resort. The Texas Supreme Court deepened those conflicts in an extreme decision that affirmed the exercise of personal jurisdiction over Mexican nationals in a defamation case brought by Mexican plaintiffs where the operative facts occurred in Mexico.

The petitioners and respondents in this case are all Mexican citizens. Respondents (Gloria Ruiz, a Mexican recording artist referred to as "Mexico's Madonna," and her son and husband) sued petitioners – a Mexican national television network (TV Azteca), one of its news anchors (Patricia Chapoy, also a Mexican national), and a Mexican corporation (Publimax) affiliated with TV Azteca's Monterrey television stations. Respondents alleged that petitioners defamed them in a series of television reports about Ruiz's arrest, criminal prosecution, and multi-year imprisonment in the 1990s and early 2000s for allegedly luring underage girls into sexual relationships with her manager and then-boyfriend. Throughout the period described in the reports, Ruiz resided in Mexico (except for nearly two years she spent in prison in Brazil). TV Azteca broadcasted these reports to Mexican viewers from stations located within Mexico. Respondents nonetheless sued in Texas, where Ruiz had temporarily moved, and the

Texas Supreme Court held that it could hear respondents' suit because TV Azteca and Publimax had made some general marketing and other commercial efforts in Texas, wholly unrelated to the broadcasts that gave rise to the defamation lawsuit. That erroneous decision deepens two circuit conflicts that warrant this Court's review.

*First*, this Court long has held that, for specific personal jurisdiction to exist, the lawsuit must be "related to or 'arise[] out of' a defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). This Court previously recognized that the contours of the "arises out of or relates to" requirement raises an issue of national importance when it granted certiorari on that question in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 589-90 (1991). But the Court ultimately did not reach this issue, instead resolving the case on other grounds. Since that time, lower federal and state courts have badly fractured, disagreeing over whether the analysis should be based on causation and, if so, whether the standard should be but-for causation, proximate causation, or something else.

The Texas Supreme Court here embraced the minority approach – eschewing the causation standard and finding that the Due Process Clause requires neither proximate nor but-for causation. App. 38a. The court below reached that conclusion through a series of analytical errors that flouted this Court's personal jurisdiction teachings. It improperly conflated specific and general jurisdiction, running afoul of this Court's admonition that specific jurisdiction turns on "the defendant's *suit-related conduct*" aimed at the forum state. *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). It improperly ignored

the corporate form by imputing the suit-unrelated activities of an American subsidiary to its Mexican parent, in contravention of this Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014). And it failed to heed this Court's admonition that personal jurisdiction should be exercised cautiously over foreign nationals given international comity concerns.

*Second*, under *Calder v. Jones*, 465 U.S. 783 (1984), a defamation defendant may be subject to specific jurisdiction only where the forum state is "the focal point both of the story and of the harm suffered." *Id.* at 789. But the Texas Supreme Court explicitly refused to apply the "focal point" test – instead importing an "intent or purpose to serve the market" standard from this Court's products-liability jurisprudence. App. 31a. That approach puts Texas at odds with at least nine federal courts of appeals (including the Fifth Circuit) and numerous other state courts of last resort. Texas's rejection of *Calder*'s "focal point" requirement was outcome-determinative, because, as the Texas Supreme Court acknowledged, the "subject matter of the allegedly defamatory broadcasts" in this case is "completely unrelated to Texas." App. 28a-29a.

The Court should grant certiorari, resolve the longstanding disagreements about the scope of the "related to or arises out of" and "focal point" tests, and reverse the decision below.

## OPINIONS BELOW

The Texas Supreme Court's opinion (App. 1a-46a) is reported at 490 S.W.3d 29. The Texas Court of Appeals' memorandum opinion (App. 47a-103a) is not reported, but is available at 2014 WL 346031. The Texas district court's order (App. 104a-105a) is not reported.

## JURISDICTION

The Texas Supreme Court entered judgment on February 26, 2016, and denied a petition for rehearing on June 10, 2016 (App. 106a). On August 29, 2016, Justice Thomas extended the time for filing a certiorari petition to and including October 8, 2016. App. 108a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). *See Calder*, 465 U.S. at 788 n.8 (denials of dismissal for lack of personal jurisdiction are final judgments within the meaning of § 1257).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." The Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code Ann. § 17.042, is set forth at App. 107a.

## STATEMENT OF THE CASE

### A. Personal Jurisdiction Framework

"The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts." *Walden*, 134 S. Ct. at 1121. A non-resident defendant "generally must have 'certain minimum contacts'" with the forum state "'such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Id.* (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

There are two types of personal jurisdiction: general and specific. General jurisdiction exists only when a defendant's contacts with a forum state "are

so constant and pervasive 'as to render [it] essentially at home in the forum State.'" *Bauman*, 134 S. Ct. at 751 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)) (alteration in original). Respondents have never asserted that petitioners are subject to general jurisdiction in Texas.

"In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear*, 564 U.S. at 919. The specific-jurisdiction inquiry "'focuses on "the relationship among the defendant, the forum, and the litigation."'" *Walden*, 134 S. Ct. at 1121 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)).

This Court has set forth a three-prong test for specific jurisdiction. First, a defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State" or purposefully directed activities toward the forum state. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Ordinarily, purposeful availment requires conduct intentionally targeting the forum state. *See Walden*, 134 S. Ct. at 1121-22. Under the "effects test" first set forth in *Calder v. Jones*, this Court has held that, in limited circumstances, intentional torts that are designed to have "effects" in the forum state can satisfy the purposeful-availment requirement. In the defamation context in particular, the "effects" test requires that the forum state (not just the plaintiff) be the "'focal point both of the story and of the harm suffered.'" *Walden*, 134 S. Ct. at 1123 (quoting *Calder*, 465 U.S. at 789).

Second, specific jurisdiction requires that the controversy be "related to or 'arise[] out of' a defendant's

contacts with the forum." *Helicopteros*, 466 U.S. at 414. That "nexus" or "relatedness" element "is the divining rod that separates specific jurisdiction cases from general jurisdiction cases," *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 714 (1st Cir. 1996), and ensures that personal jurisdiction in the forum is "reasonably foreseeable," *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 322 (3d Cir. 2007).

Third, courts must consider whether the exercise of personal jurisdiction comports with "fair play and substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). This Court repeatedly has warned that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 114 (1987).

**B. Factual Background**

Respondent Ruiz is a Mexican recording artist who is known as Gloria Trevi (hereinafter "Ms. Trevi") and is "sometimes referred to as 'Mexico's Madonna.'" App. 2a. In the late 1990s, at the height of her fame and fortune, Ms. Trevi was criminally charged with kidnapping and sexual assault for allegedly luring underage girls into sexual relationships with her manager and then-boyfriend. *Id.* Ms. Trevi was eventually arrested in Brazil, where she spent two years in prison awaiting extradition to Mexico. Prior to her arrest in Brazil, she gave birth to a daughter who died a few months later under mysterious circumstances. Ms. Trevi thereafter was extradited to Mexico, where she spent nearly two more years in prison. *Id.*

In 2004, after four years and eight months' incarceration, a Mexican judge dismissed the case against her, citing a lack of evidence (though Ms. Trevi was never acquitted of the charges against her). *Id.* Ms. Trevi's story generated worldwide media coverage. Ms. Trevi's husband, Armando Ismael Gomez, and her minor child, A.G.J.T., are also respondents in this case.

Petitioner TV Azteca is a Mexican national television network. TV Azteca produces and airs in Mexico the popular entertainment news program *Ventaneando* hosted by senior anchor petitioner Patricia Chapoy. App. 3a. Petitioner Publimax has contracted with TV Azteca for the exclusive right to commercialize TV Azteca's programming in Northeast Mexico. TV Azteca and Publimax are Mexican corporations, and neither has offices, employees, or agents in the United States. App. 9a. Petitioner Chapoy is a Mexican citizen and resident, has never resided in Texas, and has never been a party to a lawsuit in the United States. *Id.*

In 2009, upon the 10-year anniversary of the criminal charges against Ms. Trevi, *Ventaneando* produced a series of retrospective reports regarding Ms. Trevi's saga. Those reports were made in Mexico, by Mexican journalists, for Mexican viewers, relying upon Mexican sources, and they concerned the activities of Mexican citizens (including Ms. Trevi) in Mexico and Brazil. App. 29a, 31a, 59a-60a. None of the petitioners, or anyone acting on their behalf, traveled to Texas to report, prepare, or film the programs. App. 60a.

Two television stations owned by TV Azteca in Northeast Mexico broadcast the *Ventaneando* reports using over-the-air signals. It is undisputed that

those stations did not intentionally broadcast the reports into Texas. Due to "involuntary spillover" inherent in any broadcast signal, however, some over-the-air transmissions crossed into the United States and reached viewers along the south Texas border. App. 31a. Ms. Trevi, her husband, and her son claim they viewed the broadcasts in Texas, where they were temporarily living on a three-year O-1 visa.

**C. The Proceedings Below**

**1.** Respondents brought this action in Texas state court against petitioners and several other defendants, alleging defamation, libel, slander, business disparagement, civil conspiracy, and tortious interference. *See* Pls.' Third Am. Petition, ¶¶ 21-28, *Trevi v. Azteca Am.*, Cause No. C-1027-09-C (filed July 26, 2012). Petitioners filed "special appearances" pursuant to Texas law challenging the court's personal jurisdiction. TV Azteca's U.S.-based subsidiary Azteca International Corporation (which goes by "Azteca America") did not contest personal jurisdiction. On August 2, 2012, the trial court overruled petitioners' special appearances without any explanation for its decision. App. 104a-105a.

**2.** On appeal, the intermediate Texas Court of Appeals affirmed on the basis of specific jurisdiction. App. 100a & n.35, 103a. The appeals court found that petitioners purposefully directed activities at the forum state, relying in large part on the activities of Azteca America, whose American broadcast transmissions it imputed to all of the petitioners. App. 89a-91a, 97a-100a. The court did not analyze whether the underlying defamation controversy "ar[ose] out of or related to" petitioners' activities in Texas. App. 102a-103a.

**3.** The Texas Supreme Court affirmed. It first analyzed whether petitioners "purposefully availed themselves" of the Texas forum. App. 17a-18a. The court recognized that "signal 'spill-over,' which results from the over-the-air signals 'following the laws of physics,'" does not establish that petitioners purposefully directed the 2009 broadcasts at Texas. App. 20a-23a. Similarly, the court held that petitioners' "mere knowledge" that TV Azteca's broadcasts would reach some Texas homes, without more, did not establish purposeful availment. App. 23a-26a.

The court then considered whether purposeful availment could be sustained under *Calder*'s "effects test." The court acknowledged that "[t]he subject matter of the allegedly defamatory broadcasts is completely unrelated to Texas" because the events in question "occurred outside of and completely unrelated to Texas." App. 28a. The court thus acknowledged that specific jurisdiction would not exist under *Calder*'s "focal point" test. App. 29a.[1] Nevertheless, it held that test was not the "exclusive method" for establishing specific personal jurisdiction under *Calder* and that "a plaintiff can establish that a defamation defendant targeted Texas by relying on 'additional conduct' through which the defendant 'continuously and deliberately exploited' the Texas market," including general business "efforts to promote

[1] The Texas Supreme Court referred to the "focal point" test as the "subject-and-sources" test, adopting the Fifth Circuit's nomenclature in a series of cases culminating in *Clemens v. McNamee*, 615 F.3d 374, 380 (5th Cir. 2010) (test is whether "(1) the subject matter of and (2) the sources relied upon for the article were in the forum state").

their broadcasts and expand their Texas audience." App. 26a, 30a-32a.

The court cited three categories of evidence in holding that legal test satisfied. First, the court identified three instances in which petitioners were physically present in Texas unrelated to the broadcasts in question.[2] The court agreed that this evidence was likely "not . . . sufficient on its own" to establish jurisdiction. App. 32a. Second, the court cited evidence that petitioners "derived substantial revenue and other benefits by selling advertising time to Texas businesses." *Id.* Third, the court cited evidence that petitioners made "substantial and successful efforts to distribute their programs and increase their popularity in Texas." App. 33a. Although acknowledging that the activities of one corporate entity do not automatically establish jurisdiction over its foreign affiliate, the court nevertheless cited Azteca America's programming in the United States as an additional basis for jurisdiction over petitioners. App. 35a-36a.

Turning to the "nexus" prong, the Texas Supreme Court held that the "aris[ing] from or relate[d] to" test can be satisfied by a "'substantial connection between [the defendant's forum state] contacts and the operative facts of the litigation.'" App. 38a (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007)). The court explicitly rejected any

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[2] Those contacts were: (1) between 2005 and 2009, Publimax had a business office in South Texas; (2) in 2006 or 2007, Publimax "sent or hired an employee to work in Texas" to explore expanding its operations through cable distribution; and (3) Ms. Chapoy made one trip to Laredo to promote a book (unrelated to Ms. Trevi) and a few years later made another trip to Dallas to host a live broadcast of a separate episode of *Ventaneando* (which was also unrelated to Ms. Trevi). App. 31a-32a.

requirement of a causal nexus: "Th[e] 'substantial connection' standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." *Id.* (quoting *Moki Mac*, 221 S.W.3d at 584).

The court then concluded that petitioners' contacts with Texas satisfied that legal standard in two ways. First, according to the court, the broadcasts (although originating in Mexico) allegedly caused harm in Texas. App. 40a-41a. Second, the court again asserted that petitioners had engaged in additional "conduct beyond the particular business transaction at issue" that "indicate[s] an intent or purpose to serve the market in the forum State." *Id.*

Finally, the court concluded that exercising jurisdiction over petitioners comported with "fair play and substantial justice." App. 43a-46a. The court asserted that the case did not "implicate[]" concerns of infringement on the interests of Mexico, reiterating the claim that petitioners had "intentionally targeted" Texas. App. 45a.

**4.** On petition for rehearing, the Texas Supreme Court amended its decision in ways immaterial to the specific personal jurisdiction issue and denied the petition. App. 106a.

## REASONS FOR GRANTING THE PETITION

### I. FEDERAL CIRCUITS AND STATE COURTS OF LAST RESORT ARE DIVIDED OVER THE SPECIFIC-JURISDICTION NEXUS STANDARD

The Texas Supreme Court's decision deepens an openly acknowledged 9-1 split among federal circuits, with an additional split among state courts of last resort, over whether the "nexus" requirement for specific jurisdiction can be satisfied by forum-state conduct that has no causal connection to the plaintiff's complaint. This Court should grant review to provide guidance that lower courts have requested and to resolve that widespread disagreement.

#### A. The Courts Are Split On How To Apply The "Arises Out Of Or Relates To" Standard

Lower-court division over the specific-jurisdiction nexus requirement traces to this Court's 1984 decision in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), which stated: "When a controversy is related to or 'arises out of' a defendant's contacts with the forum, the Court has said that a 'relationship among the defendant, the forum, and the litigation' is the essential foundation of *in personam* jurisdiction." *Id.* at 414 (citation omitted). However, the Court explained that, "[a]bsent any briefing on the issue, we decline to reach the questions (1) whether the terms 'arising out of' and 'related to' describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists." *Id.* at 415 n.10.

Seven years later, in 1991, this Court granted certiorari on those unanswered questions in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), agreeing to decide whether "a long-arm statute constitutionally [can] reach a defendant whose activities in the forum state are insubstantial and bear only a tenuous relationship to the cause of action." Pet. for a Writ of Certiorari at i, No. 89-1647 (U.S. filed Apr. 24, 1990), 1990 U.S. S. Ct. Briefs LEXIS 389. The Court resolved *Shute* on non-constitutional grounds, however, and declined to reach the nexus issue. 499 U.S. at 589-90.

In the absence of this Court's guidance, lower courts have splintered over the "related to or arises out of" standard. *See Tamburo v. Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) (noting "conflict among the circuits" in the absence of Supreme Court guidance); *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 318 & n.4 (3d Cir. 2007) (same). Courts have divided into two broad camps, with a majority requiring some causal nexus between the plaintiff's injuries and the defendant's forum-state activities and a minority of courts adopting a "substantial connection" test that does not require causation.

**1. The majority causation approach**

The majority of federal and state courts interpret the "arises out of or relates to" element to require a causal nexus between the plaintiff's claims and the defendant's forum-state conduct. The First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits – as well as at least nine state courts of last resort, approximately half to address

the issue – have adopted a causation requirement.[3] Although these courts require different degrees of causal connection, they all reject the Texas Supreme Court's holding that forum-state activities with *no* causal connection to the plaintiff's claims can satisfy the "nexus" requirement.

Two federal circuits – the Fifth and Ninth – and Massachusetts and Washington have adopted a "but-for" causation test, which requires that the defendant's forum conduct be part of the "train of events" leading to the plaintiff's injury. *Tatro*, 625 N.E.2d at 553; *see In re Western States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 742 (9th Cir. 2013), *aff'd on other grounds sub nom. Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1270 n.21 (5th Cir. Unit A Aug. 1981); *Shute*, 783 P.2d at 82.[4]

The facts of the *Shute* case heard by this Court illustrate the but-for test. Carnival Cruise Lines provided brochures and seminars for travel agents in

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[3] *See Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287, 298, 300 (Or. 2013); *Dogra v. Liles*, 314 P.3d 952, 955 (Nev. 2013); *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002); *Kluin v. American Suzuki Motor Corp.*, 56 P.3d 829, 835 (Kan. 2002); *Williams v. Lakeview Co.*, 13 P.3d 280, 284-85 (Ariz. 2000); *Tatro v. Manor Care, Inc.*, 625 N.E.2d 549, 553 (Mass. 1994); *Waste Mgmt., Inc. v. Admiral Ins. Co.*, 649 A.2d 379, 385 (N.J. 1994): *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 82 (Wash. 1989) (en banc); *cf. Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51, 58 (Ky. 2011) (applying causation standard under Kentucky long-arm statute).

[4] Recent district court decisions have suggested that the Fifth Circuit may embrace the more rigorous "but for plus" standard. *See*, *e.g.*, *Breathwit Marine Contractors, Ltd. v. Deloach Marine Servs., LLC*, 994 F. Supp. 2d 845, 851-53 (S.D. Tex. 2014) (discussing Fifth Circuit case law).

Washington, one of whom sold a Carnival cruise to a Washington couple. *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991). The cruise ship traveled to Mexico, where one of the plaintiffs "slipped on a deck mat" and suffered injuries. *Id.* at 379. The Ninth Circuit found that Carnival's promotional activities in Washington satisfied the nexus requirement because "the Shutes would not have taken the cruise, and Mrs. Shute's injury would not have occurred," "but for" Carnival's promotional activities in Washington. *Id.* at 385-86.

The First and Sixth Circuits have adopted a more rigorous causation standard that tracks proximate cause in tort law. The First Circuit explained that "the proximate cause standard better comports with the relatedness inquiry because it so easily correlates to foreseeability, a significant component of the jurisdictional injury." *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996); *see id.* (proximate cause will "enable defendants better to anticipate which conduct might subject them to a state's jurisdiction than a more tenuous link in the chain of causation"); *see Beydoun v. Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 507-08 (6th Cir. 2014) ("[P]laintiff's cause of action must be proximately caused by the defendant's contacts with the forum state.").

The Third and Eleventh Circuits – as well as Oregon – have embraced a middle ground sometimes called "but for plus." That standard requires "a closer and more direct causal connection than that provided by the but-for test," but the "causal connection can be somewhat looser than the tort concept of proximate causation." *Sandy Lane Hotel*, 496 F.3d at 323; *see Oldfield v. Pueblo De Bahia Lora, S.A.*, 558

F.3d 1210, 1222-23 (11th Cir. 2009) ("[n]ecessarily, the contact must be a 'but-for' cause of the tort, yet the causal nexus between the tortious conduct and the purposeful contact must be such that the out-of-state resident will have 'fair warning that a particular activity will subject [it] to the jurisdiction of a foreign sovereign'") (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)) (first alteration added); *Robinson*, 316 P.3d at 298, 300 (adopting blended causation standard that combines "a but-for test and an assessment of the foreseeability of litigation to determine the relatedness requirement").

Other courts have affirmed a causation requirement while declining to "pick sides" in the debate among the various formulations of that requirement. *See*, *e.g.*, *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1079 (10th Cir. 2008); *Tamburo*, 601 F.3d at 709; *see also Lakeview*, 13 P.3d at 284-85 (Arizona requiring "causal nexus" between defendant's forum-state activities and plaintiff's claims but not specifying whether but-for or proximate cause is required); *Horowitz*, 822 So. 2d at 1260 (Florida adopting "causal connection" or "connexity" standard); *Dogra*, 314 P.3d at 955 (Nevada requiring that plaintiffs' claims "actually arise[]" from defendant's forum-state contacts).[5]

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[5] In addition, at least four intermediate state appellate courts have recognized the division over the nexus element and adopted a causation standard. *See Gallegos v. Frezza*, 357 P.3d 408, 421 (N.M. Ct. App. 2015) (rejecting "overly narrowly" nexus element and applying causation standard); *Freeburg v. International Port Servs., Inc.*, 2009 WL 416070, at *9 (Neb. Ct. App. Feb. 17, 2009) (causation standard); *Keller v. Henderson*, 834 N.E.2d 930, 939 (Ill. App. Ct. 2005) (following First Circuit proximate-cause test); *Oberlies v. Searchmont Resort, Inc.*, 633 N.W.2d 408, 417 (Mich. Ct. App. 2001) (proximate cause).

All these courts, despite their differences, agree on a common principle: a causal nexus is part and parcel of the "arises out or relates to" element of specific jurisdiction.

**2. Minority "substantial connection" approach**

In direct conflict with the vast majority of federal circuits and state courts, the court below joined a minority of jurisdictions that have adopted a "substantial connection" standard that eschews any causation requirement and instead permits jurisdiction as long as the connection is sufficiently "substantial." As the court below stated: "Th[e] 'substantial connection' standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." App. 38a (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 584 (Tex. 2007)). Under this approach, a "claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction." *Vons Cos. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1096 (Cal. 1996); *see also Licci v. Lebanese Canadian Bank*, 984 N.E.2d 893, 900 (N.Y. 2012): *Kauffman Racing Equip., L.L.C. v. Roberts*, 930 N.E.2d 784, 797 (Ohio 2010): *Beaudoin v. South Texas Blood & Tissue Ctr.*, 699 N.W.2d 421, 427 (N.D. 2005); *Thomason v. Chemical Bank*, 661 A.2d 595, 601 (Conn. 1995); *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 31 (Minn. 1995).

*Shoppers Food Warehouse v. Moreno*, 746 A.2d 320 (D.C. 2000), exemplifies the minority substantial-connection test. There, the plaintiff slipped and fell on a piece of okra at one of the defendant's Maryland

grocery stores. *Id.* at 323. A divided D.C. Court of Appeals held that the grocer was subject to specific jurisdiction in the District because it regularly advertised in *The Washington Post*, even absent evidence that the plaintiff saw those advertisements. *See id.* at 338 (Schwelb, J., dissenting). The court majority explained that "it is reasonably foreseeable that, as a result of advertising extensively and over a substantial period of time in the District's major circulation newspaper, Shoppers could be sued in the District on a claim similar to that filed by Ms. Moreno," even if Ms. Moreno's particular injuries did not result from the advertising. *Id.* at 336.

The court below adopted similar reasoning here. It held that petitioners' general business activities – such as soliciting advertisers in Texas – created a "substantial connection" between the allegedly defamatory broadcasts and Texas, even though there was no evidence that respondents' alleged injuries resulted from those general business activities.

Among federal circuits, only the Second Circuit has arguably embraced a substantial-connection test rather than a causation-based rule.[6] In *Chew v. Dietrich*, 143 F.3d 24 (2d Cir. 1998), the court acknowledged the circuit split between the proximate-cause and but-for-cause standards, but declined to follow this "dichotomy," and instead adopted a sliding-scale approach under which the nexus requirement can

[6] The Federal Circuit has not addressed the issue squarely, although it has stated in *dicta* that its nexus test is "far more permissive than either the 'proximate cause' or the 'but for' analyses." *Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1337 (Fed. Cir. 2008).

be loosened for defendants with "more substantial" overall ties to the forum. *Id*. at 29.[7]

In sum, the lower courts are deeply divided on the core meaning of the nexus requirement – an intractable division unlikely to repair itself in the absence of clarification by this Court. *See* Todd David Peterson, *The Timing of Minimum Contacts*, 79 Geo. Wash. L. Rev. 101, 159-60 (2010) (noting "lack of Supreme Court guidance" on nexus issue has yielded "widely inconsistent" jurisdictional results that "give little coherent guidance to litigants"); Braham Boyce Ketcham, Note, *Related Contacts for Specific Personal Jurisdiction over Foreign Defendants: Adopting a Two-Part Test*, 18 Transnat'l L. & Contemp. Probs. 477, 480-81 (2009) ("[U]nless and until the Supreme Court intervenes, the lower courts appear likely to remain in equipoise on the question."); Linda Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 Ind. L. Rev. 343, 348 (2005) (lower courts have "struggled" because of lack of Supreme Court guidance).

### B. The Conflict Over The Causation Requirement Raises An Important And Recurring Federal Question

The persistent division over whether the "arising from or relating to" standard requires a causal nexus

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[7] Recently, Southern District of New York judges have divided over whether the Second Circuit's "sliding-scale test" requires a causal nexus. *Compare Del Ponte v. Universal City Dev. Partners, Ltd.*, 2008 WL 169358, at *9 (S.D.N.Y. Jan. 16, 2008) (stating that *Chew* "eschewed commitment" to causation in favor of a "more flexible application of minimum contacts"), *with Gucci Am., Inc. v. Weixing Li*, 135 F. Supp. 3d 87, 98 (S.D.N.Y. 2015) (stating that, under Second Circuit law, defendant's contacts must at minimum be the "'but for' cause of the plaintiff's injury").

presents an important and recurring federal question warranting this Court's review.

*First*, the causal-nexus element is a core component of the personal-jurisdiction inquiry because it is the "divining rod that separates specific jurisdiction cases from general jurisdiction cases." *Nowak*, 94 F.3d at 714. As this Court has explained, "[f]or a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). By contrast, contacts that bear "no apparent relationship to the accident that gave rise to the suit" are properly considered under general jurisdiction, not specific jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 757 (2014). General and specific jurisdiction are thus "analytically distinct categories, not two points on a sliding scale." *Sandy Lane Hotel*, 496 F.3d at 321. This Court's guidance is necessary to stop courts (such as the court below) from "blur[ring] the distinction between specific and general personal jurisdiction" by adopting a "substantial connection" test that functionally eliminates any distinction between suit-related and suit-unrelated conduct. *Dudnikov*, 514 F.3d at 1078; *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) (reversing North Carolina Supreme Court where personal-jurisdiction analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction").

*Second*, the "Due Process Clause is supposed to bring 'a degree of predictability to the legal system.' It should allow out-of-state residents to 'structure their primary conduct with some minimum assurance as to where that conduct will and will not render

them liable to suit.'" *Sandy Lane Hotel*, 496 F.3d at 321 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Due process requires that defendants have "'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.'" *Burger King*, 471 U.S. at 472 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in the judgment)) (alteration in original).

When "courts confine general and specific jurisdiction to their separate spheres, potential defendants can anticipate and control their jurisdictional exposure." *Sandy Lane Hotel*, 496 F.3d at 321. When courts conflate general and specific jurisdiction, however, they undermine the Due Process Clause's core policies of predictability and fair notice. *See id.* (nexus inquiry becomes "freewheeling totality-of-the-circumstances" analysis and, "when the only rule is that each case is different, then in no case can the result safely be predicted"); *see also* Victor N. Metallo, *"Arise Out of" or "Related to": Textualism and Understanding Precedent*, 17 Wash. & Lee J. Civil Rts. & Soc. Just. 415, 443 (2011) ("a test that does not confine contacts to two discernable spheres fails to place defendants on notice of where they stand" and thus prevents parties from "control[ling] their jurisdictional exposure"); Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 Wake Forest L. Rev. 999, 1023-24 (2012) (noting importance of relatedness element to whether a defendant can "predict the jurisdictional consequences of its actions"); Simard, *Meeting Expectations*, 38 Ind. L. Rev. at 366 ("the sliding scale test attempts to blend the concepts of general and specific jurisdiction together" and "severely weakens the defendant's

ability to anticipate the jurisdictional consequences of its conduct").

*Third*, the nationwide patchwork of nexus standards means that defendants' federal due process protections depend on the happenstance of whether they are haled into federal or state court. To cite a few examples, the Texas Supreme Court adopts the substantial-connection test whereas the Fifth Circuit requires causation; California and Oregon law conflict with Ninth Circuit law; and the First Circuit adopts the strictest test, proximate causation, whereas Massachusetts employs the most lenient.[8] Had removal jurisdiction existed here (which it did not because Mexican citizens were both plaintiffs and defendants), a Texas federal court would have concluded that petitioners are *not* subject to personal jurisdiction in Texas. This Court frequently grants review when a state high court and its regional circuit disagree about a constitutional question, and that concern supports granting certiorari here. *See*, *e.g.*, *Johnson v. California*, 545 U.S. 162, 164 (2005); *Bates v. Dow AgroSciences, LLC*, 544 U.S. 431, 436-37 (2005); *Baldwin v. Alabama*, 472 U.S. 372, 374 (1985).

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[8] *Compare* App. 38a (Texas applying substantial-connection test and disavowing causation standard) *with Prejean*, 652 F.2d at 1270 n.21 (Fifth Circuit requiring but-for causation); c*ompare Vons*, 926 P.2d at 1096 (California applying sliding-scale substantial-connection test), *with Shute*, 897 F.2d at 385 (Ninth Circuit applying but-for test); *compare Robinson*, 316 P.3d at 298 (Oregon applying but-for-plus test), *with Shute*, 897 F.2d at 385 (Ninth Circuit applying but-for test); *compare Nowak*, 94 F.3d at 715 (First Circuit applying proximate-cause test), *with Tatro*, 625 N.E.2d at 553 (Massachusetts applying but-for test).

### C. This Case Is A Good Vehicle For Resolving The Nexus Question

#### 1. The state supreme court acknowledged applying a rule that goes beyond the business transaction at issue

This case presents an ideal vehicle for resolving the widespread and persistent lower-court division over the causation standard.[9] The Texas Supreme Court here acknowledged that its application of the substantial-connection rule permitted jurisdiction to be predicated on "conduct beyond the *particular business transaction at issue*" in this case. App. 41a-42a (emphasis added). The court viewed as sufficient petitioners' more general business and "promotional" efforts in Texas. App. 41a. That analysis flouts the basic principle that, under specific as opposed to general jurisdiction, the forum state's jurisdiction must be based on defendant's "*suit-related conduct*." *Walden*, 134 S. Ct. at 1121 (emphasis added).[10] *Cf.*

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[9] The Texas Supreme Court's decision is "'plainly final'" and "'not subject to further view in the state courts'" within the meaning of 28 U.S.C. § 1257, making it ripe for review by this Court. *Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984) (quoting *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975)).

[10] The court's reliance on TV Azteca's and Publimax's efforts to profit from the involuntary signal spillover into Texas, and to "expand their Texas audience," reinforces its conflation of general and specific jurisdiction. App. 31a-32a. Petitioners' "sales ties" with respect to advertising revenue derived from Texas "are not the subject matter of [Ms. Trevi's] claims, so they have no place in the jurisdictional calculus." *Anzures v. Flagship Rest. Grp.*, 819 F.3d 1277, 1282 (10th Cir. 2016). Indeed, the court below made no effort to link petitioners' business and promotional efforts in Texas to the broadcasts giving rise to respondents' defamation claim.

Petitioners' business activities are much like the forum-state contacts at issue in *Helicopteros*, which involved a wrongful-

Charles W. Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of A "Generally" Too Broad, but "Specifically" Too Narrow Approach to Minimum Contacts*, 57 Baylor L. Rev. 135, 140 (2005) (arguing that the "jurisdictional doctrine of one state, Texas, . . . aptly illustrates that misapplying the scope of specific and general jurisdiction has deleterious effects on predictability").

This case is an even better vehicle than *Shute* for reviewing and resolving the nexus issue. There, the Court was asked to "pick sides" among the various causation-based tests adopted by the federal circuits. *See supra* p. 15 (explaining that the Ninth Circuit had adopted a "but for" test). This case presents a more straightforward and fundamental question: whether it is proper to exercise jurisdiction over a defendant based on forum-state activities that have *no* causal connection to the plaintiff's claims. Here, under *any* causation test, reversal would be warranted because the court below concededly relied on general business activities "beyond the *particular business*

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death suit following a helicopter crash in Peru. 466 U.S. at 409-10. The plaintiffs were decedents of four Americans killed in the crash, who worked for a joint venture based in Houston. *Id.* at 410. The defendant Helicol had several contacts with Texas: it had gone to the State to negotiate a contract with the joint venture; purchased 80% of its helicopter fleet in Texas; sent pilots and other employees to the State for training; and received $5 million from the joint venture, drawn from a Houston bank account. *Id.* at 411. But Helicol's Texas activities did not cause the helicopter to crash, as the parties conceded. *Id.* at 415. The Court therefore analyzed Helicol's business ties to Texas under *general* jurisdiction, not *specific* jurisdiction, and found they were insufficient under the Due Process Clause. *Id.* at 415-16. The same analysis and result should apply here.

*transaction at issue*" in plaintiffs' lawsuit. App. 41a-42a (emphasis added).[11]

**2. The errors in the state supreme court's approach are clear**

This case provides a compelling vehicle for addressing the "nexus" prong because the Texas Supreme Court made several additional errors in its personal-jurisdiction analysis.

*First*, the Texas Supreme Court misapplied this Court's decision in *Bauman* by improperly imputing the forum-state contacts of Azteca America, TV Azteca's American subsidiary, to petitioners. Under *Bauman*, a corporate subsidiary is a "distinct corporate entity" that cannot automatically be treated as the defendant's "agent for jurisdictional purposes." 134 S. Ct. at 752. Such imputation is permissible only in "certain limited circumstances" in which it is appropriate to disregard the corporate form, such as where the two entities are alter egos. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1071 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 915 (2016); *see* 4A Charles Alan Wright et al., *Federal Practice and Procedure* § 1069.4, at 258 (4th ed. 2015).

The Texas Supreme Court paid lip service to these principles, *see* App. 34a-35a, but then disregarded them in its analysis.[12] The court invoked the facts

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[11] This case does not require the Court to choose among the lower courts' causation standards, although that issue is fairly included within the question presented.

[12] Moreover, the Texas Supreme Court relied upon the efforts of members of the TV Azteca corporate family to broadcast in the United States as a whole (and, indeed, across the world) as a basis for jurisdiction in Texas. App. 33a-34a. That misses the crux of the specific-jurisdiction inquiry, because the question is whether petitioners directed suit-related activities at *the Texas*

that Azteca America has "transmit[ted] some of TV Azteca's programs in the United States"; has a library of TV Azteca original programming; and has a license to use TV Azteca's logo. App. 33a-34a. Those contacts might be relevant to determining whether *Azteca America* is subject to personal jurisdiction in Texas (a point it never disputed). But *Azteca America's* contacts with Texas cannot be the basis for personal jurisdiction over *TV Azteca*, much less Publimax or Ms. Chapoy, who have no relationship to Azteca America.

*Second*, the Texas Supreme Court's erroneous assertion of jurisdiction over Ms. Chapoy is particularly egregious and highlights the flaws in Texas's approach to specific jurisdiction. Ms. Chapoy had two isolated contacts with Texas unrelated to the broadcasts about Ms. Trevi: (1) a trip to Dallas to host a live broadcast of a separate episode of *Ventaneando* that made no mention of Ms. Trevi; and (2) a stop-over in Laredo on a book tour, again wholly unrelated to Ms. Trevi. App. 32a. Neither of those contacts (which occurred before the relevant broadcasts aired in 2009) has any connection to the claim that Ms. Chapoy defamed Ms. Trevi, much less a causal or even substantial connection.[13]

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*forum*, not the United States generally. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality) ("personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis," and a defendant "may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State").

[13] The Texas court cited "evidence that [Ms. Chapoy] knew that the programs would have a substantial audience in Texas" from the Azteca America broadcasts. App. 37a. But mere foreseeability of harm has never been enough to support personal jurisdiction, *see*, *e.g.*, *Burger King*, 471 U.S. at 474, which the

*Third*, the court below ignored this Court's repeated instruction to consider "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system" as a factor that "should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 114 (1987); *see Bauman*, 134 S. Ct. at 763 (noting that other nations do not share the United States' "expansive" view of general jurisdiction and that the lower court in that case erred when it "paid little heed to the risks to international comity").

In its "fair play and substantial justice" analysis, the Texas Supreme Court disregarded those teachings and adopted the countervailing principle – based on a misquotation of this Court's *Burger King* decision – that courts should affirmatively exercise jurisdiction over foreign nationals to promote the "international justice system's interest in obtaining the most efficient resolution of controversies." App. 45a-46a; *cf. Burger King*, 471 U.S. at 477 (noting the "*interstate judicial* system's interest in obtaining the most efficient resolution of controversies"). The Texas court's inversion of this Court's international comity principles provides yet a further reason for review.

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Texas Supreme Court itself acknowledged elsewhere in its opinion, *see* App. 24a.

## II. FEDERAL CIRCUITS AND STATE COURTS OF LAST RESORT ARE CONFLICTED OVER THE STANDARD FOR PERSONAL JURISDICTION IN DEFAMATION CASES

The Texas Supreme Court's decision also creates a split in authority with nine federal circuits, including the Fifth Circuit, and an array of state courts of last resort over the proper interpretation of the express-aiming component of *Calder*'s "effects test" in defamation and other intentional tort cases. This Court should grant review to resolve that important question as well.

### A. The Texas Supreme Court's Rejection Of The "Focal Point" Requirement Deepens A Lopsided Split Among Federal Circuits And State Supreme Courts

In *Calder*, the plaintiff brought a libel claim in California against a reporter and editor working for the Florida-based *National Enquirer* magazine. 465 U.S. at 784-85. This Court held that the defendants had "expressly aimed" their story at California – and jurisdiction was therefore consistent with due process – because the magazine (1) had its largest circulation in California – about 600,000, twice the size of the next-largest state; (2) the alleged libelous stories concerned the "California activities of a California resident"; (3) the plaintiff's "television career was centered in California"; (4) the *Enquirer* story was "drawn from California sources"; and (5) the brunt of the plaintiff's alleged harm was suffered in California. *Id.* at 785, 788-89. In short, the Court concluded, California was "the focal point both of the story and of the harm suffered." *Id.* at 789.

Two Terms ago, in *Walden*, this Court clarified that, under *Calder*, mere injury to a forum resident

is not sufficient. Rather, *Calder* "examined the various contacts the defendants had created with California (and not just with the plaintiff) by writing the allegedly libelous story." 134 S. Ct. at 1123. Jurisdiction was appropriate in *Calder*, *Walden* clarified, because the defendants targeted the California forum: the defendants had relied on California sources to report on the plaintiff's activities in California, which in turn caused the plaintiff to suffer "reputational injury in California" from "an allegedly libelous article that was widely circulated in the State." *Id.* The *Walden* Court thus reaffirmed *Calder*'s "focal point" test. *Id.*

In the decision below, the Texas Supreme Court acknowledged that *Calder* established a "focal point" test. The court stated:

> We agree with Petitioners that the subject-and-sources test [the Fifth Circuit's nomenclature for the "focal point" test, *see supra* note 1] is consistent with *Calder*'s approach to determining whether a defendant "expressly aimed" its communications to a forum state.

App. 27a.

The court also agreed that the "focal point" test was not satisfied:

> We also agree that the evidence in this case does not support specific jurisdiction under this test. The subject matter of the allegedly defamatory broadcasts is completely unrelated to Texas. [Ms. Trevi] alleges that Petitioners defamed her by making statements that are almost exclusively about events that occurred outside of and completely unrelated to Texas.

App. 27a-28a.

Nevertheless, the court "disagree[d]" that the "focal point" test is the "exclusive method" for establishing specific personal jurisdiction under *Calder* and *Walden*. App. 30a. As with its "nexus" analysis, the court held that the "effects test" did not have to focus on the particular story underlying the plaintiff's claims. Instead, a defendant's more general "intent or purpose to serve the market in the forum State" could also suffice to create jurisdiction under *Calder*'s "effects test." App. 31a.[14]

Texas's disavowal of the focal-point test creates a square conflict with the Fifth Circuit. As the Fifth Circuit stated in *Clemens v. McNamee*, 615 F.3d 374 (5th Cir. 2010): "We read *Calder* as *requiring* the plaintiff seeking to assert specific personal jurisdic-

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[14] The Texas Supreme Court's reliance on *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), *see* App. 31a, is misplaced. In *Keeton*, the plaintiff sued Hustler Magazine for libel in New Hampshire, where Hustler delivered 10,000 to 15,000 copies each month. 465 U.S. at 772. The Court held that Hustler's deliberate and ongoing sales of magazines into the jurisdiction constituted purposeful availment, sufficient to justify New Hampshire's exercise of jurisdiction. *See id.* at 774 (noting that "[s]uch regular monthly sales of thousands of magazines cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous"). In this case, unlike with Hustler, petitioners did not deliberately broadcast TV Azteca programs into Texas. Rather, TV Azteca's broadcasts "'involuntary strayed' into Texas as a result of 'signal spill over,'" not as a result of any deliberate conduct on the part of petitioners. App. 31a. Moreover, any alleged effort by TV Azteca to obtain some financial benefit from that spillover cannot establish purposeful availment. *See GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000) (rejecting purposeful availment based on "mere accessibility" of websites even where defendants "acted to maximize usage of their websites in the District"). *Walden* forecloses any potentially broader interpretation of *Keeton*.

tion over a defendant in a defamation case to show '(1) the subject matter of and (2) the sources relied upon for the article were in the forum state.'" *Id.* at 380 (quoting *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 426 (5th Cir. 2005)) (emphasis added). Applying that test, the Fifth Circuit upheld the district court's dismissal of Clemens' defamation claim, where the defendant's statements "did not concern activity in Texas; nor were they made in Texas or directed to Texas residents any more than residents of any state." *Id.* The court below explicitly "disagree[d]" with *Clemens* that the "focal point" test is the "exclusive method" for establishing specific jurisdiction under *Calder* and *Walden*. App. 30a.

The Texas Supreme Court's decision also is at odds with at least seven other federal courts of appeals[15] and other state courts of last resort,[16] all of which have held that personal jurisdiction is inappropriate if the "focal point" test is not satisfied. The only court (state or federal) to have adopted Texas's approach is the Ninth Circuit, which also has disregarded the "focal point" test in favor of a more

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[15] *Anzures*, 819 F.3d at 1281-82; *Forras v. Rauf*, 812 F.3d 1102, 1108 (D.C. Cir. 2016); *Isaacs v. Arizona Bd. of Regents*, 608 F. App'x 70, 74-75 (3d Cir. 2015) (per curiam); *Johnson v. Arden,* 614 F.3d 785, 796-97 (8th Cir. 2010); *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 280 (4th Cir. 2009); *The Scotts Co. v. Aventis S.A.,* 145 F. App'x 109, 113 n.1 (6th Cir. 2005); *Noonan v. Winston Co.,* 135 F.3d 85, 91 (1st Cir. 1998).

[16] *State ex rel. State Treasurer of Wyoming v. Moody's Inv'rs Serv., Inc.*, 349 P.3d 979, 985 (Wyo. 2015); *Shams v. Hassan*, 829 N.W.2d 848, 856 (Iowa 2013); *Abdouch v. Lopez*, 829 N.W.2d 662, 674 (Neb. 2013); *Kauffman Racing*, 930 N.E.2d at 796; *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1200 (Colo. 2005); *Griffis v. Luban*, 646 N.W.2d 527, 533-34 (Minn. 2002).

expansive reading. *See Western States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d at 744 (finding *Calder*'s express-aiming requirement met where defendants "knew and intended that the consequences" of their actions would be felt in the forum state). The decision below thus deepens a lopsided split.

### B. The Issue Is Of National And International Importance, And This Case Presents An Ideal Vehicle For Resolving It

The conflict over the "focal point" requirement is important, and this Court should address it in addition to the "nexus" standard. As with its adoption of the "substantial connection" standard, Texas's expansion of *Calder* functionally eliminates the distinction between general and specific jurisdiction. Under the court's approach, for example, broadcasters can face litigation in Texas based on broadcasts that have nothing to do with Texas, as long as their general business activities reveal an "intent or purpose to serve the market" in Texas. App. 31a. A Louisiana TV or radio broadcaster, for example, could air a report in Louisiana about the Louisiana activities of Louisiana residents – yet face litigation in Texas court if it did any general business aimed at the Texas market. Functionally, that broadcaster would be subject to general jurisdiction in Texas for defamation claims for any story, regardless of its content. That approach poses a particular danger for U.S. broadcasters in States with international borders, because over-the-air signals do not stop at boundary lines.

Nor is the Texas Supreme Court's reasoning limited to broadcasters. If the "focal point" limitation is abandoned, Internet publishers – in the United States and abroad – would also be subject to libel

suits in Texas even if the story has nothing to do with that State. *See*, *e.g.*, *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002) (noting that, without focal-point limitation, "a person placing information on the Internet would be subject to personal jurisdiction in every State, and the traditional due process principles governing a State's jurisdiction over persons outside of its borders would be subverted"); *Millennium Enters., Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 923 (D. Or. 1999) (noting "overreaching jurisdiction" has "dramatic implications" for Internet businesses).

Moreover, vitiating *Calder*'s "focal point" limitation deprives American and foreign businesses of necessary guidance and certainty about their jurisdictional exposure. In addition to defamation and libel claims, *Calder*'s express-aiming test has been applied in a wide variety of intentional tort claims and everyday business disputes and product sales.[17] Recognizing its broad scope, numerous courts have emphasized that *Calder* must be read in factual context, and consistent with the "focal point" inquiry, to prevent it from sweeping too broadly and undermining the due process imperative of predictability. *See Griffis*, 646 N.W.2d at 535 ("Broad applications of the effects test . . . cast too wide a net and incorrectly disregard the factual underpinnings of the Court's holding in *Calder*."); *Mobile Anesthesiologists Chicago*, 623 F.3d at 444 ("[t]he outcome in *Calder* was tied closely to its facts").

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[17] *See*, *e.g.*, *Western States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d at 743 (energy price manipulation); *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Assocs. of Houston Metroplex, P.A.*, 623 F.3d 440, 444 (7th Cir. 2010) (trademark).

Finally, due process limitations on personal jurisdiction are "more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958). The Due Process Clause "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." *World-Wide Volkswagen*, 444 U.S. at 292. It is critical for this Court to enforce that federalism principle by curtailing Texas's jurisdictional overreach.

This case presents an exceptional vehicle for addressing the "focal point" requirement. The Texas Supreme Court acknowledged that jurisdiction would not be proper if the "focal point" requirement were applied: "[T]he evidence does not support a finding of purposeful availment under the *Calder* subject-and-sources test sufficient to make Texas 'the focal point' of the broadcasts at issue." App. 29a (quoting *Calder*, 465 U.S. at 789). This Court thus can cleanly address the legal question in a concededly outcome-determinative case.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 7, 2016

# APPENDIX

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IN THE SUPREME COURT OF TEXAS

No. 14-0186

TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V.,
*Petitioners*,

v.

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF A MINOR CHILD, A.G.J.T, AND ARMANDO ISMAEL GOMEZ MARTINEZ,
*Respondents*.

On Petition for Review from the
Court of Appeals for the Thirteenth District of Texas

Argued October 12, 2015

[Opinion delivered February 26, 2016]

**Opinion**

JUSTICE BOYD delivered the opinion of the Court.

This is an interlocutory appeal from the denial of Petitioners' special appearances. Petitioners are Mexican citizens who broadcast television programs on over-the-air signals that originate in Mexico but travel into parts of Texas. Respondents are Texas residents who allege Petitioners defamed them in some of those programs. We hold that the allegations and evidence that Petitioners harmed Texas residents in Texas, Petitioners' broadcasts were viewable in Texas, and Petitioners knew Texans could watch the programs in Texas are insufficient to establish that Petitioners purposefully availed themselves of the

benefits of conducting activities in Texas. However, that evidence, taken together with evidence that Petitioners exploited the Texas market to capitalize on the broadcasts that traveled into Texas, does establish purposeful availment and provides a constitutional basis for exercising jurisdiction over Petitioners in this case. Because Respondents' claims arise from and relate to those broadcasts, and the exercise of jurisdiction comports with traditional notions of fair play and substantial justice, we affirm the court of appeals' judgment.

## I.

## Background

Mexican recording artist Gloria de Los Angeles Trevino Ruiz, popularly known as Gloria Trevi (and sometimes referred to as "Mexico's Madonna"), now lives in Texas. Near the height of Trevino's fame in the late 1990s, she was accused of luring underage girls into sexual relationships with her manager. Authorities arrested Trevino and her manager in Brazil on charges of sexual assault and kidnapping. Trevino spent nearly five years in prisons in Brazil and Mexico, but a Mexican judge ultimately found her not guilty and dismissed all charges in 2004.

After her acquittal, Trevino moved to McAllen, Texas, and later married Armando Gomez, a Mexican attorney who had defended her in the criminal proceedings. In the late 2000s, as the ten-year anniversary of the scandal approached, various Mexican media outlets ran stories discussing the events and Trevino's activities following her acquittal. In 2009, Trevino, acting individually and on behalf of her minor son, and Gomez (collectively, Trevino)[1] filed

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[1] Although Gomez is a named plaintiff and the petition includes broad allegations that all defendants collectively defamed all

this lawsuit in Hidalgo County, alleging that several media defendants defamed them in their broadcasts.[2] Trevino asserts that she and others viewed the defamatory programs on their televisions in Texas.

The relevant defendants are two Mexican television broadcasting companies, TV Azteca, S.A.B. de C.V., and Publimax, S.A.B. de C.V., and a Mexican citizen, Patricia Chapoy, a news anchor and producer for TV Azteca. Trevino alleges that TV Azteca, Publimax, and Chapoy (collectively, Petitioners) defamed her on several occasions, primarily in stories on a television program called *Ventaneando*, a Spanish-language entertainment news program that TV Azteca produced, Chapoy hosted, and Publimax aired on television stations affiliated with TV Azteca. Petitioners filed special appearances challenging the trial court's jurisdiction over them. The trial court denied the special appearances, and this interlocutory appeal followed.[3] The court of appeals affirmed the

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plaintiffs, the pleadings and evidence focus almost exclusively on alleged defamatory statements about Trevino. We refer to the plaintiffs collectively as Trevino unless we must distinguish between them. We address only personal jurisdiction and do not consider or address the merits of the plaintiffs' claims.

[2] Trevino asserted claims for defamation, business disparagement, civil conspiracy, and tortious interference with existing and prospective business relationships and contracts. All of the claims are based on Petitioners' allegedly defamatory broadcasts. The pleadings allege conduct both before and after Trevino's acquittal in 2004, but Trevino focuses, in this appeal, on defamation that occurred after her acquittal. We do not address the extent to which the statute of limitations may bar any of the claims.

[3] *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(7) (permitting appeal from interlocutory orders that grant or deny a special appearance under Rule 120a); TEX. R. CIV. P. 120a(1) (permitting special appearance "for the purpose of objecting to the

trial court's denial of special appearances, —— S.W.3d ——, 2014 WL 346031, and we granted review to consider, as a matter of first impression in this Court, whether a television broadcast that originates outside Texas but travels into the state can support personal jurisdiction over the broadcaster in Texas.

## II.

## Jurisdictional Requirements

We begin by summarizing the well-established limits on a trial court's jurisdiction. A court has power to decide a case only if it has "both subject matter jurisdiction over the controversy and personal jurisdiction over the parties." *Spir Star AG v. Kimich*, 310 S.W.3d 868, 871 (Tex. 2010). Subject matter jurisdiction involves a court's "power to hear a particular type of suit," while personal jurisdiction "concerns the court's power to bind a particular person or party." *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996). Petitioners argue that Texas courts lack personal jurisdiction over them.

Courts have personal jurisdiction over a non-resident defendant when the state's long-arm statute permits such jurisdiction and the exercise of jurisdiction is consistent with federal and state due-process guarantees. *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013). The Texas long-arm statute broadly allows courts to exercise personal

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jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State"). We conclude that inconsistencies between the court of appeals' decision and our prior decisions addressing personal jurisdiction establish a conflict that authorizes our jurisdiction over this interlocutory appeal. *See* TEX. GOV'T CODE §§ 22.001(a)(2), 22.225(b)(3), (c), (e).

jurisdiction over a nonresident who "commits a tort in whole or in part in this state." TEX. CIV. PRAC. & REM. CODE § 17.042(2). Because this statute reaches "as far as the federal constitutional requirements for due process will allow," Texas courts may exercise jurisdiction over a nonresident so long as doing so "comports with federal due process limitations." *Spir Star*, 310 S.W.3d at 872 (quoting *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002)).

Consistent with federal due process protections, a state court can exercise jurisdiction over a nonresident defendant only if (1) the defendant has established "minimum contacts" with the state and (2) the exercise of jurisdiction comports with "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see Moncrief Oil*, 414 S.W.3d at 150. We will address both requirements in turn, in light of the allegations and evidence in this case.[4]

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[4] Whether a court has jurisdiction is a question of law that we review de novo. *Moncrief Oil*, 414 S.W.3d at 150. The plaintiff bears "the initial burden of pleading allegations sufficient to confer jurisdiction," and the burden then shifts to the defendant "to negate all potential bases for personal jurisdiction the plaintiff pled." *Id.* at 149. A defendant can negate jurisdiction either legally or factually. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 659 (Tex. 2010). Legally, the defendant can show that the plaintiff's alleged jurisdictional facts, even if true, do not meet the personal jurisdiction requirements. *See id.* Factually, the defendant can present evidence that negates one or more of the requirements, controverting the plaintiff's contrary allegations. *Id.* The plaintiff can then respond with evidence supporting the allegations. *Id.* If the parties present conflicting evidence that raises a fact issue, we will resolve the dispute by upholding the trial court's determination. *See Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d

## III.
## Minimum Contacts

The minimum-contacts requirement protects due-process rights by permitting a state to exercise jurisdiction over a nonresident defendant only when the defendant "could reasonably anticipate being haled into court there." *Moncrief Oil*, 414 S.W.3d at 152. Minimum contacts may create either general or specific personal jurisdiction. *Id.* at 150. A court has general jurisdiction over a nonresident defendant whose "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler v. Bauman*, 134 S. Ct. 746, 754 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). This test requires "substantial activities within the forum" and presents "a more demanding minimum contacts analysis than for specific jurisdiction." *BMC Software*, 83 S.W.3d at 797. When a court has general jurisdiction over a nonresident, it may exercise jurisdiction "even if the cause of action did not arise from activities performed in the forum state." *Spir Star*, 310 S.W.3d at 872.

By contrast, courts may exercise specific jurisdiction when the defendant's forum contacts are "isolated or sporadic," as opposed to "continuous and systematic," but only if the plaintiff's cause of action arises from or relates to those contacts. *Id.* at 872-73 (quoting 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED-

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333, 337 (Tex. 2009); *see also BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002). "When, as here, the trial court does not issue findings of fact and conclusions of law, we imply all relevant facts necessary to support the judgment that are supported by evidence." *Moncrief Oil*, 414 S.W.3d at 150.

ERAL PRACTICE AND PROCEDURE § 1067.5 (3d ed. 2002)); *see also Moncrief Oil*, 414 S.W.3d at 150 ("[S]pecific jurisdiction exists when the cause of action arises from or is related to purposeful activities in the state."). For specific jurisdiction, we must analyze the defendant's contacts "on a claim-by-claim basis" to determine whether each claim arises out of or is related to the defendant's minimum contacts. *Moncrief Oil*, 414 S.W.3d at 150.

Trevino alleged that the trial court has both general and specific personal jurisdiction over Petitioners. The trial court denied Petitioners' special appearances without specifying which type of jurisdiction it found. Affirming the trial court's decision, the court of appeals found that the trial court has specific jurisdiction, and it did not reach the general-jurisdiction issue. —— S.W.3d at ——, 2014 WL 346031, at *26. We therefore also address specific jurisdiction. Because we conclude the evidence establishes that Petitioners purposefully availed themselves of the benefits of conducting activities in Texas and that Trevino's claims arise from or relate to those purposeful contacts, we do not reach the general-jurisdiction issue.

**A. Purposeful Availment**

To establish minimum contacts for both general and specific jurisdiction, the defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Moncrief Oil*, 414 S.W.3d at 150 (quoting *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009)). Due process requires purposeful availment because personal jurisdiction "is premised on notions of implied consent—that by invoking

the benefits and protections of a forum's laws, a nonresident consents to suit there." *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005). Three principles guide our analysis of whether a nonresident has purposefully availed itself of the privilege of conducting activities in Texas:

> First, only the defendant's contacts with the forum are relevant, not the unilateral activity of another party or a third person. Second, the contacts relied upon must be purposeful rather than random, fortuitous, or attenuated. . . . Finally, the defendant must seek some benefit, advantage[,] or profit by availing itself of the jurisdiction.

*Moncrief Oil*, 414 S.W.3d at 151 (quoting *Retamco*, 278 S.W.3d at 338-39).

To constitute purposeful availment, the defendant's contacts must be "purposefully directed" to the state, *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991), and must result from the defendant's own "efforts to avail itself of the forum." *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 576 (Tex. 2007). "[A] defendant will not be haled into a jurisdiction solely based on contacts that are 'random, isolated, or fortuitous,'" *Michiana*, 168 S.W.3d at 785 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)), or on the "unilateral activity of another party or a third person." *Guardian Royal*, 815 S.W.2d at 226 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). Through its purposeful forum contacts, the defendant must have sought "some benefit, advantage, or profit by 'availing' itself of the jurisdiction." *Michiana*, 168 S.W.3d at 785. In conducting this analysis, we assess "the quality and nature of

the contacts, not the quantity." *Moncrief Oil*, 414 S.W.3d at 151.

TV Azteca is a Mexican national broadcasting company that provides programs to affiliated network-television stations. Publimax operates two such stations in Monterrey, Mexico, which are licensed by the Mexican government. Publimax pays TV Azteca for the exclusive right to broadcast TV Azteca programs in northeastern Mexico. Chapoy produces and hosts one of those programs, *Ventaneando*. Both TV Azteca and Publimax are Mexican corporations, are not registered in Texas or any of the United States, and do not have any offices, employees, agents, or representatives in Texas. Chapoy is a Mexican citizen and resident, has never been a Texas citizen or resident, does not have an office or agent for service of process in Texas, and has never been a party to a lawsuit in Texas other than this suit. Nevertheless, Trevino contends that Texas courts have specific personal jurisdiction over all three Petitioners because they purposefully availed themselves of the benefits of conducting activities in Texas when they defamed her in broadcasts that aired in Texas. As this is our first opportunity to address specific jurisdiction in the context of defamation claims arising from media broadcasts, we begin by reviewing four key precedents that are crucial to our analysis. We then apply those precedents to the allegations and evidence to determine whether Petitioners purposefully availed themselves of the benefits of doing business in Texas.

**1. Guiding precedents**

Numerous other courts, including the United States Supreme Court, have addressed specific personal jurisdiction in cases involving claims based on

alleged defamatory or false statements[5] and in cases involving claims arising out of media broadcasts.[6]

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[5] *See*, *e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1119-20 (2014) (holding Nevada courts lacked specific jurisdiction over Georgia resident who allegedly used false affidavit to violate Nevada residents' Fourth Amendment rights); *Calder v. Jones*, 465 U.S. 783, 788-89 (1984) (holding California courts had specific jurisdiction over Florida residents who allegedly defamed California resident in newspaper article); *Keeton*, 465 U.S. at 770 (holding New Hampshire courts had specific jurisdiction over Ohio corporation that allegedly defamed New York resident in magazine articles); *Clemens v. McNamee*, 615 F.3d 374, 380 (5th Cir. 2010) (holding Texas courts lacked specific jurisdiction over New York resident who allegedly defamed Texas resident in statements to federal investigators); *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 422 (5th Cir. 2005) (holding Texas courts lacked specific jurisdiction over German and New York companies that allegedly defamed German residents in magazine article); *Revell v. Lidov*, 317 F.3d 467, 476 (5th Cir. 2002) (holding Texas courts lacked specific jurisdiction over Massachusetts resident and New York university that allegedly defamed Texas resident in article posted on university's internet bulletin board); *Young v. New Haven Advocate*, 315 F.3d 256, 258-59 (4th Cir. 2002) (holding Virginia courts lacked specific jurisdiction over Connecticut newspapers that allegedly defamed Virginia resident in articles posted on internet); *Johns Hopkins Univ. v. Nath*, 238 S.W.3d 492, 495-96 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (holding Texas courts lacked specific jurisdiction over Maryland physician who allegedly defamed Texas physician through verbal statements and emails).

[6] *See*, *e.g.*, *Indianapolis Colts, Inc. v. Metro. Baltimore Football Club Ltd. P'ship.*, 34 F.3d 410, 411 (7th Cir. 1994) (holding Indiana courts had specific jurisdiction to enjoin Canadian Football League's Baltimore Colts team, which allegedly infringed Indiana plaintiff's trademark by broadcasting games in Indiana); *Holmes v. TV-3, Inc.*, 141 F.R.D. 692, 696-97 (W.D. La. 1991) (holding Louisiana courts had specific jurisdiction over Mississippi television station and reporter who allegedly defamed Louisiana residents in program broadcast in Mississippi but viewable in Louisiana); *Tonka Corp. v. TMS Entm't.*,

Although all are helpful to our analysis, four decisions—three from the United States Supreme Court and one from this Court—are worth describing in detail as a foundation for the discussion that follows.

a. *Keeton*

In *Keeton*, a New York resident filed a defamation suit in New Hampshire against the publisher of *Hustler* magazine, an Ohio corporation with headquarters in California. 465 U.S. at 772. The plaintiff apparently filed in New Hampshire because it was the only state where limitations had not run. *Id.* at 773. Although the defendant's only contacts with New Hampshire consisted of monthly magazine sales there, the Court concluded that the distribution of "some 10,000 to 15,000 copies of *Hustler* magazine in that State each month" could not "by any stretch of

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638 F. Supp. 386, 387, 391 (D. Minn. 1985) (holding Minnesota courts had specific jurisdiction over California corporation that allegedly infringed Minnesota company's trademark through television show that aired in Minnesota); *Thomas Jackson Publ'g, Inc. v. Buckner*, 625 F. Supp. 1044, 1045-46 (D. Neb. 1985) (holding Nebraska courts had specific jurisdiction over Georgia residents who allegedly infringed Nebraska plaintiff's copyright to song that defendants discussed and performed in television and radio broadcasts in Nebraska); *Massey Energy Co. v. United Mine Workers*, 69 Va. Cir. 118, 118-19 (Va. Cir. Ct. 2005) (holding Virginia court had specific jurisdiction over West Virginia organization and its chairman who allegedly defamed Virginia residents in television ad broadcast in West Virginia but viewable in Virginia); *Pegler v. Sullivan*, 432 P.2d 593, 597 (Ariz. Ct. App. 1967) (holding Arizona courts had specific jurisdiction over New York producer and publisher who allegedly invaded Arizona plaintiffs' privacy through skit performed on national show that aired in Arizona); *United Med. Labs., Inc. v. Columbia Broad. Sys., Inc.*, 256 F. Supp. 570, 572 (D. Or. 1966) (holding Oregon courts had specific jurisdiction over nonresidents who allegedly defamed Oregon plaintiff through national news show that aired in Oregon).

the imagination be characterized as random, isolated, or fortuitous." *Id.* at 772, 774. The Court viewed this as evidence that the defendant "chose to enter the New Hampshire market," *id.* at 779, and found it to be "sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine." *Id.* at 773-74.

Although the plaintiff in *Keeton* had almost no connection with New Hampshire, the Court noted that "the jurisdictional inquiry . . . focuses on the relations among *the defendant*, the forum, and the litigation." *Id.* at 780 (emphasis added). Referencing its decision in *Calder v. Jones*, 465 U.S. 783 (1984), which the Court released on the same day as *Keeton*, the Court explained that the plaintiff's residence "is not . . . completely irrelevant" because the "plaintiff's residence in the forum may, because of defendant's relationship with the plaintiff, enhance defendant's contacts with the forum." *Id.* (citing *Calder*, 465 U.S. at 788-89). "Plaintiff's residence," in other words, "may be the focus of the activities of the defendant out of which the suit arises." *Id.* "But plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts." *Id.* Noting that "New Hampshire has a significant interest in redressing injuries that actually occur within the State" and that "[t]he tort of libel is generally held to occur wherever the offending material is circulated," *id.* at 776-77, the Court concluded that, because the defendant had "continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine." *Id.* at 781.

b. *Calder*

In *Calder*, Hollywood actress Shirley Jones filed suit in California asserting defamation claims based on statements in a *National Enquirer* article. 465 U.S. at 785. Jones sued the *Enquirer*'s owner, its local distributing company, the reporter who wrote the article, and the editor who revised and approved the final draft. *Id.* at 785-86. The reporter and editor, who resided in Florida and prepared the article there, challenged the California court's personal jurisdiction over them. Although the Court acknowledged that the reporter and editor did not create the article in California or personally direct or control its circulation to the state, it found that several facts established that California was "the focal point both of the story and of the harm suffered." *Id.* at 789. Specifically, the Court noted that the article (1) targeted California because it "concerned the California activities of a California resident" and "was drawn from California sources," and (2) caused Jones to suffer "the brunt of the harm" in California. *Id.* at 788-89. Because the *Enquirer* sold nearly twice as many copies in California than in any other state, the reporter and editor "knew that the brunt of that injury would be felt by [Jones] in the State in which she lives and works and in which the *National Enquirer* has its largest circulation." *Id.* at 789-90. Considering "the 'effects' of their Florida conduct in California" and the evidence that "their intentional, and allegedly tortious, actions were expressly aimed at California," the Court concluded that the reporter and editor "must 'reasonably anticipate being haled into court there' to answer for the truth of the statements made in their article." *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). The Court

referred to this analytical approach as the "'effects' test." *Id.* at 787 n.6.

Although the facts that Jones was a California resident and suffered "the brunt of the harm" there were critical to the Court's decision, the Court acknowledged, as it did in *Keeton*, "In judging minimum contacts, a court properly focuses on 'the relationship among *the defendant*, the forum, and the litigation.'" *Id.* at 788 (emphasis added) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). Cross-referencing its decision in *Keeton*, the Court explained that the plaintiff's "lack of 'contacts' will not defeat otherwise proper jurisdiction," but those contacts "may be so manifold as to permit jurisdiction when it would not exist in their absence." *Id.* (citing *Keeton*, 465 U.S. at 778-81). The plaintiff's lack of contacts with New Hampshire was not decisive in *Keeton*, but the plaintiff's contacts with California were crucial to the Court's decision in *Calder* because they evinced "the 'effects' of [the defendant's] Florida conduct in California." *Id.* at 789.

c. *Michiana*

We previously addressed and applied *Keeton* and *Calder* in *Michiana*, 168 S.W.3d at 781-85. Although the claims in *Michiana* were not based on defamatory statements or broadcasts, our discussion of *Keeton* and *Calder* in *Michiana* helps lay the proper foundation for the resolution of this case. The plaintiff in *Michiana*, a Texas resident, purchased a recreational vehicle from an Indiana dealer that "only did business in Indiana." *Id.* at 781. Seeking a lower price than he could get from a Texas dealer, the plaintiff called the dealer in Indiana to negotiate the deal, then "sent payment to Indiana, paid for delivery from Indiana, and agreed to resolve every dispute in

Indiana." *Id.* But when a dispute arose, he filed in Texas, asserting claims for breach of contract, breach of warranty, fraud, and DTPA violations based on misrepresentations the dealer allegedly made during the parties' phone call. *Id.* at 784; *see also id.* at 794 (Medina, J., dissenting) (listing causes of action asserted). Relying on the three principles that govern a purposeful-availment analysis—only the defendant's forum contacts count; the contacts must be "purposeful" rather than "random, isolated, or fortuitous"; and the defendant "must seek some benefit, advantage, or profit by 'availing' itself of the jurisdiction"—we held that the evidence did not establish that the dealer had purposefully availed itself of the privilege of conducting activities in Texas. *Id.* at 785.

We then addressed the court of appeals' holding that Texas could assert specific jurisdiction over the dealer because the dealer had "committed a tort in Texas" by making misrepresentations in its phone call with the plaintiff. *Id.* at 788. Like several other Texas appellate courts, the court of appeals had relied on *Calder* to hold that "[i]f a tortfeasor knows that the brunt of the injury will be felt by a particular resident in the forum state, he must reasonably anticipate being haled into court there to answer for his actions." *Id.* We rejected that overly simplistic interpretation of *Calder* because it ignored *Calder*'s reliance on the fact that the defendants knew that their article "was for their employer, the *National Enquirer*, which sold more than 600,000 copies in the forum state every week." *Id.* at 789 (citing *Calder*, 465 U.S. at 785 n.2). The *Calder* defendants' article "constituted a substantial 'presence' in the state." *Id.* The single RV the *Michiana* defendant sold to a Texas resident did not. Construing *Calder* in light

of *Keeton*'s reliance on the defendant's distributing thousands of copies of its publication in the forum state, we rejected a jurisdictional test "based solely upon the effects or consequences" in the forum state, such as the court of appeals' "directed-a-tort" test, and concluded that "the important factor was the extent of the defendant's activities, not merely the residence of the victim." *Id.* at 789-90.

d. *Walden*

The Supreme Court recently confirmed our understanding of *Calder* and *Keeton* in *Walden v. Fiore*, 134 U.S. 1115 (2014). The defendant in *Walden*, a Georgia police officer assigned to a federal drug-interdiction team, confiscated money from the plaintiffs at the Atlanta airport. *Id.* at 1119. The plaintiffs were Nevada residents catching a connecting flight in Atlanta on their way from Puerto Rico. *Id.* They sued the Georgia defendant in Nevada, alleging he violated their Fourth Amendment rights by seizing and attempting to forfeit their money, in part by signing a false affidavit. *Id.* at 1119-20. The Ninth Circuit concluded that Nevada courts had specific jurisdiction over the Georgia defendant because the defendant had "'expressly aimed' his submission of the allegedly false affidavit at Nevada by submitting the affidavit with knowledge that it would affect persons with a 'significant connection' to Nevada." *Id.* at 1120. The Supreme Court reversed, holding that "the mere fact that [the defendant's] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 1126.

The Court reaffirmed that the specific-jurisdiction inquiry "focuses 'on the relationship among the defendant, the forum, and the litigation.'" *Id.* at 1121 (quoting *Keeton*, 465 U.S. at 775). Thus, "the

relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State," *id.* at 1122 (quoting *Burger King*, 471 U.S. at 475), and the "analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there," *id.* (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). The Court explained that *Calder* focused on the "various contacts the defendants had created with California (and not just with the plaintiff)." *Id.* at 1123. The defendants' contacts were sufficient in *Calder* because they had relied on "California sources" for information, they had written "the story about the plaintiff's activities in California," and they had caused the "brunt of the injury" in California "by writing an allegedly libelous article that was widely circulated in the State." *Id.* (quoting *Calder*, 465 U.S. at 788-89). "In sum, California [wa]s the focal point both of the story and of the harm suffered." *Id.* (quoting *Calder*, 465 U.S. at 789). Under *Calder*, "mere injury to a forum resident is not a sufficient connection to the forum." Instead, "an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State," and "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 1125.

**2. Petitioners' Contacts**

With these precedents and principles in mind, we now consider Trevino's allegations and the evidence regarding Petitioners' contacts with Texas to determine whether they support the trial court's finding that Petitioners purposefully availed themselves of the benefits of conducting activities in the state.

Specifically, we consider allegations and evidence that Petitioners:

- "directed a tort" at Trevino in Texas;
- broadcast allegedly defamatory statements in Texas;
- knew the statements would be broadcast in Texas; and
- intentionally targeted Texas through those broadcasts.

We conclude that the evidence of the first three contentions does not establish purposeful availment, but the evidence of the fourth one does.

a. *The "directed-a-tort" test*

No one disputes that Trevino resides in Texas and the brunt of any injuries she suffered from Petitioners' broadcasts occurred in Texas. Petitioners argue, however, that the court of appeals erred by finding jurisdiction based on these facts because we expressly rejected the "directed-a-tort" test for specific jurisdiction in *Michiana*. Petitioners are mostly correct. *See Michiana*, 168 S.W.3d at 788-91. We explained in *Michiana* that courts cannot base specific jurisdiction merely on the fact that the defendant "knows that the brunt of the injury will be felt by a particular resident in the forum state." *Id.* at 788. "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Walden*, 134 S. Ct. at 1122 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

As Trevino notes, however, the court of appeals did not rely on the mere fact that Trevino lives in Texas and allegedly suffered harm here. To the contrary, the court agreed with Petitioners that its analysis

should not focus "on where the plaintiffs felt the harm caused by the defamation if the defendants have not directed the publication or broadcast at the forum," and explained that it had "not considered [Trevino's] injury or residence in [its] analysis because it is not relevant." —— S.W.3d at ——, 2014 WL 346031, at *22. Petitioners contend that, despite these disclaimers, the court in fact relied on the directed-a-tort test by holding that Texas courts can exercise specific jurisdiction because Petitioners "purposefully directed their broadcasts at Texas." *Id.* at *25. We disagree.

There is a subtle yet crucial difference between directing a tort at an individual who happens to live in a particular state and directing a tort at that state. In *Michiana*, for example, the defendant allegedly directed a tort (by making misrepresentations in a phone call) at a plaintiff who lived in Texas, but that was the defendant's only contact *with Texas*. 168 S.W.3d at 789. By contrast, in *Keeton*, the plaintiff did not even reside in the forum state, but the defendant had "continuously and deliberately exploited the New Hampshire market" by regularly distributing its magazines there. 465 U.S. at 781. Thus, when the magazine ran a story that allegedly defamed the plaintiff, it directed a tort at the state of New Hampshire, not just at the plaintiff. Under *Keeton*, *Calder*, *Walden*, and *Michiana*, the fact that the plaintiff lives and was injured in the forum state is not irrelevant to the jurisdictional inquiry, but it is relevant only to the extent that it shows that *the forum state* was "the focus of the activities of the defendant." *Keeton*, 465 U.S. at 780. We thus conclude, as the court of appeals also concluded, that the mere fact that Petitioners directed defamatory

statements at a plaintiff who lives in and allegedly suffered injuries in Texas, without more, does not establish specific jurisdiction over Petitioners.

b. *Broadcasts into Texas*

We next address Trevino's allegations and evidence that Petitioners' broadcasts, though originating in Mexico, reached Texas residents through their television sets in their Texas homes. Petitioners do not dispute this contention, at least with respect to over-the-air transmissions. Publimax's controller explained that TV Azteca's two affiliated stations in Monterrey direct their broadcasts "at viewers in the northeast zone of Mexico, not Texas," but he acknowledged that households in South Texas may receive the broadcasts due to "signal 'spill-over,'" which results from the over-the-air signals "following the law of physics." Petitioners concede that the signals carry "far enough that they might be received by households or cable system operators in a small section of the Rio Grande Valley," and that Texas cable companies that receive those signals may rebroadcast them to their cable subscribers. As the court of appeals noted, there is evidence that "programs broadcast by TV Azteca and Publimax [are] seen in Texas potentially by over one million viewers." —— S.W.3d at ——, 2014 WL 346031, at *20. Comparing these broadcasts to the *Keeton* and *Calder* defendants' "regular circulation" of thousands of magazines in those forum states, the court concluded that Petitioners' act of "broadcasting programs to residents of Texas supports an assertion of jurisdiction in this case." *Id.*

Petitioners and their supporting amici[7] vigorously contend that the court erred by equating television broadcasts to the distribution of magazines and newspapers. The Texas Association of Broadcasters, for example, explains that *Keeton* and *Calder* were based on the distribution of written publications that involved voluntary contractual agreements, not "the simple fact that broadcast transmissions do not respect international borders." If the "over-the-air transmission of television signals" constitutes "business in Texas," they contend, then every television and radio broadcaster "deep in Mexico" whose signal reaches over the border is "doing business in Texas," as is "virtually every out-of-state Internet service provider which operates a website accessible in Texas."[8] Petitioners contend that, for purposes of establishing

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[7] The National Association of Broadcasters and the Texas Association of Broadcasters each submitted amicus briefs supporting Petitioners.

[8] For twenty years already, courts around the country have struggled to determine how to apply personal-jurisdiction principles to a defendant's Internet website or activities, which are often accessible in every jurisdiction. *See, e.g.*, TiTi Nguyen, *A Survey of Personal Jurisdiction Based on Internet Activity: A Return to Tradition*, 19 BERKELEY TECH. L.J. 519 (2004); Michael Geist, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345 (2001). The Texas Association of Broadcasters urges us to announce a test for both broadcasters and Internet publishers because both disseminate content by "putting it out there" for whomever chooses to access it, and because of "the expansion of streaming video and retransmission," the distinction between broadcasters and Internet publishers is likely to collapse even further in the near future." While we acknowledge that the two types of media may share similarities, this case does not present an Internet-based jurisdictional issue, so any discussion of that issue would be advisory.

specific jurisdiction, "TV signals that stray into a forum do not constitute a contact with the forum."

Several courts have addressed specific jurisdiction based on electronic broadcasts, and many have at least arguably found minimum contacts based solely on the fact that the broadcasts could be received in the forum state.[9] Citing several of these decisions, the court of appeals "conclude[d] that broadcasting programs to residents of Texas supports an assertion of jurisdiction in this case." —— S.W.3d at ——, 2014 WL 346031, at *20. To the extent any of these courts found specific jurisdiction based *solely* on broadcasts in the forum state, however, we disagree. The "touchstone of jurisdictional due process" is "purposeful

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[9] *See, e.g.*, *Indianapolis Colts*, 34 F.3d at 411-12 (7th Cir. 1994) (finding specific jurisdiction based on broadcasts of football games on nationwide cable television); *Digital Equip. Corp. v. AltaVista Tech.*, 960 F. Supp. 456, 466 n.20 (D. Mass. 1997) ("Numerous courts have held that jurisdiction can be based on the broadcasting of a television program (or advertising) into the forum state . . . ."); *Holmes v. TV-3, Inc.*, 141 F.R.D. 692 (W.D. La. 1991) (finding specific jurisdiction over television station and reporter based on program broadcast in Mississippi but viewable in Louisiana); *Tonka Corp. v. TMS Entm't., Inc.*, 638 F. Supp. 386, 391 (D. Minn. 1985) (finding specific jurisdiction based on television show that aired in forum state); *Thomas Jackson Publ'g, Inc. v. Buckner*, 625 F. Supp. 1044, 1046 (D. Neb. 1985) (finding specific jurisdiction based on national television program, radio broadcast, and cable television network show that aired in the forum state); *United Med. Labs., Inc. v. CBS, Inc.*, 256 F. Supp. 570, 572 (D. Or. 1966) (finding personal jurisdiction over Walter Cronkite and news producer based on television program broadcast in forum state); *Massey Energy*, 69 Va. Cir. 118, 121 (stating television advertisement that "reached homes" in forum state was "alone a sufficient basis of jurisdiction under the statute"); *Pegler v. Sullivan*, 432 P.2d 593 (Ariz. Ct. App. 1967) (finding specific jurisdiction based on television show that aired in forum state).

availment," *Michiana*, 168 S.W.3d at 784, and a defendant purposefully avails itself of the benefits of activities in the state only when its contacts are "purposeful rather than random, fortuitous, or attenuated," and it seeks "some benefit, advantage[,] or profit by availing itself of the jurisdiction." *Moncrief Oil*, 414 S.W.3d at 151 (quoting *Retamco*, 278 S.W.3d at 338-39). We agree with Petitioners that the mere fact that the signals through which they broadcast their programs in Mexico travel into Texas is insufficient to support specific jurisdiction because that fact does not establish that Petitioners purposefully directed their activities at Texas.

c. *Knowledge of the forum broadcasts*

Trevino argues, however, that Petitioners *knew* their broadcasts would reach Texas homes. Trevino points to evidence, for example, that Publimax stated on its website that the two Monterrey television stations reached 766,087 viewers in South Texas in 2008 and 1,583,829 in 2012. Petitioners do not dispute that they knew the programs could be viewed in Texas, but they contend that mere known accessibility is not enough to support specific jurisdiction. Instead, they assert, the defendant must "aim" its broadcasts at the forum state. *See*, *e.g.*, *Calder*, 465 U.S. at 789 (noting that defendants were "not charged with mere untargeted negligence," but "expressly aimed" their actions at California).

Many of the courts that found jurisdiction based on broadcasts in the forum expressly noted that the defendants knew that the broadcasts would be viewable in those states.[10] Petitioners contend the court

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[10] *See*, *e.g.*, *Holmes*, 141 F.R.D. at 696 (noting that map broadcasters used to solicit advertisers showed a "large portion"

of appeals did the same in this case by concluding, for example, that Chapoy's knowledge that her program would be viewed on TV Azteca by Texas residents "supports a finding that Chapoy directed the statements she made on *Ventaneando* to residents of Texas." —— S.W.3d at ——, 2014 WL 346031, at *24. Again, to the extent courts have found jurisdiction based solely on the defendants' knowledge that their broadcasts could be viewed in the forum, we disagree. Because the minimum-contacts test is intended to ensure that the defendant could "reasonably anticipate" being sued in the forum's courts, *World-Wide Volkswagen*, 444 U.S. at 297, "foreseeability is an important consideration" in the analysis, *BMC Software*, 83 S.W.3d at 795. But "foreseeability alone will not support personal jurisdiction." *CSR Ltd.*, 925 S.W.2d at 595. Instead, the defendant must reasonably anticipate being sued in the forum *because of* actions the defendant "purposefully directed toward the forum state." *Id.* (quoting *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987)

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of its broadcast area was in the forum state, and holding that "[t]his deliberate reliance upon the signal reaching Louisiana is a significant contact with the State"); *Tonka Corp.*, 638 F. Supp. at 391 (finding specific jurisdiction because defendant "obviously knew that ABC would be syndicating the program nationwide, including" in the forum state); *Massey Energy*, 69 Va. Cir. at 126 (finding specific jurisdiction because television station "regularly broadcast into" the forum state and "must have foreseen" that they would be sued there); *Pegler*, 432 P.2d at 596-97 (holding Ed Sullivan "entered Arizona" by producing skit with knowledge that it would be aired in Arizona, thus making his actions "voluntary, purposeful, reasonably foreseeable and calculated to have effect in Arizona," thus creating minimum contacts with the state); *United Medical Labs.*, 256 F. Supp. at 572 (holding Walter Cronkite's forum activities were "voluntary" and "purposeful" because he "knew that the particular material would be broadcast in the [forum] state").

(plurality opinion)). While a defendant's knowledge that its actions will create forum contacts may support a finding that the defendant purposefully directed those actions at the forum, that knowledge alone is not enough.

We find a helpful analogy on this issue in our stream-of-commerce cases. Under the stream-of-commerce theory of personal jurisdiction, "a non-resident who places products into the 'stream of commerce' with the expectation that they will be sold in the forum state" may be subject to personal jurisdiction in the forum. *Moki Mac*, 221 S.W.3d at 576-77. But even under that theory, mere knowledge that the product will be sold in the forum state is not enough. A product seller's "awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." *CSR*, 925 S.W.2d at 595 (quoting *Asahi*, 480 U.S. at 112). Instead, "additional conduct" must demonstrate "an intent or purpose to serve the market in the forum State." *Moki Mac*, 221 S.W.3d at 577 (quoting *Asahi*, 480 U.S. at 112); *see also J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) ("The defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State."); *Zinc Nacional, S.A. v. Bouche Trucking, Inc.*, 308 S.W.3d 395, 397 (Tex. 2010) ("The fact that a seller knows his goods will end up in the forum state does not support jurisdiction when the seller made no attempt to market its goods there."); *Moki Mac*, 221 S.W.3d at 577

("[T]he facts alleged must indicate that the seller intended to serve the Texas market.").

In the same way, we conclude that a broadcaster's mere knowledge that its programs will be received in another jurisdiction is insufficient to establish that the broadcaster purposefully availed itself of the benefits of conducting activities in that jurisdiction. Instead, evidence of "additional conduct" must establish that the broadcaster had "an intent or purpose to serve the market in the forum State." *Moki Mac*, 221 S.W.3d at 577.

d. *Intentionally targeting the Texas market*

Trevino contends that evidence of Petitioners' additional conduct demonstrates that they intended to serve the Texas market with their broadcasts. Relying on *Calder*, Petitioners argue that the evidence does not establish that they intentionally targeted Texas because the subject matter of the allegedly defamatory broadcasts had no relation to Texas and Petitioners did not rely on Texas sources to prepare those broadcasts. We agree that the evidence does not establish targeting under *Calder*'s "subject-and-sources" test, but we do not agree that the subject-and-sources test is the only way to establish that a broadcaster targeted a forum state. Instead, a plaintiff can establish that a defamation defendant targeted Texas by relying on other "additional conduct" through which the defendant "continuously and deliberately exploited" the Texas market. *Keeton*, 465 U.S. at 781. We conclude that Trevino has done so here.

**(1) Subject-and-sources test**

The Supreme Court found that the defendants in *Calder* were "not charged with mere untargeted negligence," but instead had "expressly aimed" their

actions at California, because their article "concerned the California activities of a California resident" and "was drawn from California sources." 465 U.S. at 788-89. Petitioners rely on three Fifth Circuit cases to argue that, under *Calder*, an allegedly defamatory broadcast targets the forum state *only* if the subject matter of the article involves events in the state and the broadcaster prepared the article by relying on sources in the state. First, in *Revell v. Lidov*, the Fifth Circuit held that "the sources relied upon and activities described in an allegedly defamatory publication should in some way connect with the forum if *Calder* is to be invoked." 317 F.3d 467, 474 (5th Cir. 2002). Then, in *Fielding v. Hubert Burda Media, Inc.*, the court relied on *Revell* for the proposition that "[t]his Court has held that, to exercise specific jurisdiction in a libel action, the 'aim' of the plaintiff under the *Calder* test must be demonstrated by showing that (1) the subject matter of and (2) the sources relied upon for the article were in the forum state." 415 F.3d 419, 426 (5th Cir. 2005) (citing *Revell*, 317 F.3d at 474 & n.48). Finally, in *Clemens v. McNamee*, the court again stated, "We read *Calder* as requiring the plaintiff seeking to assert specific personal jurisdiction over a defendant in a defamation case to show '(1) the subject matter of and (2) the sources relied upon for the article were in the forum state.'" 615 F.3d 374, 380 (5th Cir. 2010) (quoting *Fielding*, 415 F.3d at 426).

We agree with Petitioners that the subject-and-sources test is consistent with *Calder*'s approach to determining whether a defamation defendant "expressly aimed" its communication to a forum state. We also agree that the evidence in this case does not support specific jurisdiction under this test.

The subject matter of the allegedly defamatory broadcasts is completely unrelated to Texas. Trevino alleges that Petitioners defamed her by making statements that are almost exclusively about events that occurred outside of and completely unrelated to Texas. Specifically, she asserts the Petitioners:

- "defamed her concerning the very charges of which she had been acquitted";
- stated and affirmed "that [she] was a rapist, a murderer, and she would corrupt minors . . . [and] that she had been the lover of a mafia chief";
- reported favorably on a "book and lawsuit against [her and others,] which asserted that they were involved in corruption of minors, kidnapping, and rape";
- "broadcast[ed] allegations that [she] had a daughter in Brazil, that the baby was murdered, and that the body had been dismembered";
- broadcasted allegations that her former jail-mate "was hired as a back-up singer . . . but not paid";
- asserted that she and others "got away with" their misdeeds "because they are delinquents";
- repeated allegations that she "had been diagnosed as having 'dangerous schizophrenia'";
- "promoted claims that Gomez made [her] pregnant when she was in prison and before they were married, calling him 'crazy,' implying that he fabricated a document in order to see [her] in prison, saying he manipulated [her], and accusing him of making death threats";
- made "false statements in which they speculate as to the identity of the father of [her son]";

- "made defamatory statements concerning the way [her son] was conceived"; and
- claimed while covering a fire at the home of her former manager in McAllen in 1999, that "pornography would be found at the scene of the fire."

We agree with Petitioners that these broadcasts did not "concern[] the [Texas] activities of a [Texas] resident," *Calder*, 465 U.S. at 788, or describe activities having a connection with Texas, *Revell*, 317 F.3d at 474, as the subject-and-sources test requires. With the exception of the coverage of the house fire—which occurred in 1999, nearly ten years before the broadcasts about which Trevino primarily complains—and Trevino's assertion that one of the alleged assault victims resides in Texas, all of the statements relate to people and events in Brazil or Mexico. Thus, the evidence does not support a finding of purposeful availment under the *Calder* subject-and-sources test sufficient to make Texas "the focal point" of the broadcasts at issue. *See Calder*, 465 U.S. at 789.

**(2) Intentional efforts to serve the Texas market**

Citing the Fifth Circuit's decision in *Clemens*, Trevino asserts that the subject-and-sources test is only one method of proving that a defamation defendant targeted the forum state, and it need not be met when evidence otherwise establishes that the defendant's statement was "aimed at or directed to" the state. *See Clemens*, 615 F.3d at 380. Petitioners disagree, arguing that "whether the forum state is the focal point of the story is a crucial criterion in determining whether the story is directed at the forum state." We agree with Trevino.

When the Fifth Circuit first articulated the subject-and-sources test in *Revell*, it emphasized "[a]t the outset" that *Calder*'s "'effects' test is but one facet of the ordinary minimum contacts analysis, to be considered as part of the full range of the defendant's contacts with the forum." 317 F.3d at 473 (citing *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 869 (5th Cir. 2001)).[11] Adhering to *Revell* in *Fielding*, the court explained that a plaintiff can establish specific jurisdiction over a defamation defendant by showing *either* "(1) a publication with adequate circulation in the state" under *Keeton*, *or* "(2) an author or publisher who 'aims' a story at the state knowing that the 'effects' of the story will be felt there" under *Calder*. *Fielding*, 415 F.3d at 425. And then in *Clemens*, the court read *Calder* to require the subject-and-sources test, 615 F.3d at 380, but it did not hold that *Calder* established the only test for determining personal jurisdiction over a defamation defendant. *See id.* at 384 (Haynes, J., dissenting) ("[T]he *Calder* effects test is simply an additional, but not exclusive, vehicle for establishing personal jurisdiction over a nonresident defendant who may never have been to the forum state.").

Even if the Fifth Circuit recognized the subject-and-sources test as the exclusive method for establishing personal jurisdiction over a defamation defendant, we would disagree. The test determines whether the forum state was "the focal point . . . of

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[11] As described above, under the *Calder* "effects" test, a defamation defendant has minimum contacts with the forum state when (1) the state is the focus of the article's "subject-and-sources" and (2) the defendant knew that the "brunt" of the injury would occur there. *See Calder*, 465 U.S. at 788-89 ("California is the focal point both of the story and of the harm suffered.").

the story," which in turn determines whether the defendant purposefully availed itself of the benefits of conducting activities in the state sufficient to establish minimum contacts. *Calder*, 465 U.S. at 788-89. In *Keeton*, the plaintiff had no relevant contacts with New Hampshire, and the offending articles did not address events related to or drawn from sources within that state. 465 U.S. at 772-73. Nevertheless, the Court found minimum contacts because the defendant had "continuously and deliberately exploited the New Hampshire market." *Id.* at 781. We must likewise determine whether Petitioners had "an intent or purpose to serve the market in the forum State." *Moki Mac*, 221 S.W.3d at 577 (quoting *Asahi*, 480 U.S. at 112).

As we have explained, the mere facts that Petitioners' signal reaches into Texas and that Petitioners know it does do not establish that Petitioners purposefully sought to serve the Texas market through their broadcasts. Petitioners cite to evidence to show that is, in fact, not their intent. TV Azteca's contract with Publimax, for example, limits Publimax's right to broadcast TV Azteca's programs like *Ventaneando* only to three Mexican states: Nuevo Leon, Coahuila, and Tamaulipas. Chapoy testified that her programs reported stories deemed appealing to Mexican viewers and that her intended viewership included "primarily Mexican citizens and residents, and not viewers located in the State of Texas." In short, Petitioners' evidence tends to establish that the signals "involuntarily strayed" into Texas as a result of "signal 'spill-over,'" which occurs naturally from the broadcasts in Mexico.

Trevino submitted evidence, however, that Petitioners made substantial and successful efforts to

benefit from the fact that the signals travel into Texas, as well as additional efforts to promote their broadcasts and expand their Texas audience. This evidence generally falls into three categories of activities. First, Trevino points to evidence that Petitioners actually physically "entered into" Texas to produce and promote their broadcasts. Between 2005 and 2009, for example, when Petitioners were producing and airing the allegedly defamatory stories about Trevino, TV Azteca had a business office and production studio in South Texas.[12] In 2006-2007, Publimax sent or hired an employee to work in Texas on a project to expand Publimax's broadcasts through cable distribution. Chapoy, meanwhile, traveled to Laredo to promote her books about the *Ventaneando* program (*The Best of Ventaneando* and *The Files of Ventaneando*) and to Dallas to host a live broadcast of *Ventaneando*. While this evidence might not be sufficient on its own, we agree that it is relevant and supports Trevino's allegation that Petitioners purposefully availed themselves of the benefits of conducting activities in Texas.

Second, Trevino points to evidence that Petitioners derived substantial revenue and other benefits by selling advertising time to Texas businesses. As we previously noted, Publimax's website included a map of its viewing market that at least arguably promoted that the stations (which Publimax operates and TV Azteca owns) had over 1.5 million viewers in South Texas. Trevino points to evidence that Petitioners

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[12] TV Azteca submitted an affidavit stating that it does not currently have a place of business in Texas. Trevino's evidence that TV Azteca previously had a business office and studio in Texas from 2005 to 2009 is not inconsistent with TV Azteca's evidence.

took advantage of this Texas audience as a means to increase their advertising revenue in Texas. For example, the record includes evidence that:

- between 2006 and 2007, TV Azteca hired an advertising agent in McAllen, sent employees to meet with her, and presented advertising packages to her and to Texas businesses to solicit advertising buys on their programs;
- Texans saw advertisements in Texas for Texas businesses on at least one of the TV Azteca/ Publimax stations; and
- Publimax and TV Azteca shared almost $2 million in revenue from over a hundred contracts through which Texas businesses purchased advertising time on the TV Azteca/Publimax stations.

And third, Trevino points to evidence that Petitioners made substantial and successful efforts to distribute their programs and increase their popularity in Texas, including the programs in which they allegedly defamed Trevino. For example, Trevino points to evidence that:

- TV Azteca stated in its 2005 annual report that the programs it produces in-house (like *Ventaneando*) are more expensive than those it purchases, and it seeks to offset those production costs by selling its in-house programs outside of Mexico;
- TV Azteca's annual reports reflect that it has made millions of dollars selling its programs and the rights to air its programs internationally, including in the United States;
- TV Azteca gave its wholly owned subsidiary, Azteca International Corporation (AIC), a Delaware corporation headquartered in California

that operates as "Azteca America," a content license that permitted Azteca America to transmit some of TV Azteca's programs in the United States;

- *Ventaneando* is "one of the most successful and influential programs in Mexico, the United States, and other Latin American countries";
- AIC has a "library with over 200,000 hours" of TV Azteca's original programming and "news from local bureaus in 32 Mexican states";
- TV Azetca gave AIC a license to use TV Azteca's logo as the logo for Azteca America;
- TV Azteca gave a United States-based satellite broadcaster exclusive rights to distribute the programming of one of the stations that Publimax operates, via satellite;
- Publimax operates TV Azteca's channels under the name "TV Azteca Noreste," which name actually belongs to TV Azteca;
- Publimax agreed to allow another company to retransmit its morning newscast in the United States via satellite;
- Chapoy believes herself to be well known outside of Mexico, including in the United States, because of her work as a journalist;
- Chapoy conducted interviews in the United States and traveled to Texas to promote her books about *Ventaneando* and to promote *Ventaneando America*; and
- Chapoy hosted *Ventaneando America* for AIC on Azteca America when it celebrated the fifteenth anniversary of *Ventaneando*.

Petitioners argue that this evidence, at best, establishes that AIC and other companies intentionally

target Texas, but it does not establish that Petitioners themselves have done so. Arguing that the court of appeals erred by relying on the activities and contacts of these other entities to find specific jurisdiction, Petitioners contend that this evidence shows that they have "not afforded [themselves] the benefits and protections of the laws of Texas, but instead [have] calculatedly avoided them." *See Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 808 (Tex. 2002) (quoting *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987)). As we have noted, "a nonresident may purposefully avoid a particular jurisdiction by structuring its transactions so as neither to profit from the forum's laws nor be subject to its jurisdiction." *Michiana*, 168 S.W.3d at 785. And we have "rejected attempts to sue foreign subsidiaries in Texas based on a parent corporation's contacts, holding that jurisdiction over one does not automatically establish jurisdiction over the other." *Spir Star*, 310 S.W.3d at 873.

But the evidence here relates as much to Petitioners' own efforts to target Texas with their broadcasts as it does to AIC's and the other contractors' efforts. To be sure, courts may lack specific jurisdiction over a nonresident defendant who made no independent efforts to purposefully avail itself of Texas and merely contracted with a third party who did. *See*, *e.g.*, *Zinc Nacional*, 308 S.W.3d at 396 (holding that a Mexican company "using a third-party trucking service to transport its goods through Texas to an out-of-state customer" did not purposefully avail itself of Texas). But a defendant who "intentionally targets Texas as the marketplace for its products" is subject to specific jurisdiction, and "using a distributor-intermediary for that purpose provides no haven

from the jurisdiction of a Texas court." *Spir Star*, 310 S.W.3d at 871. We conclude that this evidence would support a finding that Petitioners made substantial and successful efforts to distribute their programs in Texas, not just that they contracted with other companies that happened to have contacts with Texas.

We acknowledge Petitioners' evidence that their broadcasts originated in Mexico and were directed primarily at northeastern Mexico and their argument that no evidence suggests that they took steps to direct the signals into Texas or that they reasonably could have stopped that from happening. But whether Petitioners intentionally directed the signals into Texas or not, we must look for evidence that each of the Petitioners took specific and substantial actions to take advantage of the fact that the signals reach into Texas and to financially benefit from that fact. We conclude such evidence exists.

When determining personal jurisdiction, "[e]ach defendant's contacts with the forum State must be assessed individually." *Calder*, 465 U.S. at 790. As the evidence we have listed demonstrates, each of the Petitioners physically entered Texas, sought revenue from Texas, and made efforts to distribute their broadcasts and increase their popularity in Texas. Publimax argues that it did not create, produce, or exercise editorial control over the allegedly defamatory broadcasts, so it cannot be charged with having targeted Texas with defamatory statements. But at this stage of the litigation, the issue is not whether the broadcasts were defamatory (an issue we do not address), but whether Publimax purposefully availed itself of Texas through those broadcasts.

For her part, Chapoy argues that the evidence does not establish her minimum contacts with Texas because she did not control the broadcasts. But the evidence establishes that she personally promoted *Ventaneando* in Texas. Like the editor and reporter who argued in *Calder* that they were "not responsible for the circulation of [their] article in California" and had "no direct economic stake in their employer's sales in a distant State," Chapoy's broadcasts were "expressly aimed" at Texas. 465 U.S. at 790. And there is evidence that she knew that the programs would have a substantial audience in Texas and "the brunt" of Trevino's injury would be felt in Texas. *See Michiana*, 168 S.W.3d at 789 (citing *Calder*, 465 U.S. at 785 n.2) (noting the *Calder* Court's reliance on the fact that the editor and reporter knew their article "was for their employer, the *National Enquirer*, which sold more than 600,000 copies in the forum state every week").

The evidence that Petitioners physically "entered into" Texas to produce and promote their broadcasts, derived substantial revenue and other benefits by selling advertising to Texas businesses, and made substantial efforts to distribute their programs and increase their popularity in Texas supports the trial court's finding that Petitioners "continuously and deliberately exploited the [Texas] market." *Keeton*, 465 U.S. at 781. We thus conclude that the evidence supports the trial court's finding that through their broadcasts, Petitioners purposefully availed themselves of the benefits of conducting activities in Texas, such that they "could reasonably anticipate being haled into court there." *Moncrief Oil*, 414 S.W.3d at 152.

**B. "Arising from or related to"**

Because we are addressing the issue of specific—as opposed to general—jurisdiction, we must also determine whether Trevino's claim "arises from or is related to [Petitioners'] purposeful activities in the state." *Id.* at 150. "For specific-jurisdiction purposes, purposeful availment has no jurisdictional relevance unless the defendant's liability arises from or relates to the forum contacts." *Moki Mac*, 221 S.W.3d at 579. A claim arises from or relates to a defendant's forum contacts if there is a "substantial connection between those contacts and the operative facts of the litigation." *Id.* at 585; *see Spir Star*, 310 S.W.3d at 874 (stating same); *Walden*, 134 S. Ct. at 1121 ("For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State.").

This "substantial connection" standard does not require proof that the plaintiff would have no claim "but for" the contacts, or that the contacts were a "proximate cause" of the liability. *Moki Mac*, 221 S.W.3d at 584 ("[T]he but-for relatedness test is too broad and conceptually unlimited in scope, the substantive-relevance/proximate-cause test poses too narrow an inquiry . . . ."). Instead, we consider what the claim is "principally concerned with," *Moncrief Oil*, 414 S.W.3d at 157, whether the contacts will be "the focus of the trial" and "consume most if not all of the litigation's attention," and whether the contacts are "related to the operative facts" of the claim, *Moki Mac*, 221 S.W.3d at 585.

Petitioners contend that, even if the evidence we have described establishes that they purposefully availed themselves of the benefits of doing business in Texas, Trevino's claims are not substantially

connected to those Texas contacts. The map showing their Texas viewership, for example, "contains no alleged defamation," and the advertising contracts and revenues from Texas are not "in any way attributable to the subject broadcasts." They thus compare this case to the circumstances we addressed in *Moki Mac*, in which Texas plaintiffs, the Druggs, sought specific jurisdiction over an Arizona outfitter company based in part on the company's advertising of its programs in Texas. 221 S.W.3d at 585-86. The Druggs sued the Arizona outfitter, Moki Mac, after their son, Andy, fell off a cliff and died while on a hiking trip Moki Mac led in Arizona, asserting wrongful-death claims for negligence and claims for intentional and negligent misrepresentation. *Id.* at 573. We held that Moki Mac's Texas advertisements were not substantially connected to the Druggs' claims, because "claims arising out of personal injury that occurs outside the forum do not arise from or relate to a defendant's forum advertising." *Id.* at 586. We concluded that "the injuries for which the Druggs seek recovery [were] based on Andy's death on the hiking trail in Arizona, and the relationship between the operative facts of the litigation and Moki Mac's promotional activities in Texas [were] simply too attenuated to satisfy specific jurisdiction's due-process concerns." *Id.* at 588. Petitioners here argue that, as in *Moki Mac*, Trevino's defamation claims do not arise from or relate to Petitioners' map, advertising contracts, studio, promotional tour, and other Texas contacts.

Petitioners overlook a key distinction between *Moki Mac* and this case. In *Moki Mac*, the evidence of the defendant's Texas contacts was insufficient to support specific jurisdiction in Texas because the "operative facts" of the suit occurred in Arizona.

*Id.* at 585. In other words, Moki Mac's "actionable conduct," from which the claim arose, occurred in Arizona, and its "additional conduct" of advertising in Texas did not transform its actionable conduct in Arizona into a contact with Texas. We explained,

> Certainly on a river rafting trip safety is a paramount concern, and we accept as true the Druggs' claim that Andy might not have gone on the trip were it not for Moki Mac's representations about safety. However, the operative facts of the Druggs' suit concern principally the guides' conduct of the hiking expedition and whether they exercised reasonable care in supervising Andy. The events on the trail and the guides' supervision of the hike will be the focus of the trial, will consume most if not all of the litigation's attention, and the overwhelming majority of the evidence will be directed to that question. Only after thoroughly considering the manner in which the hike was conducted will the jury be able to assess the Druggs' misrepresentation claim.

*Id.* at 585.

In *Moki Mac*, the actionable conduct occurred and caused harm outside of the forum state, so the defendant's liability arose from conduct outside of the forum state, not its additional conduct within the state. The plaintiffs' jurisdictional argument thus failed because specific jurisdiction requires the defendant's liability to arise from or relate to its contacts with the forum state. *Id.* at 579. Here, the actionable conduct is the allegedly defamatory broadcasts. Although the broadcasts originated in Mexico, they were received and viewed—and allegedly caused harm—in Texas. Unlike in *Moki Mac*, the actionable conduct at issue here occurred in Texas, so we need

not determine whether Trevino's claims arise from Petitioners' additional conduct in Texas.

But the fact that the actionable conduct occurred in Texas is only one stage of the analysis, and it is not enough. For jurisdiction to exist, the actionable conduct within Texas must be conduct through which Petitioners purposefully had contact with Texas and sought some "benefit, advantage, or profit by 'availing' itself of the jurisdiction." *Michiana*, 168 S.W.3d at 785. Thus, unlike in *Moki Mac*, the question here is not whether Trevino's claims arise from Petitioners' additional conduct in Texas (the promotional map, advertising contracts, the promotional tour, etc.), but whether that additional conduct establishes that Petitioners purposefully availed themselves of Texas through their actionable conduct in Texas (the broadcasts). The relevance of the additional conduct, in other words, is not to establish that those contacts constitute Petitioners' minimum contacts with Texas, but to establish that the actionable conduct in Texas itself constitutes minimum contacts.

In this regard, this case is more like the stream-of-commerce cases, in which the court determines whether a seller's placement of its product into the stream of commerce constitutes minimum contacts when the product travels into and causes harm in the forum state. *See*, *e.g.*, *CSR*, 925 S.W.2d at 595. In those cases, the seller's "awareness that the stream of commerce may or will sweep the product into the forum State" is not enough, and "additional conduct" must indicate "an intent or purpose to serve the market in the forum State." *Asahi*, 480 U.S. at 112. We expressly acknowledged this principle in *Moki Mac*, and explained, "In determining whether the defendant purposefully directed action toward Texas, we may look to conduct beyond the particular busi-

ness transaction at issue: '[a]dditional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State.'" 221 S.W.3d at 577 (quoting *Asahi*, 480 U.S. at 112).

We further noted in *Moki Mac* that "[e]xamples of additional conduct that may indicate whether a defendant purposefully availed itself of a particular forum include advertising and establishing channels of regular communication to customers in the forum state." *Id.* Or, as we listed more thoroughly in *Spir Star*, "[e]xamples of this additional conduct include: (1) 'designing the product for the market in the forum State,' (2) 'advertising in the forum State,' (3) 'establishing channels for providing regular advice to customers in the forum State,' and (4) 'marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.'" *Spir Star*, 310 S.W.3d at 873 (quoting *Asahi*, 480 U.S. at 112). Although this conduct may be "beyond the particular business transaction at issue" (i.e., the allegedly defamatory broadcasts), it is the kind of "additional conduct" that "indicate[s] an intent or purpose to serve the market in the forum State.'" *Moki Mac*, 221 S.W.3d at 577 (quoting *Asahi*, 480 U.S. at 112). The evidence of "additional conduct" here (the advertising, promotional tour, map, etc.) establishes that Petitioners purposefully availed themselves of Texas in connection with their actionable conduct (the allegedly defamatory broadcasts), which occurred and caused harm in Texas. And since Trevino's claims arise directly out of those broadcasts, we hold that the evidence supports the trial court's conclusion that Petitioners have minimum contacts sufficient to support specific jurisdiction in Texas.

## IV.

## Fair Play and Substantial Justice

Even when a nonresident has established minimum contacts with a state, due process permits the state to assert jurisdiction over the nonresident only if doing so comports with "traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316; *Moncrief Oil*, 414 S.W.3d at 154. Typically, "[w]hen a nonresident defendant has purposefully availed itself of the privilege of conducting business in a foreign jurisdiction, it is both fair and just to subject that defendant to the authority of that forum's courts." *Spir Star*, 310 S.W.3d at 872. Thus, "[i]f a nonresident has minimum contacts with the forum, rarely will the exercise of jurisdiction over the nonresident not comport with traditional notions of fair play and substantial justice." *Moncrief Oil*, 414 S.W.3d at 154-55.

Nevertheless, we consider several factors to evaluate the fairness and justness of exercising jurisdiction over a nonresident defendant: (1) the burden on the defendant; (2) the interests of the forum in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the international judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several nations in furthering fundamental substantive social policies. *Id.* at 155. When the defendant is a citizen of a foreign country, and not just another state, we consider more specifically (6) "the unique burdens placed upon the defendant who must defend itself in a foreign legal system;" (7) the state's regulatory interests; and (8) "the procedural and substantive policies of other nations whose interests are affected as well as the federal

government's interest in its foreign relations policies." *Guardian Royal*, 815 S.W.2d at 229. "To defeat jurisdiction, [the defendant] must present 'a compelling case that the presence of some consideration would render jurisdiction unreasonable.'" *Spir Star*, 310 S.W.3d at 878-89 (quoting *Guardian Royal*, 815 S.W.2d at 231).

Petitioners (and their supporting amici) primarily argue that Texas lacks a constitutionally sufficient interest in providing a forum for the adjudication of this dispute. Specifically, Petitioners argue that Trevino and Gomez are Mexican citizens, and Texas has no interest in this suit by Mexican citizens "against other Mexican citizens over Mexican news broadcasts about Mexican activities." We disagree. Fundamentally, "[a] state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory," *Keeton*, 465 U.S. at 776, and we have never conditioned that interest on the plaintiff's status as a Texas "citizen," as opposed to a Texas "resident."[13] *See*, *e.g.*, *Moncrief Oil*, 414 S.W.3d at 155 ("[T]he allegations that . . . Defendants committed a tort in Texas against a resident implicate a serious state interest in adjudicating the dispute."); *Spir Star*, 310 S.W.3d at 879 ("Texas has a significant interest in exercising jurisdiction over controversies arising from injuries a Texas resident sustains . . . ."); *see also Asahi*, 480 U.S. at 114 ("Because the plaintiff is not a California resident,

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[13] Petitioners do not contest that Trevino and Gomez resided in Texas at the time of allegedly defamatory broadcasts, but they do argue that Trevino did not prove "that they were lawfully entitled to be in Texas" at that time. We do not consider here whether the legality of Trevino's residency is relevant to our constitutional analysis, as the record does not establish Trevino's immigration status.

California's legitimate interests in the dispute have considerably diminished.").

Focusing on the international nature of this dispute and the respective policies of Mexico and the United States, Petitioners and their amici also argue that the exercise of jurisdiction in this case would infringe upon the interests of Mexico, and in turn, place American broadcasters at risk of unreasonable suits in Mexico and other countries. Our decision upholding Texas jurisdiction over them, they assert, "could well produce undesirable reciprocity, with foreign courts unreasonably exercising jurisdiction over American broadcasters whose over-the-air signals similarly cross national boundaries." And because different countries apply different standards to protect free speech, U.S. broadcasters will "be forced to make editorial decisions and to review programming with an eye to the differing legal standards applicable in other countries, with a clear potential for chilling speech in this country." While we recognize the legitimacy of these concerns, we do not agree that our holding implicates them. We hold that Texas courts have jurisdiction over Petitioners not because their broadcast signals "strayed" and "crossed national boundaries," but because some evidence establishes that Petitioners intentionally targeted Texas with those broadcasts and thereby purposefully availed themselves of the benefits of Texas laws. Requiring nonresidents to comply with the laws of the jurisdictions in which they choose to do business is not unreasonable, burdensome, or unique.

Although Petitioners do not contend that the remaining factors make jurisdiction here constitutionally unfair or unjust, we note that "the international judicial system's interest in obtaining the most

efficient resolution of controversies" further supports the exercise of jurisdiction in this case. Petitioners are not the only defendants in this case, and because the other defendants have not challenged the trial court's jurisdiction over them, Texas will host the adjudication of Trevino's claims in this case whether Petitioners are present or not. As we have noted in other cases, adjudicating Trevino's claims against all defendants in one proceeding provides the most efficient means for resolving these disputes. *See Moncrief Oil*, 414 S.W.3d at 155 ("[B]ecause these claims will be litigated with [another defendant] in a Texas court, it promotes judicial economy to litigate the claims as to all parties in one court."); *Spir Star*, 310 S.W.3d at 879 ("[B]ecause the claims against [another defendant] will be heard in Texas, it would be more efficient to adjudicate the entire case in the same place."). We thus conclude that the Texas trial court's exercise of jurisdiction over Petitioners in this case will not offend traditional notions of fair play and substantial justice.

## V.

## Conclusion

Trevino submitted evidence in this case that Petitioners intentionally targeted Texas through their broadcasts that aired in Texas, and Trevino's claims arise from and relate to those broadcasts. Because the evidence supports the trial court's conclusion that Petitioners have minimum contacts with Texas and the exercise of specific personal jurisdiction over Petitioners will not offend traditional notions of fair play and substantial justice, we affirm the court of appeals' judgment and remand this case to the trial court.

COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI – EDINBURG

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No. 13-12-00536-CV

TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V.,
*Appellants*,
v.

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, ANGEL GABRIEL DE JESUS TREVINO, AND ARMANDO ISMAEL GOMEZ MARTINEZ,
*Appellees*.

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On appeal from the 139th District Court
of Hidalgo County, Texas

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[Delivered and filed January 30, 2014]

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**MEMORANDUM OPINION**

Before Chief Justice Valdez and
Justices Benavides and Longoria

Memorandum Opinion by Chief Justice Valdez

Appellants, TV Azteca, S.A.B. de C.V., Patricia Chapoy, and Publimax, S.A. de C.V. (the "Media Defendants"), complain in this accelerated interlocutory appeal that the trial court erred in denying their

special appearance in a suit brought by appellees, Gloria de los Angeles Trevino Ruiz (aka "Gloria Trevi"), individually and on behalf of her minor child, Gabriel de Jesus Trevino, and Armando Ismael Gomez Martinez (the "Trevi Parties"). *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(7) (West 2008); TEX. R. APP. P. 28.1. Appellants contend by five issues, that the trial court erred by: (1) denying their special appearance; (2) finding that it had specific jurisdiction over the Media Defendants; (3) finding that it had general jurisdiction over the Media Defendants; (4) finding that exercising personal jurisdiction over the Media Defendants would not offend traditional notions of fair play and substantial justice; and (5) overruling the appellants' objections to the affidavit testimony of Francisco Peña[1], the affidavit and deposition testimony of Patti Sunday, the deposition testimony of Othon Frias Calderon, and the deposition testimony of Vicente Diaz. We affirm.

## I. STANDARD OF REVIEW

Whether the trial court has personal jurisdiction over a defendant is a question of law. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). The plaintiff bears the initial burden of pleading "sufficient allegations to bring a nonresident defendant within the provisions of the [Texas] long-arm statute." *Id.* at 793. However, when a defendant files a special appearance, he assumes the burden of negating all bases of personal jurisdiction asserted by

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[1] We have not reviewed Peña's affidavit for purposes of this appeal. Therefore, we need not consider whether the trial court improperly overruled appellants' objections to Peña's affidavit. *See* TEX. R. APP. P. 47.1 (stating that an appellate court must address every issue necessary for final disposition of appeal).

the plaintiff. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *BMC Software*, 83 S.W.3d at 793; *El Puerto de Liverpool, S.A. de C.V. v. Servi Mundo Llantero, S.A. de C.V.*, 82 S.W.3d 622, 628 (Tex. App.—Corpus Christi 2002, pet. dism'd w.o.j.). The trial court determines the special appearance by referring to the pleadings, any stipulations made by and between the parties, any affidavits and attachments filed by the parties, discovery, and any oral testimony. TEX. R. CIV. P. 120a(3).

When the trial court issues findings of fact and conclusions of law, we may review the findings of fact for legal and factual sufficiency. *BMC Software*, 83 S.W.3d at 794. We review a trial court's legal conclusions de novo. *Moki Mac*, 221 S.W.3d at 574 (citing *BMC Software*, 83 S.W.3d at 794). The appellant may not challenge the trial court's conclusions of law as factually insufficient; however, the appellate court may "review the trial court's legal conclusions drawn from the facts to determine their correctness." *Id.*

If the trial court does not issue findings of fact and conclusions of law, we must imply all facts necessary to support the judgment if those facts are supported by the evidence. *BMC Software*, 83 S.W.3d at 795 (citing *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *Zac Smith & Co. v. Otis Elevator Co.*, 734 S.W.2d 662, 666 (Tex. 1987); *In re W.E.R.*, 669 S.W.2d 716, 717 (Tex. 1984)). "When . . . the trial court does not issue fact findings, we presume that the trial court resolved all factual disputes in favor of its ruling." *Glattly v. CMS Viron Corp.*, 177 S.W.3d 438, 445 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (citing *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 805-06 (Tex. 2002)). However, "we review de novo if the underlying facts are undisputed

or otherwise established." *Preussag Aktiengesellschaft v. Coleman*, 16 S.W.3d 110, 113 (Tex. App.—Houston [1st Dist.] 2000, pet. dism'd w.o.j.). Any implied findings are not conclusive and may be challenged for legal and factual sufficiency if the appellate record contains the reporter's and clerk's records. *Id.* "For legal sufficiency points, if there is more than a scintilla of evidence to support the finding, the no evidence challenge fails." *Id.*

## II. PERSONAL JURISDICTION

Texas courts have personal jurisdiction over a nonresident defendant only if it is authorized by the Texas long-arm statute, *see* TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (West 2008), which allows Texas courts to exercise personal jurisdiction over nonresident defendants who are doing business in Texas. *Id.*; *BMC Software*, 83 S.W.3d at 795. The Texas long-arm statute sets out several activities that constitute "doing business" in Texas; however, the list is not exclusive, and Texas's long arm statute's "broad language extends Texas courts' personal jurisdiction 'as far as the federal constitutional requirements of due process will permit.'" *BMC Software*, 83 S.W.3d at 795 (quoting *U-Anchor Adver., Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977)). Therefore, "the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations." *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996).

Under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, a Texas court has personal jurisdiction over a nonresident defendant when (1) the nonresident defendant has established minimum contacts with the forum state, and (2) the exercise of jurisdiction does

not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *BMC Software*, 83 S.W.3d at 795; *see* U.S. CONST. amend. XIV, § 1. "The exercise of personal jurisdiction is proper when the contacts proximately result from actions of the nonresident defendant which create a substantial connection with the forum state." *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991).

Minimum contacts may be found when the nonresident defendant purposefully avails himself of the privileges and benefits inherent in conducting business in the forum state.[2] *Moki Mac*, 221 S.W.3d at 575 ("[A] defendant must seek some benefit, advantage or profit by 'availing' itself of the jurisdiction.") (quoting *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005)); *Michiana*, 168 S.W.3d at 784 ("For half a century, the touchstone of jurisdictional due process has been 'purposeful availment.'"); *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985). Minimum contacts with the forum state may establish either specific or general jurisdiction over the nonresident defendant.

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[2] In determining whether purposeful availment has occurred, there are three considerations. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (2005). First, we consider only the nonresident defendant's contacts with the forum state. *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) ("This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of . . . the 'unilateral activity of another party or a third person.'")). Second, we consider whether the contacts were purposeful and not "random, isolated, or fortuitous." *Id.* Finally, we consider whether the nonresident defendant sought "some benefit, advantage, or profit by 'availing' itself of the jurisdiction." *Id.*

*Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). There is specific jurisdiction over the nonresident defendant if the defendant purposefully directed his activities at residents of Texas and the litigation arose from or related to those contacts. *See Burger King*, 471 U.S. at 472; *Helicopteros*, 466 U.S. at 414; *Guardian Royal*, 815 S.W.2d at 227. In other words, there must be a substantial connection between the nonresident defendant's contacts and the operative facts of the litigation. *Moki Mac*, 221 S.W.3d at 585. The forum state has general jurisdiction over the nonresident defendant if the defendant's contacts in the forum state are continuous and systematic. *BMC Software*, 83 S.W.3d at 796. General jurisdiction allows the forum state to exercise personal jurisdiction over the defendant "even if the cause of action did not arise from or relate to activities conducted within the forum state." *Id.*

## III. PERSONAL JURISDICTION IN DEFAMATION SUITS

In determining whether the nonresident defendant that is sued for defamation has had minimum contacts with the forum state, the United States Supreme Court has provided a framework for courts to follow. *See Calder v. Jones*, 465 U.S. 783 (1983); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1983). In *Keeton*, the United States Supreme Court overturned the lower court's dismissal of the plaintiff's libel cause of action against the publisher of a magazine. *Keeton*, 465 U.S at 772. The plaintiff, who was not a resident of New Hampshire, sought relief in New Hampshire because the statute of limitations had run in her home state. *Id.* at 773. The Supreme Court held that the defendant's "regular circulation of magazines in [New Hampshire] is sufficient to

support an assertion of jurisdiction in a libel action based on the contents of the magazine." *Id.* at 773-74. The Court citing the lower court's findings stated that "[t]he general course of conduct in circulating magazines throughout the states was purposefully directed at New Hampshire, and inevitably affected persons in the state." *Id.* at 774. The Court explained that

> [s]uch regular monthly sales of thousands of magazines cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous. It is, therefore, unquestionable that New Hampshire's jurisdiction over a complaint based on those contacts would ordinarily satisfy the requirement of the Due Process Clause that a State's assertion of personal jurisdiction over a nonresident defendant be predicated on 'minimum contacts' between the defendant and the State.

*Id.*

The Supreme Court explained that the plaintiff's lack of contacts with the forum state did not defeat jurisdiction because we analyze the relationship among the defendant, the forum state, and the litigation. *Id.* at 775-76. The Court found the plaintiff's claims that she suffered damages in multiple states relevant to the question of whether it was "fair" to compel the defendant to defend a multi-state suit in New Hampshire. *Id.* at 776. However, the Supreme Court held her multi-state claims did not defeat New Hampshire's jurisdiction over the defendant because New Hampshire had a legitimate interest in holding the defendant answerable on a claim related to the defendant's activities of circulating its magazine in that state. *Id.* The Court explained that New Hampshire has a significant interest in redressing

injuries that actually occur within its borders. Quoting *Leeper v. Leeper*, 114 N.H. 294, 298 (1974), the Supreme Court stated:

> A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

*Keeton*, 465 U.S. at 776 (internal citations omitted). The Court explained that this interest "extends to libel actions brought by nonresidents" and that New Hampshire has an interest in discouraging the deception of its citizens in a libel action. *Id.* The Supreme Court said, "False statements of fact harm both the subject of the falsehood *and* the readers of the statement" and "there is no constitutional value in false statements of fact." *Id.* (emphasis in original). The Court determined that New Hampshire had an interest in remedying an injury that in-state libel caused within its borders to a nonresident and that "the tort of libel is generally held to occur wherever the offending material is circulated." *Id.* at 776-77.

Noting that the defendant had "chosen to enter the New Hampshire market[,]" the Court concluded that the defendant could be "charged with knowledge of its laws." *Id.* at 779. The defendant's activities could not be regarded as continuous and systematic and were not so substantial as to support jurisdiction over a cause of action unrelated to its activities in New Hampshire. *Id.* However, the defendant was "carrying on a 'part of its general business' in New Hampshire, and that [was] sufficient to support

jurisdiction when the cause of action [arose] out of the very activity being conducted, in part, in New Hampshire." *Id.* at 779-80.

The Supreme Court recognized that in some situations, the plaintiff's residence may be relevant to a minimum contacts analysis because the relationship between the defendant and the plaintiff's residence may "enhance" the defendant's contacts with the forum state, especially if the plaintiff's residence is the focus of the defendant's activities related to the suit. *Id.* at 780. However, an appellate court is not required to take the plaintiff's residence into consideration when determining whether the defendant has had minimum contacts with the forum state. *Id.* This is because the plaintiff's lack of residence "will not defeat jurisdiction established on the basis of [the] defendant's contacts." *Id.* The Court concluded that when a defendant has "continuously" and deliberately "exploited" a forum state's market, "it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine." *Id.* at 781. The Court stated, "There is no unfairness in calling [a defendant] to answer for the contents of [its] publication wherever a substantial number of copies are regularly sold and distributed." *Id.*

In *Calder v. Jones*, the Supreme Court found that California had personal jurisdiction over an editor and writer for the National Enquirer who were based in Florida. 465 U.S. at 790. At the time, Shirley Jones was an entertainer living and working in California, and the National Enquirer published allegedly defamatory statements about her. *Id.* at 788-89. The Supreme Court found that California was the focal point of the published story and the harm was suffered in California. *Id.* at 789. Thus, the Court

stated that California had jurisdiction based on the "effects" of the defendants' Florida conduct in California. *Id.* The Supreme Court explained that (1) the story concerned the California activities of a California resident, (2) the plaintiff's career was centered in California, (3) the article was drawn from California sources, and (4) the brunt of the harm was felt in California. *Id.* at 788-89.

The *Calder* defendants argued that they were similar to welders who had built a boiler in Florida and who had no control over where the manufacturer sold the boilers. *Id.* at 789. The Supreme Court rejected that argument because according to the Court, the defendants were not charged merely with untargeted negligence. *Id.* Instead, the defendants had been charged with intentional and tortious actions expressly aimed at California. *Id.* The Supreme Court stated that the defendants knew that the brunt of the injury would be felt by Jones in the state in which she lives and works and in which the National Enquirer had its largest circulation. *Id.* Under the circumstances, the Supreme Court found that the defendants must have "reasonably anticipate[d] being haled into [a] court [where the plaintiff lived and worked and the publication was disseminated]" to answer for the truth of the statements made in their article. *Id.* at 789-90. The Supreme Court reasoned that in the case of an intentional tort, such as defamation, an individual injured in California should not be required to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California. *Id.* at 790.

## IV. THE EVIDENCE

The Trevi Parties sued appellants for defamation, libel per se, slander, defamation per se, business

disparagement, civil conspiracy, and tortious interference with existing and prospective contracts and business relationships. The Trevi Parties claimed that appellants allegedly broadcast defamatory statements about them on their television programs. In their joint special appearance, TV Azteca, S.A.B. de C.V. ("Azteca") and Chapoy asserted that they are not residents of Texas, that they have not had minimum contacts with Texas allowing jurisdiction in Texas, the trial court lacked specific and general jurisdiction over them, and jurisdiction over them would offend traditional notions of fair play and substantial justice. Azteca stated that it is not registered to do business in Texas and that it is an entity that has not been formed under the laws of Texas. Azteca and Chapoy challenged all of the bases for jurisdiction listed in the Texas long-arm statute.

Chapoy stated that she is a citizen and resident of Mexico employed by a Mexican corporation. Chapoy claimed that her "intended viewership includes primarily Mexican viewers, not viewers in Texas." Chapoy asserted that the evidence presented showed that she has not (1) engaged in business in Texas; (2) agreed to be subject to jurisdiction in Texas; (3) appointed an agent for service of process in Texas; (4) ever maintained a place of business in Texas; (5) owned property in Texas; (6) owed or paid any taxes to the State of Texas or any of its political subdivisions; (7) filed a lawsuit in Texas; or (8) been a party to a lawsuit other than the current action.

In its special appearance, Publimax stated that: (1) it is an entity formed under the laws of Mexico; (2) it was not formed under Texas laws; (3) it was not registered to do business in Texas (4) it did not have employees, agents, or assets, representatives, or offices

in Texas; (5) it did not engage in business in Texas; (6) it did not agree to be subjected to jurisdiction in Texas; (7) it had not appointed an agent for service of process in Texas; (8) it had not maintained a place of business in Texas, owned property in Texas, or owed or paid any taxes to Texas or any of its political subdivisions; (9) it had not "aim[ed] or target[ed] any alleged defamatory broadcast to the State of Texas"; and (10) it had not "create[d], [written], or produce[d] any allegedly defamatory broadcast." Publimax acknowledged that it operated "over-the-air television channels 7 and 13 in Monterrey, Mexico" but alleged that "pursuant to an agreement with the owner of those stations, the programming broadcast over those channels is directed at viewers in the northeast zone of Mexico not Texas." Publimax stated that "[c]hannels 7 and 13 in Monterrey are licensed for broadcast by the Mexican government, not the U.S. Federal Communications Commission." Publimax recognized that households in southern Texas are capable of receiving transmission of broadcasts from channels seven and thirteen, but it claimed that it had not "engage[d] in purposeful attempts to do business in south Texas through programming targeted or directed to south Texas." Publimax also stated that it did not have sufficient minimum contacts with Texas conferring jurisdiction to a Texas court.

Regarding general jurisdiction, appellants stated that the Trevi Parties "acknowledge[d] that [they] do 'not maintain a registered agent for service of process in Texas.'" Appellants claimed that the Trevi Parties' accusation that they are "doing business in the State of Texas and [were] at all times material hereto doing business in Texas" was conclusory and did not constitute evidence of continuous and systematic contacts sufficient to vest the trial court with juris-

diction over them. Appellants alleged that the Trevi Parties failed to state which defendant actually broadcast the television programs in Texas, which gave rise to the Trevi Parties' causes of action. Finally, appellants claimed that even if Azteca broadcast the television programs at issue, that fact alone is not sufficient to confer general jurisdiction in Texas.

Regarding specific jurisdiction, appellants stated that the Trevi Parties' allegation that they had directed their activities to Texas residents was vague and the type of evidence rejected by the Texas Supreme Court. Appellants argued that even if Azteca broadcast its programs to Texas, those broadcasts were incidental and not directed to the state of Texas. Finally, appellants asserted that vesting a Texas court with jurisdiction over them would offend traditional notions of fair play and substantial justice.[3]

Azteca and Chapoy attached Othon Frias Calderon's and Chapoy's affidavits to their joint special appearance wherein Calderon stated that he is employed as an "attorney-in-fact" for Azteca and is "familiar with and [has] knowledge of [Azteca's] business." Calderon stated:

> I have knowledge that the intention of [Azteca] in supervision, producing and conducting the television programming at issue in this lawsuit was to accurately inform in a truthful, objective and professional manner about the matters reported therein. The programs contain reporting and commentary on the legal proceedings related to Gloria Trevi and Sergio Andrade, among others,

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[3] On appeal, appellants have not challenged the sufficiency of the Trevi Parties' pleadings.

> which occurred mainly in Mexico, Europe, and Brazil, and have no relationship to the State of Texas. The producers, reporters and investigators involved in the production of programs did not include or discuss any act or event taking place in the State of Texas and did not rely on any sources in the State of Texas. All of the work on the subject broadcasts was performed and conducted in Mexico.

In her affidavit, Chapoy stated that she is a resident of Mexico and has never been a resident of Texas. Chapoy said that she serves as director of entertainment for Azteca. According to Chapoy, she intends that viewers of the programs she produces consist of Mexican citizens, and she does not intend for residents of Texas to view her reports. Chapoy stated, "The report that I understand to be the subject of Plaintiff's Original Complaint [was] investigated, written and prepared by me and colleagues working in Mexico. All of my work on the subject broadcasts were performed and conducted in Mexico." Chapoy said that she intended to "accurately" inform her viewers about the matters reported in the broadcasts that "focused on cases and legal proceedings involving Gloria Trevi which took place in Mexico, Europe and Brazil and not in the State of Texas." According to Chapoy, the reports "did not discuss any Texas events involving Ms. Trevi or others and did not rely on any sources in the State of Texas."

Publimax offered the affidavit of Vicente Diaz Charles ("Diaz").[4] Diaz works as the controller at Publimax. Diaz denied that Publimax has engaged in

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[4] Diaz is also referred to as "Vicente Diaz" in the record. We will refer to him as "Diaz" because during his deposition, the attorneys referred to him as "Mr. Diaz."

any acts listed in the Texas long-arm statute. Diaz stated:

> The television programming that is the subject of the Petition was not created, written or produced by Publimax. Publimax did not have any responsibility for or role in preparing the content of that programming and did not exercise any editorial control or decision making regarding that content. Publimax did not aim or target any alleged defamatory broadcast to the State of Texas. The subject programming originated from a national Mexican television network which was responsible for creating the content of the programming and which exercised editorial control over the content of the programming. Publimax operates over-the-air television Channels 7 and 13 in Monterrey, Mexico pursuant to an agreement with the owner of those stations; however, the programming broadcast over those channels is directed at viewers in the northeast zone of Mexico, not Texas. Channels 7 and 13 in Monterrey are licensed for broadcast by the Mexican government, not the U.S. Federal Communications Commission.
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> . . . .
>
> Although some households located in south Texas may have the capability of receiving the over-the-air television signal of channels 7 and 13 in Monterrey operated by Publimax as a result of signal "spill-over", that is the result of the over-the-air signal following the law of physics, not man-made laws as to borders and jurisdiction. Publimax has not and does not engage in purposeful attempts to do business in south Texas through programming targeted or directed to south Texas.

Appellants attached excerpts from depositions of Trevino, Calderon, Chapoy, Diaz, and Armando Ismael Gomez to their designation of deposition testimony, additional affidavits and expert witnesses in support of special appearances. To their response to appellants' special appearances, the Trevi Parties attached excerpts from: (1) Diaz's depositions taken on November 15, 2011 and March 8 and 9, 2012 with deposition exhibits; (2) Calderon's deposition with exhibits; (3) Chapoy's deposition with exhibits; (3) Trevi's deposition; (4) Laura Cantu's deposition; and (5) Patti S. Sunday's deposition. The Trevi Parties also offered a variety of documents, including among other things: (1) Francisco J. Peña Valdés's affidavit; (2) Patti S. Sunday's affidavit; (3) Trevi's affidavit; (4) portions of TV Azteca's 2005, 2006, 2007, 2008, and 2009 annual reports; (5) documents in a lawsuit filed by a Texas resident against Publimax and its employee; (6) a "Linkendine" profile of TV Azteca's manager of editing, post production, and signal distribution, Omar Garza Galvan, and an invoice; (7) a printout of pages from TV Azteca Noreste's website; (8) Rebecca Vela's affidavit; (9) Raymond L. Thomas's affidavit; and (10) Vanessa Villegas's affidavit.

Both the Trevi Parties and appellants provided excerpts of Trevi's deposition.[5] During her deposition, Trevi testified that she lives in McAllen, Texas and is in the United States under a work visa. Trevi testified that she viewed one of the broadcasts containing the allegedly defamatory statements at her mother-in-law's home in McAllen. Trevi claimed she sued appellants in Texas because the defamatory statements harmed her and her family economically in

[5] We have summarized the portions of Trevi's deposition provided by both sides together.

Texas. Trevi stated that she lost business in Texas due to the broadcasts.

Trevi stated that she did not know whether appellants "did anything in Texas to prepare" the allegedly defamatory broadcasts and did not know if the preparation of the broadcasts occurred in Mexico. Trevi agreed with appellants' attorney that several of the alleged defamatory remarks concerned incidents that occurred in Mexico and had not occurred in Texas. She also agreed that several of the remarks concerned incidents that occurred in Brazil. Trevi stated that she did not know where the programs "aired." Trevi could not say whether Chapoy made the allegedly defamatory statements in Mexico. Trevi explained:

> Well, look, I saw it here [in Texas]. I saw it here on TV Azteca, and I do not know where this woman records her show or where the people who are being interviewed are. But they pay a lot of money to people to give interviews to defame me and they have even said that in their own show.
>
> I don't know where she is recording her show or where these people who are being interviewed are or where the reporters are when these interviews are taking place. I know that I saw it here in McAllen. I actually don't watch TV Azteca, but people who saw it called me up and told me to turn to that channel to—to watch it because they were attacking me.
>
> . . . .
>
> I don't want to make any assumptions. I don't want to say "yes" or "no." I simply saw this woman making the statements. I don't know where she is recording her show.

Appellants' attorney asked Trevi to explain what she saw including the title of the program and the date that it ran. Trevi responded:

> Well, in the show Ventaneando, I don't remember the exact date. I received a call from Aunt Mapy and from my Aunt Luisa. The calls were minutes apart. I don't remember who called first, but they called to say that they were talking about me on TV Azteca because they live here. So I changed the channel and I saw that they were advertising this series, this show that was a series saying something like ten years after my release.
>
> And statements were being made by people with interest in that advertising. People who are interested to cause me harm, and [Pati] Chapoy was giving credibility to those statements and making affirmations about what was being said. There were also reporters talking about it as well. They were advertising this series of shows that were supposed to be talking about something like the dark side of my release, and they were making affirmation or supporting all these false statements about me.
>
> These false statements and a good portion of them are right there from the beginning of the lawsuit that I personally saw myself and some from around midway into the lawsuit.

Trevi testified that her Aunt Luisa lives in McAllen "very close to [her] mom's house." However, Trevi did not know the address. Trevi believed that she saw the program sometime in 2009 before she filed the lawsuit.

Trevi stated that she does not know where Publimax's regular place of business is located. When asked if appellants interviewed her in Texas regard-

ing the complained-of broadcasts, Trevi replied, "No." Trevi acknowledged that Chapoy had previously interviewed her in Mexico and that she has never met or seen Chapoy in Texas. When asked if any of appellants' sources were interviewed in Texas, Trevi responded, "I cannot say 'yes' or 'no' because I don't have a certainty. I do not know where those statements were made by them. I am not certain as to whether they were made here [in Texas] or over there [in Mexico]." In response to whether she had seen or met a representative from Publimax in Texas before her deposition, Trevi said, "Well, I—I couldn't say because I have seen reporters and people from TV Azteca here." Trevi stated that she had not met or seen Chapoy in Texas.

When asked if she had ever been interviewed by any employee or representative of TV Azteca in Texas, Trevi replied, "They have tried, but I have not agreed to give them an interview." Trevi explained, "During public activities that I might be involved in or they—they have tried to intercept me at a restaurant or when my son was born." When asked if she had "contact with TV Azteca in Texas," Trevi said, "I have not accepted their coming close to me." Appellants' attorney asked, "Right. Which means that you never have had any contact with TV Azteca in Texas, correct?" Trevi responded, "That's incorrect. They have approached me, putting their microphones in front of my face; and I have refused to give them an interview." When asked to provide details of one incident where this occurred in Texas, Trevi stated, "At the hospital after my son was born. They have tried it [with] my family at my mom's different houses, at Tony Roma's restaurant some years ago, at the airport. On several occasions before filing this

lawsuit." Appellants' attorney asked Trevi why she believed TV Azteca knew where she lived despite her testimony that she did not divulge that information to the public. Trevi replied, "Because as I said before, they were practically camping outside my mom's house. And they themselves say it that way in some of the shows: 'We are right here, right outside Gloria Trevi's mother's house.'"

When appellants' attorney asked why Trevi brought her lawsuit in Texas, Trevi responded:

> Well, I am filing this lawsuit, as you can see, because of the harm that has been caused to me. These people know, they have made the statements and these broadcasts knowing that I live in McAllen, and they are making the shows where they get broadcasted here in the state and they get broadcasted all over the United States. It doesn't only harm me, but it—also my family and also my—my work.
>
> These people very well know those shows and those statements get broadcasted here. And I am not doing this—I'm not filing this lawsuit because I'm angry, but it's out of love and protection for my children. Because this doesn't only hurt me, but it hurts them as well. They suffer from comments made in school.
>
> And independently from the harm to my work, these people and this company have caused fear upon me, fear for my freedom. My freedom is again being threatened, and they are doubting and putting my innocence and acquittal to be judged by others.
>
> These shows are—were seen here. I saw them here. I heard about them here while I was here in my house. I have a son who is from here, from

> McAllen, and my children are here studying here in McAllen. So that's why I decided to get legal help here in the United States because I believe in the justice of this country.

Appellants' attorney objected to Trevi's response on the basis that it was nonresponsive and asked her "You made reference to—that the Defendants allegedly know that you live in McAllen. What evidence do you have of that?" Trevi responded:

> Well, I am being followed or prosecuted by them, by the reporters and their cameras. Even when my son was born that was mentioned earlier and also commented earlier about my husband's problem. They are making an effort to document with their comments my husband's problems, and they very well know and it is very clear that they know that I'm here in McAllen, in the United States.
>
> . . . .
>
> I am not assuming that [they know]. I know they know that I live here.

Trevi testified that while watching TV, she saw that a reporter from TV Azteca named Laura Suarez was following her and her family in Texas. Appellants' attorney asked, "Have you ever seen Laura Suarez physically present through your own eyes in Texas? Yes or no?" Trevi said, "When I see a TV Azteca camera, I turn around. I do not face the camera. I have—but I have been told that she has been present, both by my family and by the people who are accompanying me. So, I don't face the camera. I don't look at the reporter." Trevi clarified that she did not believe she had ever personally seen Laura Suarez in Texas.

Trevi explained how she was harmed in Texas as follows:

> Well, there have been issues about concerts, concerts that were being prepared, things were being prepared for the concerts; and after these comments, everything got cut off.
>
> I have been having a real problem registering my children to a club. I want to be with them in a club here in Texas, and we have not been accepted because of all these things that were said about me.
>
> . . . .
>
> These concerts were not only here [in McAllen], but also in other cities such as Houston, San Antonio, Dallas. Independently from the economic harm, maybe the economic issue is most important to TV Azteca, but there's also psychological harm to my children. Emotional distress or harm to me and—and my family, among others.
>
> . . . .
>
> [C]omparing my normal activity after I retook my career, my artistic career both in Mexico and the United States, the number of concerts that—that I was having changed after this interview—rather, these shows that were broadcasted. Projects such as an energy drink that was stopped and other projects that had to do with perfumes and using my image. All this stopped.
>
> . . . .
>
> I knew that we were preparing for appearances, for a tour in Texas. And it didn't happen after the broadcast.

At his deposition, Calderon testified that TV Azteca "operates a national TV station—Mexican TV

station." When asked if TV Azteca has an ownership interest in several different companies, Calderon replied, "Yes."[6] However, according to Calderon those companies are not related to the operation of the national television station. Calderon agreed with the Trevi Parties' attorney's statement that Azteca America is a "wholly-owned subsidiary of TV Azteca" and said that Azteca America is an American company.[7] The Trevi Parties' attorney asked if TV Azteca owned "the channel known as Azteca 13," and Calderon responded, "They are not the owners, but they have a license to operate from—from the Mexican government." When asked who owns Azteca 13, Calderon said, "The owner of the station concessions is the Mexican government." Calderon stated that TV Azteca also has a license to operate Azteca 7 and that although he did not know the number of television stations TV Azteca has a license to operate, he thought there were "several around the Mexican Republic." The Trevi Parties' attorney told Calderon she understood that TV Azteca had licenses to operate over 300 television stations in Mexico. Calderon responded that he thought "there are less" and that all of the stations "are the property of the Mexican government."[8]

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[6] The Trevi Parties and appellants attached portions of Calderon's deposition to their respective motions and responses. We have reviewed and summarized the excerpts of Calderon's deposition provided by the Trevi Parties and appellants together.

[7] Calderon stated that he did not believe that TV Azteca owned any other American companies besides Azteca America.

[8] We note that appellants complain on appeal that the trial court overruled their objections to pages 25-27 and 32 of Calderon's deposition testimony. Appellants also complain that the

When asked if TV Azteca owned or operated the television station Azteca Noreste, Calderon said, "I understand that TV Azteca Noreste doesn't exist; and about Publimax, we have no ownership." Calderon stated that "at present" as he understood it, TV Azteca did not have any ownership interest in the name TV Azteca Noreste. When asked if TV Azteca had ever owned an interest in TV Azteca Noreste, Calderon replied, "As I understand it, and I see that it doesn't exist, I would need to review documents from the past."

Calderon explained that TV Azteca has an agreement with Publimax which limits where Publimax can broadcast TV Azteca's programming to three Mexican states of Nuevo Leon, Coahuila, and Tamaulipas. Calderon stated that Publimax is the only company allowed to broadcast TV Azteca programming in those states and that Publimax pays TV Azteca a fee for the broadcasting rights.

Calderon testified that some of the programs that are broadcasted by Publimax on TV Azteca 7 and 13 "are produced by TV Azteca [and] are the property of TV Azteca. Others, they are bought programs from other companies from different countries." Calderon stated that TV Azteca owned the right to the programs, "Ventaneando," "Ojo del Huracan," and "Vidas al Limite."

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trial court should not have considered evidence that a TV Azteca reporter attended the Super Bowl in 2011. However, we have not considered the above-mentioned testimony and documents in our determination of whether the trial court should have granted appellants' special appearance. Therefore, we need not determine whether it was error for the trial court to overrule appellants' objections to this portion of Calderon's deposition. *See* TEX. R. APP. P. 47.1.

Calderon stated that there is no agreement between TV Azteca and Publimax for Publimax to broadcast TV Azteca's programs in the United States of America. Calderon said, "I understand that in order to be able to broadcast in the U.S., you [are] require[d] [to have] a license or a permit from the F—FCC, which is the telecommunications authority in the United States." Calderon said that TV Azteca does not own any towers in the United States and "only has licenses in Mexico." When asked, "The towers that transmit the signal from television, TV Azteca that are located in Mexico, is that signal broadcast into the United States," Calderon replied, "Not that I know of. I'm not a technician, neither I know too much about technology; but there is—it's possible, or I have heard that the signals can be—expanded . . . without anybody's control." When asked if TV Azteca's signal is transmitted to Texas, Calderon clarified that TV Azteca's signals are transmitted only in Mexico but that it is possible that "due to technical issues" the signal may be transmitted to "other places."

Calderon testified that TV Azteca neither owns nor operates any television stations in the United States of America. When asked if the programs produced by TV Azteca are shown in the United States, Calderon responded, "It's possible." When asked if Publimax broadcasts programming from TV Azteca, Calderon replied, "They can." The Trevi Parties' attorney asked Calderon if that programming is broadcast in the United States through Azteca America, and Calderon stated that "TV Azteca gives license to Azteca America for certain programs in the United States." Calderon did not know whether TV Azteca received any portion of the income from Azteca America's programming. Calderon did not "think"

that TV Azteca received any portion of the income from advertisements on Azteca America.

Calderon's affidavit stated that "TV Azteca operates television stations in Mexico pursuant to a concession issued by the government of . . . Mexico." According to Calderon' affidavit, TV Azteca had never had a license to operate in the United States of America and produces programs only for audiences in Mexico. Calderon stated that "Azteca International Corporation [("AIC")] is a wholly-owned subsidiary of TV Azteca" that is organized under the laws of Delaware with its headquarters in California. Calderon said that AIC is a separate entity from TV Azteca and that TV Azteca has "contributed content licenses to AIC," which "allowed AIC to broadcast certain TV Azteca-owned programs, including 'Ventaneando,' and to use certain intellectual property of TV Azteca in the United States." Calderon stated that "AIC uses this license to retransmit certain TV Azteca programming for distribution in the United States and to market itself in the United States. For instance, pursuant to the license, AIC utilizes original content from TV Azteca as 'Ventaneando' in order to distribute through its affiliates in the United States, a program known as 'Ventaneando America.'"

At his deposition, Calderon stated that to his knowledge, TV Azteca did not have any contracts with Echostar, Dish Network, or Direct TV in Texas. Calderon did not know whether TV Azteca had any contracts with Time Warner Cable in Texas. When asked, "Does TV Azteca provide any programming to the Rio Grande Valley through Time Warner Cable in Texas," Calderon responded, "No. My understanding is that, or what I know, is that TV Azteca, as I said before, gives licenses, other content to Azteca

America, or to AIC. And then what AIC does is unknown to me in relation to other—cable companies."

Calderon clarified that "TV Azteca is the owner of [AIC], and Azteca America is a brand, which I believe is owned by [AIC]." When shown a logo of Azteca America, Calderon acknowledged that it used the same logo used by TV Azteca. Calderon affirmed that TV Azteca owns the trademark for the logo in Mexico and "also in other countries." Calderon thought that TV Azteca had registered the trademark for the logo in the United States. Calderon believed that TV Azteca had given AIC a license to use the logo.

The trial court examined excerpts from Chapoy's deposition provided by appellants and excerpts provided by the Trevi Parties.[9] Chapoy testified that she "started" with TV Azteca "in September, 19 or 20 years ago." Chapoy stated that she had been a director of production for TV Azteca for about a year and then took over in her current position as director of entertainment. Chapoy agreed that she "launched" Ventaneando in 1996. Chapoy created other projects for TV Azteca including among others, Alfa Dance, Corazo Grupero, El Ojo del Huracan, Historias Emgarzadas, and Vidas al Limite. Chapoy did not recall which shows other than Ventaneando discussed Trevi and her husband.[10] When asked if El Ojo del

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[9] Appellants and the Trevi Parties provided some of the same excerpts of Chapoy's deposition, and they also each provided different excerpts. We have reviewed both sets and have summarized them together.

[10] Later, during her deposition testimony, Chapoy denied that she created Ventaneando. She claimed that "[i]t was Carmen Arizmendi's idea." However, Chapoy acknowledged that she is the "principal" host of the program.

Huracan discussed Trevi, Chapoy replied, "Probably, yes."

Chapoy agreed that Ventaneando has "been broadcast continuously by TV Azteca for 16 years" for five days per week. Chapoy affirmed that she had been a producer for Ventaneando in the past. Chapoy testified that Ventaneando, Ojo del Huracan, and Vidas al Limite are broadcast in Mexico on Channel 13. Chapoy did not know whether Ventaneando is also available on Azteca America channels. Chapoy stated that she receives no compensation from Azteca America. When asked, "What is Ventaneando America," Chapoy said, "I don't know" and denied any involvement in that show. However, after the Trevi Parties' attorney showed Chapoy a document marked Exhibit No. 2 for purposes of the deposition, Chapoy acknowledged that she had recently served as the host of the anniversary of Ventaneando on Azteca America.

Exhibit No. 2 is a press release from Azteca America dated May 10, 2011, entitled "Azteca America Celebrates 15 Years of the Best Entertainment News Program on Spanish-Language Television: Ventaneando." The document states that "[t]hroughout the month of May, Azteca America will celebrate the 15-year anniversary of the best Spanish-language entertainment news program and a pioneer of the genre—Ventaneando America hosted by Pati Chapoy with her incomparable team of experts: Daniel Bisogno, Pedro Sola, Atala Sarmiento, and Jimena Perez. The press release states:

> After 15 years of broadcasting in Mexico and nearly 7 years of airing its exclusive version for Spanish-speaking viewers in this country, *Ventaneando America* has earned a reputation for being the first program to break celebrity

news and show business gossip. "We work very hard to find the sort of information that isn't readily made available in a press conference or in interviews. We investigate what is happening everywhere from every angle and that is an enormous challenge," said Chapoy.

"For Azteca America it is an honor to celebrate Ventaneando, one of the most successful and influential programs in Mexico, the United States, and other Latin American countries, as led by the outstanding journalist, Pati Chapoy, who is an icon in the entertainment world. Congratulations on these 15 years of continuous broadcasts and best wishes for continued success in the future; this is the only program capable of high-impact exclusive coverage of important events and interviews of top stars," stated Alberto Santini Lara, Vice President of Production, Programming, and Marketing for Azteca America as well as General Director of Azteca 13 and Azteca Novelas in Mexico.

Last week, Pati Chapoy kicked off celebrating "15 Years" of her program Ventaneando with a spectacular remodeled set, which she dubbed her "casona" ("big house"). "I am happy to be Ventaneando and I feel proud of what we have accomplished in the first 15 years. I feel happy to have a phenomenal team and to continue producing an entertaining program that presents clear, truthful, objective, and timely information," added Pati Chapoy.

. . . .

In fine print the document stated the following:

> About Azteca America
>
> Azteca America is the alternative choice in broadcast television for Spanish speaking families residing in the United States. Azteca America operates in 66 markets nationwide, and can also be seen on DIRECTTV Mas Channel 441 (AZA 441) and DISH Network Channel 825. Wholly owned by Mexican broadcaster TV Azteca, S.A. de C.V., Azteca America has access to the best programming from Azteca's three national networks, including a library with over 200,000 hours of original programming and news from local bureaus in 32 Mexican states. The network complements Mexican programming with an innovative line-up of shows from international producers and distributors to ensure the finest programming for Spanish-speaking viewers and unique advertising solutions for partners seeking to reach the most dynamic market in the country.

The Trevi Parties' attorney asked Chapoy whether the press release indicated that she had hosted the program Ventaneando America. Chapoy agreed that the press release says she hosted Ventaneando America, and Chapoy stated, "When they ask me to do a special type of—act as an advisor for something specially, I do it." The attorney asked, "Right. So, what is Ventaneando America," and Chapoy said, "A promotion made by Asesores." The Trevi Parties' attorney stated, "And when I asked you earlier, what is Ventaneando America, and you said you don't know; the truth is you do know," and Chapoy replied, "The truth is that I do a lot of promotions. I have been doing promotions for 16 years, and I don't remember specifically any of them." Chapoy did not know whether the Ventaneando shown on Azteca

America is the same or a different program that is shown on TV Azteca in Mexico.

Chapoy acknowledged that she is "well-known" in the United States and stated that she is also "well-known" in Argentina, Brazil, Latin America, "and some other parts of the world." When asked why she thought she had "so much recognition or fame in the United States," Chapoy said, "Because I have been working for many years as a journalist, and I started to work about 40 or more years ago with Raul Velasco. And ever since people know me, I was his assistant. I worked for him for 25 or 30 years." The Trevi Parties' attorney stated that the shows that Chapoy had created and produced and in which she appears "many of those are broadcast in the United States," Chapoy replied, "Okay. I understand—I highly understand that that's the way it is." The Trevi Parties' attorney asked, "And not only in the United States, but Texas in particular?" Chapoy responded, "I—I don't know—I assure you I can—I can assure you that I am not a systems engineering [technician], so I don't [know] . . . ."

Chapoy testified that she did not know that the Trevi Parties lived in McAllen. Chapoy stated that she did not recall ever saying that she had obtained evidence supporting her stories about the Trevi Parties from the United States, Chile, and Mexico. Chapoy denied obtaining any evidence from the United States when researching the story about the Trevi Parties.

Chapoy stated that her husband has a Merrill Lynch account in McAllen, Texas. Chapoy, however, claimed that she had no knowledge of any of the details regarding the account and had never contributed her money to the account. Chapoy stated that it

was not a joint account and that her husband had merely "[written her] name there, that's all."

The Trevi Parties provided excerpts of Diaz's deposition testimony taken on November 15, 2011. In these excerpts, Diaz testified that Publimax has used the name of "TV Azteca Noreste" and that the name "TV Azteca Noreste" "belongs to TV Azteca."[11] Diaz explained that an agreement existed, which allowed Publimax to use the name "TV Azteca Noreste." Diaz testified that "TV Azteca Noreste" is used to identify the northeast region of Mexico in order to identify what area Publimax and TV Azteca agreed to cover.

The Trevi Parties' attorney showed Diaz a document marked "Exhibit No. 3" for purposes of his deposition. Exhibit No. 3 is a picture of a map purportedly taken from "Azteca Noreste's" website with graphs and information written in Spanish. The map appears to show areas of Coahuila, Nuevo León, "Sur de Texas," and Tamaulipas. There are two graphs next to the map. In one graph, the above stated regions are listed. Under the title "Sur de Texas," the following Texas cities are listed and then identified on the map with corresponding numbers: Brownsville, Eagle Pass, Edinburg, Harlingen, Laredo, McAllen, Mission, Pharr, Port Isabel, Rio Grande, San Benito, and Zapata. The other graph lists Nuevo Laredo, Tamaulipas, Coahuila, and Sur de Texas with

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[11] The Trevi Parties' attorney asked Diaz a series of questions asking him to explain who owned the "trademark" to "TV Azteca Noreste," Diaz said, "It's a trademark that doesn't belong to Publimax, that belongs to TV Azteca but there's an agreement so Publimax can use it." However, when asked if TV Azteca owned the "trademark" to "TV Azteca Noreste," Diaz replied, "I already indicated that TV Azteca Noreste it's not a trademark. It's a commercial name."

columns labeled, "Personas," "Hogares," "Televidentes," and "TV Hogares." With a final row stating "Total Cobertura." The graph shows that each region is assigned a particular number for each category listed. For example, in the category of "Personas," Nuevo Leon has 4,352,783, Tamaulipas has 2,602,394, Cohuila has 2,077,627 and the "Sur de Texas" has 1,63,814 with the "Total Cobertura" of 10,665,618.

The Trevi Parties' attorney asked Diaz, "[W]e see that there's an area for Coahuila, Nuevo Leon, South Texas, and Tamaulipas, correct," and Diaz responded, "That's correct." The Trevi Parties' attorney said, "And underneath the indication of South Texas, it indicates the cities of Brownsville, Eagle Pass, Edinburg, Harlingen, Laredo, McAllen, Mission, Pharr, Port Isabel, Rio Grande, San Benito and Zapata, correct," Diaz replied, "It's correct." The Trevi Parties' attorney stated, "And there's an indication under South Texas that the television viewers—can you tell me what that number there says," Diaz replied, "1,583,829.[12] Diaz stated that the number for Texas in the "TV Hogares" column was 576,914. The Trevi Parties' attorney asked, "Was there any advertisements run on the TV Azteca Noreste channels for local businesses or retailers in South Texas," Diaz responded, "Possibly, yes."

Diaz testified that he "thought" that Publimax had done business in Texas by buying equipment used for broadcasting. Diaz stated that he believed that Publimax had entered into contracts with persons or companies in Texas.

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[12] The column where this number appeared for the "Sur de Texas" is "Televidentes." No translation was provided.

In excerpts from his deposition taken on March 8 and 9, 2012, provided by appellants and the Trevi Parties, Diaz reviewed some of Publimax's "in-house documents."[13] Diaz described four of the documents as being Publimax employees' requests for expenses for travel in Texas. Diaz explained that the employees' travels occurred "[b]etween 2005 and 2009. In 2005, for example, there were none. 2006, 2007, and 2008, there were none either. So, it's 2006 and 2007."[14]

Diaz reviewed a document he identified as "an invoice from Kevin Ler, for the rent of an apartment" in McAllen in "December of 2006 and January of 2007." Diaz explained Publimax employed Ler from 2006 through 2007 and that Ler rented the apartment in McAllen "[b]ecause at that time there was a project in order to cable the signal for Publimax." Diaz testified that Ler had been assigned to the project by Publimax and was working on a contract with "Warner," a cable company in McAllen.[15] According to Diaz, Ler's project was unsuccessful and Publimax abandoned it. When asked, "Did Publimax ever enter into any sort of written agreement or contract with Time Warner Cable," Diaz responded, "Not that I

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[13] The Trevi Parties attached some of the same portions of Diaz's deposition taken on March 8 and 9, 2012 provided by appellants; however, some of Diaz's deposition provided by the Trevi Parties were not included in those excerpts provided by appellants. We have reviewed and summarized the excerpts of Diaz's deposition provided by the Trevi Parties and appellants together.

[14] It is not clear what Diaz meant when he stated that there was no travel in 2006 and 2007 prior to stating "So, it's 2006 and 2007."

[15] When asked if the company was "Time Warner Cable," Diaz said, "I think so."

know of." When asked, "And the signal that you were attempting to provide over the cable network, was it the Mexican signal," Diaz said, "Yes."

Diaz stated that "TV Azteca Noreste" is a "commercial name" that is not registered in Mexico. According to Diaz, "Today, [Publimax does not] use TV Azteca. They use . . . Azteca Noreste."[16] When asked, "And who owns the rights to the name of Azteca Noreste," Diaz replied, "TV Azteca." Diaz first claimed that there was no specific agreement regarding Publimax's use of the name "Azteca Noreste." However, when asked, "What allows Publimax to use the name Azteca Noreste," Diaz responded, "A contract, a mercantile agreement." Diaz agreed that the contract was also a licensing agreement that Publimax has with TV Azteca. Diaz explained that the contract allowed Publimax "[t]o make air time in the northern part of the Mexican [R]epublic at certain times for Channels 7 and 13, TV Azteca [C]hannels 7 and 13."

Diaz agreed with the Trevi Parties' attorney when she said, "All right. And Exhibit No. 3 shows that there are services of the television signal to Coahuila, Nuevo Leon, South Texas, and Tamaulipas; is that correct?" However, Diaz clarified "that in the southern part of Texas the signal is only an air signal." Diaz agreed that Publimax has a website for "Azteca Noreste" that shows that "there's a signal provided to the southern part of Texas." Diaz claimed it was "just an accident" and said, "It's not controlled by Publimax." When asked, "But Publimax advertises that its air signal reaches the southern part of Texas,

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[16] Appellants' attorney then stated, "No. Azteca Noreste," and the interpreter said, "Azteca Noreste." We interpret this exchange to mean that Publimax uses the name, "Azteca Noreste," and we have deleted "TV" from his response.

correct," Diaz said, "By error, yes." Diaz acknowledged that Exhibit No. 3 showed "the number of persons, homes, and televisions that are reached in the southern part of Texas."[17] Later during his deposition, the Trevi Parties' attorney asked Diaz, whether the "coverage area for Publimax's television broadcast signal [was] the same [in 2009] as it is today," Diaz replied, "I suppose so." The Trevi Parties' attorney asked, "And in 2009, was Publimax transmitting via air signal to the southern part of Texas," Diaz said, "As an accident, not voluntarily." The attorney stated, "And my question is whether or not Publimax was transmitting its signal via air, as you testified earlier, to the southern part of Texas in 2009," and Diaz replied, "Yes, as an accident." The attorney explained that she wanted a yes or no response, and Diaz said, "Yes."

Diaz denied that Publimax had solicited advertisers from Texas, but Diaz acknowledged that Publimax has advertisers from Texas who pay for commercial air time. Diaz acknowledged that Publimax had aired commercials from entities or businesses that are located in Texas from 1994, when it entered its agreement with TV Azteca, to the present. Diaz agreed that pursuant to its contract with TV Azteca, Publimax pays TV Azteca some percentage of the advertising revenues that it receives. However, according to Diaz, the amount of the percentage is confidential.

When asked, "Are the programs Ventaneando, or Ojo de Huacan, and La Vidas al Limite broadcast on

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[17] During Diaz's deposition, the Trevi Parties' attorney represented that Exhibit 3 "was obtained from the website for Azteca Noreste." This appears to be the same exhibit referenced during Diaz's deposition taken on November 15, 2011 and previously explained.

the Publimax stations," Diaz replied, "I think, yes." Diaz stated that "Myriam Marlene" was "the representative of the sales agency," Xoana Entertainment. When asked if Marlene ever worked for Publimax, Diaz said, "As an advertising agency." Diaz testified that Publimax and Marlene had entered a "verbal agreement" with "the commercial director at that time . . . . [b]etween 2006 and 2007." Diaz explained that Marlene "would sell advertising to be broadcasted in Matamoros and Reynosa." When asked if she was selling advertising on behalf of Publimax, Diaz replied, "I think she was selling advertising on behalf of her agency." Diaz agreed that the advertising that Marlene sold was to be shown on Publimax stations in Matamoros, Reynosa, and Monterrey. Diaz thought that Marlene's advertising agency was located in McAllen. Diaz stated that Publimax did not have any agreements presently with advertising agencies in Texas.

Diaz reviewed documents marked as "Exhibit No. 4" for purposes of his deposition.[18] Diaz identified the documents as being "Emails from Myriam Marlene, directed to the people who were in charge of programming, the advertisers and the different stations." Diaz acknowledged that "Marlene identifie[d] herself underneath her name as TV Azteca Texas." However, Diaz did not know what "TV Azteca Texas" is. When asked if Publimax ever allowed Marlene to use "TV Azteca Texas in her dealings with potential advertisers," Diaz replied, "Not that I know of." Diaz explained that Marlene "was in charge of production for Mexican customers. She would bring the customers, or she would include advertising for American customers."

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[18] These documents are not included in the record.

The Trevi Parties' attorney asked Diaz to identify for the record deposition "Exhibit No. 5."[19] Diaz replied, "It's a commercial agreement between Xoana Entertainment and Publimax, in order to be able to broadcast advertising in Reynosa and Matamoros on Channel 7 . . . and 13." Diaz read from the agreement the names of the "advertisers," which were "Andy's Kids Place, Bodies Under Construction, C.N.A.[,] Herbal Nutrition, C.N.A.[,] Herbal Nutrition[,] Crayon-Man's Fun House—CrayonMan's Fun House, [and] Excellent Fence." When asked if those advertisers were from Texas, Diaz said, "Possibly, yes." Diaz clarified that he meant that he was "not too sure" whether these advertisers were from Texas. Diaz testified that the "client's address" was not indicated and the only address in the document was Marlene's address. However, when asked if he produced any documents to the Trevi Parties' attorney for advertising contracts that were located in Mexico, Diaz replied, "No." Diaz stated that he did not "think" that the above listed businesses were still "advertising with Publimax." The Trevi Parties' attorney asked, "You are no longer—Publimax is no longer advertising for Gonzalez Furniture."[20] Diaz said, "I don't think so." The Trevi Parties' attorney then asked if Publimax was still providing advertising for Pueblo Tires, and Diaz responded, "No, I'm not sure."[21]

Diaz acknowledged that Publimax had a bank account in Laredo, Texas from 2003 until 2009.

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[19] This exhibit is not included in the record.

[20] We note that Gonzalez Furniture was not previously mentioned on the record as being listed in deposition Exhibit No. 5.

[21] We note that no one had previously mentioned that Pueblo Tires was listed on deposition Exhibit No. 5.

According to Diaz, Publimax had no other bank accounts in Texas or the United States. Diaz acknowledged that Publimax had done business with entities in Texas regarding the purchase of production equipment during the period of 2005 through 2009. Diaz stated that Publimax had been sued in an unrelated case in Hidalgo County, Texas. Diaz testified that the case involved Marlene who "felt that [Publimax] had cut relations with her, had affected her interests." Diaz recalled that the parties had settled out of court.

Diaz stated that Publimax did not have a contract with Echostar, Dish Network, or Direct TV to provide its signal via satellite to Texas. Diaz thought that at some point, Publimax had planned to provide its Mexican programming via satellite to Texas residents. Diaz clarified that "[i]t's a recent [November 2011] agreement" with "Una Vez Mas." According to Diaz, Publimax agreed to "allow" retransmission of its morning newscast "for a certain period of time." The newscasts are televised in Monterrey on "Info 7," and could be viewed in Dallas and Houston, Texas.[22]

When asked if Publimax had ever conducted interviews used in programming in Texas and had ever recorded any footage in Texas, Diaz responded, "Possibly" and "Probably" yes. Diaz then stated that he did not know what Publimax employee knew whether Publimax either conducted interviews in Texas or recorded any footage in Texas.

Gomez testified that he is an attorney residing in McAllen, Texas with Trevi and that he is a Mexican

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[22] Diaz agreed that Publimax and Una Vez Mas had a current agreement.

citizen.[23] Gomez stated that he has a visa that is "in process" which allows him to reside in the United States. Gomez claimed that he has followed the same process in the past five years to acquire his visa. Gomez had not traveled to the United States since "last year," which was in 2011. Gomez explained that when his visa is "in the process," he must wait for the consulate to call him. Gomez has not travelled to the United States because the consulate has not called him to get his visa. Gomez stated that he did not recall when his last visa expired but believed that it expired on December 7, 2011.[24] Gomez has never "held resident status" in the United States.[25]

Gomez has never practiced law in the United States and had not practiced law in Mexico for the past five years. Gomez stated that he last practiced law in Mexico when he represented Trevi in her criminal case.

When asked if he had viewed any of the alleged defamatory broadcasts, Gomez replied, "Affirmative. In my house in McAllen . . . Texas in January or February . . . . This was in the show Ventaneando where we were defamed, and it was in our home in Texas."[26] Gomez believed that he saw the show in either 2007 or 2008. Gomez stated that he viewed the broadcast on a television that had a "regular

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[23] Gomez said that he has resided at his current address in McAllen for seven months.

[24] Gomez gave his deposition on June 20, 2012.

[25] Gomez did not clarify where he considers his residence to be.

[26] Gomez later claimed that he viewed the broadcast "at [his] mom's house on [sic] Sebastian, Mission, Texas."

antenna" and that the channel's signal was picked up from the air.

When asked if Roberto Olguin, a Mexican lawyer, made allegedly defamatory remarks about him while in Texas, Gomez said that he did not know where Olguin was when he made the remarks. Gomez agreed that all of the remarks allegedly made by Olguin concerned events occurring in Mexico.

## V. DISCUSSION

The evidence provided to the trial court in this case undisputedly proves that TV Azteca's program, Ventaneando, where the allegedly defamatory statements were made, was viewed by Texas residents. In fact, a map from the Azteca Noreste website shows its viewers live in Northern Mexico and South Texas. The map further shows that in South Texas there were 1,583,829 viewers in 2012. Diaz testified that Publimax has used the name "TV Azteca Noreste" and that the name belongs to TV Azteca. From this evidence, we conclude that the trial court could have reasonably found that TV Azteca and Publimax have advertised on the internet that they have viewers in South Texas. Furthermore, the trial court did not err in accepting as true TV Azteca and Publimax's own advertisement concerning its Texas viewers. Diaz acknowledged that the coverage area for Publimax's television broadcast signal in 2009 was the same coverage area as shown on the map he reviewed during his deposition. Chapoy testified that Ventaneando is shown five days per week. And, Trevi and Gomez both testified that they each saw the program with the allegedly defamatory remarks on their television sets in Texas.

In *Keeton*, the publisher of Hustler Magazine sold "some 10 to 15,000 copies" of its magazine in New

Hampshire each month. 465 U.S. at 772. The United States Supreme Court held that Hustler Magazine, Inc.'s "regular circulation of magazines in the forum State was sufficient to support an assertion of jurisdiction in a libel action based on the content of the magazine." *Id.* at 773. Here, the trial court had evidence that programs broadcast by TV Azteca and Publimax is seen in Texas potentially by over one million viewers and that these programs form the basis of the Trevi Parties' defamation suit. We conclude that broadcasting programs to residents of Texas supports an assertion of jurisdiction in this case.[27] *See id.*

Moreover, appellants do not appear to dispute that the program broadcasting the allegedly defamatory statements was shown or viewed in Texas. Appellants, instead, merely claim that the broadcasting by Publimax of TV Azteca's programs to Texas was due to a technical glitch and that they are unable to control or fix this glitch. Thus, appellants argue they have not purposefully directed their activities to

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[27] We note that other jurisdictions have held that "A defendant expressly aims a defamatory statement at a particular state if he has in some fashion 'entered' the state, for example by broadcasting or distributing the statement there." *Bank Express, Int'l v. Kang*, 265 F. Supp. 2d 497, 506 (E.D. Pa. 2003) (citing *Imo Industries, Inc. v. Kiekert AG*, 155 F.3d 265 (3d Cir. 1998); *Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club*, 34 F.3d 410, 412 (7th Cir. 1994)); *see Massey Energy Co. v. United Mine Workers*, 69 Va. Cir. 118, 121 (2005) (concluding that because "the advertisement was broadcast into Virginia" that "alone [was] a sufficient basis [for asserting] jurisdiction under [Virginia's long-arm] statute); *see also Smith v. Holland*, Civ. No. 4-2349, 2004 WL 1858041, at * 2 (E.D. Pa. Aug. 18, 2004) ("In defamation cases, the defendant "enters" the forum state by broadcasting or publishing the defamatory statement there.").

Texas despite Publimax's broadcasts of TV Azteca's programming to Texas residents. We disagree with appellants because the evidence supports a conclusion that appellants purposefully directed their activities at Texas as explained further below.

Calderon testified that TV Azteca has attempted to enter the broadcast industry in Texas and owns a subsidiary knows as Azteca America. Both TV Azteca and Azteca America use the same logo, and TV Azteca owns the trademark for the logo in Mexico. Evidence was presented that Azteca America has a show entitled Ventaneando America and that Chapoy hosted that program for Azteca America when it celebrated the fifteenth anniversary of Ventaneando.

A press release from Azteca America regarding Chapoy's appearance states that Azteca America targets Spanish speaking families in the United States, operates in sixty-six markets nationwide, and can be seen on "DIRECTTV" and "DISH Network." The press release sets out that "Azteca America has access to the best programming from Azteca's three national networks, including a library with over 200,000 hours of original programming and news from local bureaus in 32 Mexican states." The press release further states that Ventaneando America had been broadcast on Azteca America for nearly seven years and had been broadcast in Mexico for fifteen years. In fact, Chapoy, who claimed to only host the Ventaneando shown in Mexico, remarked in the press release, "We work very hard to find the sort of information that isn't readily made available in a press conference or in interviews. We investigate what is happening everywhere from every angle and that is an enormous challenge." Chapoy makes no distinction between Ventaneando America and

Ventaneando. In the press release, Alberto Santini Lara, the vice president of production, programming and marketing for Azteca America and the general director of Azteca 13, is quoted as stating that Ventaneando is "one of the most successful and influential programs" in the United States and Mexico.

Calderon testified that TV Azteca gave AIC, an American corporation, a content license allowing AIC to broadcast Ventaneando in the United States. Calderon stated that AIC uses its content license given to it by TV Azteca to market itself in the United States. From this evidence, and the evidence that TV Azteca and Publimax advertised South Texas as one of its viewership markets, the trial court could have reasonably found that TV Azteca and Publimax intended for Texas viewers to watch its programs, including Ventaneando.[28]

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[28] The burden is on appellants to provide evidence that AIC and Azteca America did not show the same Ventaneando program containing the alleged defamation in Texas. *See Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *BMC Software Belgium, N .V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002); *El Puerto de Liverpool, S.A. de C.V. v. Servi Mundo Llantero, S.A. de C.V.*, 82 S.W.3d 622, 628 (Tex. App.—Corpus Christi 2002, pet. dism'd w.o.j.). There is sufficient evidence in the record to support a finding that the programs viewed by the Trevi Parties in Texas were shown pursuant to TV Azteca's agreement with AIC and Azteca America. Thus, we conclude that this is another basis that supports the trial court's denial of their special appearance. We further note, that when given the opportunity, appellants' deposition witnesses would not or could not explain the relationship between TV Azteca, AIC, Publimax, TV Azteca Noreste, and Azteca America sufficiently to support a finding that these entities did not all provide either advertising or programming to Texas residents concerning the Ventaneando program. Moreover, Chapoy claimed that she is well-known in the United States. The trial court may have also questioned how Chapoy, who claimed to

> In its 2005 Annual Report, TV Azteca stated:
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> The programs produced in-house by TV Azteca have a higher average cost than purchased programs. TV Azteca seeks to offset its production costs by selling its in-house programs outside of Mexico. In 2003, 2004, and 2005, TV Azteca sold approximately 27,111; 23,905; and 24,513 hours (including 6,467 hours per year, estimated to have been sold to EchoStar), respectively, of in-house produced programming, resulting in sales of 161 million Pesos, 131 million Pesos (U.S. $13 million) (nominal), and 101 million Pesos (U.S. [$]9.1 million) (nominal), respectively.

Also, in March, 2000, TV Azteca executed a "programming contract with EchoStar" to deliver a satellite feed of Azteca 13 programming to EchoStar. TV Azteca made more than two million dollars from the deal in 2003, 2004, and 2005.

Taken together, we conclude that the above-mentioned evidence supports a finding that Ventaneando is targeted to Spanish speaking viewers in the United States. This evidence, when combined with the undisputed evidence that TV Azteca can been viewed by South Texas residents, establishes that TV Azteca and Publimax have purposefully directed their programs, including Ventaneando, to Texas.

TV Azteca and Publimax's regular broadcasts of its programs to potentially thousands of Texas viewers cannot be characterized as random, isolated, or fortuitous. *See Keeton*, 465 U.S. at 774. Appellants claim

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have only aimed her programs to Mexican residents, could be well-known in a country that she claims she has purposefully avoided directing her programs to.

that this so-called "spillover" into Texas is merely fortuitous. However, as explained, the evidence presented belies their argument. Therefore, we conclude that Publimax's and TV Azteca's purposeful broadcasts of its programs in Texas satisfy the minimum contacts required by the due process clause.

In *Keeton*, the United States Supreme Court stated that Hustler Magazine, Inc. "chose to enter the New Hampshire market"; thus, Hustler Magazine, Inc. could have been "charged with knowledge of [New Hampshire's] laws and would have claimed the benefit of them if it had a complaint against a subscriber, distributer, or other commercial partner." *Id.* at 779. Here, there is evidence that TV Azteca and Publimax chose to enter the Texas market by broadcasting to Texas and according to Diaz, Publimax has advertisers from Texas who pay for commercial air time and that Publimax has aired commercials from entities or businesses located in Texas from 1994, when it entered its agreement with TV Azteca, until the present. Diaz also testified that TV Azteca received some percentage of the advertising revenues that Publimax receives pursuant to their contract. Moreover, in its 2007 annual report, TV Azteca documented that it had entered a contract with Alta Empresa in December 2001 wherein Alta Empresa agreed to commercialize and sell TV Azteca throughout the world and initially, Alta Empresa was only allowed to sell TV Azteca's programming in the United States. TV Azteca would receive "99% of the net profits resulting from the commercialization and sale of its programming outside of Mexico." Also, the report states that because TV Azteca's in-house produced programs have a higher average cost of production than purchased programs, TV Azteca

intended to "offset its production costs by selling its in-house produced programs outside of Mexico." Taking the evidence together, the trial court could have found that TV Azteca intended to profit through its broadcasts directed to Texas. Thus, we conclude that TV Azteca and Publimax can be charged with knowledge of the laws of Texas, and we have no doubt that they would have claimed the benefit of them if they had had a complaint regarding its programs or the advertisers in the Texas market.

Appellants argue that under *Calder*, the defamatory *statements* must have had some connection with Texas. *See Calder*, 465 U.S. at 788-89. However, in *Keeton*, the plaintiff was not from New Hampshire, and the Supreme Court did not find the actual statements made about the plaintiff in the magazine, which arguably had no connection to New Hampshire, relevant to its jurisdictional analysis. *See Keeton*, 465 U.S. at 772 (stating that the plaintiff was a New York resident and that her only connection with New Hampshire was "the circulation there of copies of a magazine that she assist[ed] in producing"). In fact, the sole reason the plaintiff in *Keeton* sued in New Hampshire was due to New Hampshire's six-year statute of limitations.[29] *Id.* at 773. The *Keeton* Court stressed that in some cases it might be relevant to consider the plaintiff's residence in the forum because the "Plaintiff's residence may be the focus of the activities of the defendant out of which the suit arises." *Id.* at 780. However, in *Keeton*, the Court did not find the plaintiff's residence to be relevant to its inquiry. *Id.* at 779 ("[W]e have

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[29] New Hampshire was the only state where the plaintiff's suit would not have been time-barred when she filed it. *Calder*, 465 U.S. at 773.

not to date required a plaintiff to have 'minimum contacts' with the forum State before permitting that State to assert personal jurisdiction over a non-resident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking.").[30] We find no support in *Keeton* that leads to a conclusion that when defamatory statements are purposefully directed at a forum, we must consider what was said in our minimum contacts determination. We also note that in *Keeton*, the "bulk" of the plaintiff's "alleged injuries had been sustained outside New Hampshire." *Id.* at 773.

Moreover, the United States Supreme Court in *Calder* merely considered the contents of the alleged defamation in order to link the defendants to the forum. *Calder*, 465 U.S. at 790 (explaining that the defendants' "intentional, and allegedly tortious, actions were expressly aimed at California" and the defendants' each knew that the article "would have a potentially devastating impact upon respondent [the plaintiff]" in California). The *Calder* Court did not establish per se that the defamatory statements if made in or directed at the forum must concern activities of the defamed person in that state.[31] *See gener-*

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[30] In *Keeton*, the Supreme Court emphasized that the "tort of libel is generally held to occur wherever the offending material is circulated" and that the "communication of the libel may create a negative reputation among residents of a jurisdiction where the plaintiff's previous reputation was, however, small, at least unblemished." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 777 (1983).

[31] The issue in *Calder* was whether jurisdiction was proper in California even though the defendants, a reporter and an editor, wrote and edited the article in Florida. *Calder v. Jones*, 465 U.S. 783 (1984). The decision did not address jurisdiction over the publishers of the magazine wherein the alleged defamation

*ally id.* The Court could not find that the defendants had made the alleged defamatory statements in California, the forum state, because South, one of the defendants, undisputedly wrote the complained-of article in Florida and Calder, as the editor, "reviewed and approved the initial evaluation of the subject of the article and edited it in its final form" in Florida.[32] *Id.* at 786.

We agree with appellants that the focal point of our analysis should not be on where the plaintiffs felt the harm caused by the defamation if the defendants have not directed the publication or broadcast at the forum. However, we have concluded that appellants in this case purposefully directed their programs wherein the allegedly defamatory statements occurred to Texas residents. Thus, we have not considered the Trevi Parties' injury or residence in our analysis because it is not relevant.[33]

We also conclude that our decision in this case is consistent with *Clemens v. McNamee*, 615 F.3d 374, 380 (5th Cir. 2010) because we have concluded that

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occurred. However, *Keeton*, did address the publisher of a magazine that had allegedly contained defamatory statements and that was sold to residents of New Hampshire. *Keeton*, 465 U.S. at 772.

[32] South's contacts with California consisted of frequent business trips to California, and phone calls to sources in California. Calder had been to California only once or twice on a pleasure trip. *Calder*, 465 U.S. at 786.

[33] As previously explained, the *Keeton* Court recognized that the plaintiff's residence may be relevant to a minimum contacts analysis because the relationship between the defendant and the plaintiff's residence may "enhance" the defendant's contacts with the forum state, especially if the plaintiff's residence is the focus of the defendant's activities related to the suit. *Keeton*, 465 U.S. at 780.

appellants' allegedly defamatory actions were purposefully directed to Texas. In *Clemens*, the Fifth Circuit Court of Appeals, applying *Calder*, stated that the emphasis in a libel cause of action when the defamatory statements are not made in or directed at Texas is on whether Texas was the focal point of the story. *Id.* Again, in *Clemens*, the issue did not concern the publishers of a magazine or the broadcasters of a television program or channel purposefully directing its broadcasts to Texas. Instead, the defendant was an individual who made statements about Roger Clemens in New York and Canada. *Id.* at 377. Thus, the court applying *Calder* held that the defendant's statements were not "aimed at or directed to Texas, and were not made in Texas." *Id.* In this case, appellants produced and broadcast a program containing the allegedly defamatory statements about the Trevi Parties that was shown in Texas and directed the broadcast to Texas residents.

Once the Trevi Parties pleaded sufficient allegations bringing Chapoy within the provisions of the Texas long-arm statute, the burden shifted to her. *See BMC Software*, 83 S.W.3d at 793. Here, appellants have not contended on appeal that the Trevi Parties failed to plead sufficient allegations to bring them under the Texas long-arm statute. Therefore, the burden was on Chapoy to negate all bases of personal jurisdiction alleged by the Trevi Parties. *See Moki Mac River Expeditions*, 221 S.W.3d at 574; *BMC Software*, 83 S.W.3d at 793; *El Puerto de Liverpool, S.A. de C.V.*, 82 S.W.3d at 628. Thus, Chapoy had the burden of establishing that jurisdiction is inappropriate under the minimum contact analysis.

The Trevi Parties' alleged in their live pleading that Chapoy purposefully directed her allegedly

tortious activities to residents of the State of Texas and that the causes of action asserted by them arose from and/or were connected with Chapoy's purposeful acts. As stated above, the evidence shows that TV Azteca and Publimax purposefully directed broadcasts of their programs to Texas-Ventaneando wherein the allegedly defamatory statements were made. The Trevi Parties alleged that Chapoy produced a television program where she made and reported defamatory statements that were directed at residents of Texas.

When given the opportunity at her deposition to provide evidence negating the Trevi Parties' allegations, Chapoy claimed ignorance. Chapoy claimed that although a press release indicated that she had hosted a program celebrating the fifteenth anniversary of Ventaneando and the seventh anniversary of Ventaneando America, she did not know when she hosted Ventaneando America and she did not know that she was participating in a television program that is aired in the United States on Azteca America. And, when confronted with the press release explaining that she had hosted the show to celebrate her show's anniversary, she claimed that she just does what she is told to do and that she does not remember the specifics of the "promotions" she does. Chapoy also claimed that she was not aware of whether Ventaneando America is the same program as Ventaneando. Moreover, as stated above, the evidence shows that the two programs are similar if not the same.

We disagree with appellants' argument that under *Calder* and *Clemens*, Texas courts do not have jurisdiction over Chapoy. The *Clemens* court reasoned that the nonresident defendant's statements were not adequately directed at Texas and were not made

in Texas. The court explained that it found the reasoning in *Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002) instructive and quoted *Revell*'s holding that the defendant's statements were "not directed at Texas readers as distinguished from readers in other states. [And that] Texas was not the focal point of the article or the harm suffered." *Clemens*, 615 F.3d at 379. The *Clemens* court stated that the question before it was whether the defendant who allegedly defamed Clemens "aimed or directed" his statements to Texas. *Id.* The court found that the defendant did not make the statements in Texas and the defendant did not direct his statements to Texas residents.[34] *Id.*

However, in this case, the program and statements were directed to Texas residents as explained above. Trevi testified that she had been approached in Texas by reporters from TV Azteca and had seen on TV Azteca that reporters were at her mother's home in McAllen. Trevi had avoided these reporters. From this evidence the trial court could have found that research had been conducted in Texas to produce the complained-of television show. Chapoy stated in her affidavit that the complained-of reports were investigated, written, and prepared in Mexico, and Chapoy denied using sources in Texas in order to acquire information for her show. The Trevi Parties provided to the trial court an email from Chapoy requesting to interview Trevi, and as stated above, there was some evidence that reporters had followed Trevi and been at her mother's home. From this evidence, the trial court could have inferred that Chapoy contacted

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[34] The defendant in *Clemens* made his complained-of statements in New York and Canada and not in Texas. *Clemens*, 615 F.3d at 380.

Trevi while she was in Texas to conduct research and that other reporters had been in Texas doing research for Chapoy's program. Even though Chapoy denied that she did any research for the program at issue in Texas or that she used any sources in Texas, we must presume that the trial court resolved all factual disputes in favor of its ruling. *See Glattly*, 177 S.W.3d at 445. As to the final *Calder* element, Trevi testified that she and her children felt the harm of the alleged defamation in Texas. *Calder*, 465 U.S. at 790.

Based on the evidence presented, the trial court could have reasonably found that Chapoy knew that her program would be viewed on TV Azteca by Texas residents. We conclude that the evidence supports a finding that Chapoy directed the statements she made on Ventaneando to residents of Texas. Therefore, Chapoy has not met her burden to overcome the strong presumption that Texas courts have jurisdiction over her in this case. *See Moki Mac River Expeditions*, 221 S.W.3d at 574; *BMC Software*, 83 S.W.3d at 793; *El Puerto de Liverpool, S.A. de C.V.*, 82 S.W.3d at 628.

We also conclude that jurisdiction over appellants in Texas would not offend traditional notions of fair play and substantial justice because "[t]here is not unfairness in calling [them] to answer for the contents of" their programming and broadcasts wherever a substantial number of viewers are able to access it. *Keeton*, 465 U.S. at 781. Finally, the Texas long-arm statute allows jurisdiction over non-resident defendants who commit a tort in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042. Here, the Trevi Parties have alleged that appellants committed several torts in Texas when they broadcast the allegedly defama-

tory statements. Because the Texas long-arm statute reaches as far as the Constitution allows, and we have concluded that appellant purposefully directed their broadcasts at Texas, we conclude that, as set out in *Keeton*, all the requisites for personal jurisdiction in Texas are present. *See id.* at 774-75. We overrule appellants' first and second issues contending that the trial court reversibly erred by denying their special appearances and finding that it had specific jurisdiction over appellants.[35] We likewise overrule appellants' fourth issue that the trial court reversibly erred by finding that exercising personal jurisdiction over appellants would not offend traditional notions of fair play and substantial justice. *See id.* at 781 ("[T]here is no unfairness in calling [a defendant] to answer for the contents of [its] publication wherever a substantial number of copies are regularly sold and distributed.").

## VI. OBJECTIONS

By their fifth issue, appellants complain about the trial court's overruling their objections to evidence presented by the Trevi Parties in response to appellants' special appearance. We did not consider much of the complained-of evidence for purposes of our analysis. Thus, we will only address the relevant objections to the evidence we have considered in our analysis.

Appellants' challenge the trial court's consideration of Sunday's deposition testimony regarding Publimax's and TV Azteca's sale of advertising space to

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[35] Because we have determined that the requirements of specific jurisdiction have been met in this case, we need not address appellants' third issue regarding whether the general jurisdictional requirements have been met. *See* TEX. R. APP. P. 47.1.

Texas businesses. However, Diaz also testified that Publimax has advertisers from Texas who pay for commercial air time and that Publimax has sold advertising space to Texas businesses since 1994 when it entered into the contract with TV Azteca. Therefore, we need not consider Sunday's testimony for purposes of this appeal. Accordingly, we need not address appellants' contention that the trial court improperly considered Sunday's deposition testimony as it is not dispositive. *See* TEX. R. APP. P. 47.1.[36]

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[36] Patti Sunday testified by deposition that she is an "ad agent" and that Publimax and TV Azteca offered to sell her ad space for her Texas clients from 2005 to 2009. Sunday stated that people claiming to be representatives of Publimax came to her McAllen office asking her to buy ad space for her clients. Although she was still researching whether she actually bought ad space, Sunday recalled that she had and that "it was something to do with soccer." Sunday stated that she was aware that Publimax was "in the marketplace" to "obtain advertising revenue" from Texas businesses and that "people were buying" ads from Publimax. Sunday did not have personal knowledge regarding the amount of revenue Publimax received from selling ads to Texas businesses. Sunday stated, "But at the time, they were coming in and saying, if they were honest, you know, 'We're here,' and 'So and so is buying from us,' and 'So and so is buying from us.'"

Sunday explained that Miriam Morales represented Publimax and TV Azteca during the time that they were offering to sell her ad space. Sunday testified that she referred to the people, such as Morales, as employees of Publimax and TV Azteca because in her industry that is how she refers to "the person [that she] does business with to place an order to get [her] customers on the air." However, Sunday had no personal knowledge of how such people were paid or if they were considered employees under Mexican law.

According to Sunday, TV Azteca had a business office and a small production studio in McAllen. Sunday stated that she visited the studio and that it was located on "a little side indus-

Appellants also challenge the trial court's consideration of Diaz Deposition Exhibit No 3. Appellants, citing *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 169-70 (Tex. 2007), argue that the trial court should have granted their objection to Diaz Deposition Exhibit No. 3 on the basis that the map was dated 2012, which occurred after the lawsuit had been filed. In *PHC-Mindon*, the Texas Supreme Court analyzed whether Texas had general jurisdiction over the non-resident defendant. *Id.* at 171. In its analysis, the court stated that general jurisdiction has a "more demanding minimum contacts analysis" and described general jurisdiction as a "dispute-blind" analysis in contrast to specific jurisdiction which focuses on whether the dispute is "arising out of or related to the defendant's contacts with the forum." *Id.* at 168. The court then determined that when a court reviews evidence regarding general jurisdiction, "the relevant period ends at the time suit is filed." *Id.* at 169. Thus, based solely on this case, appellants argue the trial court could only review the evidence that related to events occurring before the Trevi Parties filed suit in this case.

However, as stated above, the *PHC-Mindon* court based its holding on whether Texas had general jurisdiction over the non-resident defendant. The court did not address cases where specific jurisdiction is at issue. In fact, the *PHC-Mindon* court stated its reasoning as follows: "[G]eneral jurisdiction is dispute-blind; accordingly, and in contrast to specific jurisdiction, the incident made the basis of the suit should not be the focus in assessing continuous and systematic contacts—contacts on which jurisdiction

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trial street off of Jackson Road." Sunday did not know whether this "studio/business" office still existed.

over any claim may be based." *Id.* at 170. The court made no finding regarding specific jurisdiction. *See generally id.*

Here, the trial court found that Texas has specific jurisdiction over appellants, and we have affirmed the denial of appellants' special appearance on that basis. Appellants have not cited any authority supporting a basis for the trial court to have sustained their objection to Diaz Deposition Exhibit No. 3 for purposes of analyzing whether Texas has specific jurisdiction over them. *See* TEX. R. APP. P. 38.1(i). Therefore, we conclude that the trial court did not abuse its discretion in overruling appellants' objection.[37] As to all of the other objections to different portions of the record, as previously stated, we have not considered the objected-to evidence for purposes of our analysis. Thus, to the extent the trial court committed error, it was harmless. We overrule appellants' fifth issue.

## VII. CONCLUSION

We affirm.

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[37] Whether the trial court improperly considered the exhibit for its general jurisdiction analysis is not relevant to our determination that the trial court properly found specific jurisdiction. Thus, we need not address that claim. *See* TEX. R. APP. P. 47.1.

IN THE DISTRICT COURT OF HIDALGO COUNTY
139TH JUDICIAL DISTRICT

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Cause No. C-1027-09-C

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF A MINOR CHILD, A.G.J.T, AND ARMANDO ISMAEL GOMEZ MARTINEZ,
*Plaintiffs*,

v.

AZTECA AMERICA, UNA VEZ MAS, LP D/B/A AZTECA AMERICA, UNA VEZ MAZ MCALLEN LICENSE, LLC, AZTECA INTERNATIONAL CORPORATION, TV AZTECA S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX S.A. DE C.V.,
*Defendants*.

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**ORDER DENYING SPECIAL APPEARANCES**

On July 26, 2012, came on to be considered the Special Appearances filed by Defendants TV Azteca S.A.B. de C.V., Patricia Chapoy, and Publimax S.A. de C.V. Upon consideration of the Special Appearances, Plaintiffs' Response to the Special Appearances, including all of the exhibits to the Response, the pleadings, and the arguments of counsel, and having taken judicial notice of the contents of the Court's file, the Court finds and concludes that it has personal jurisdiction over said Defendants. Accordingly, it is

ORDERED AND DECREED that the Special Appearances of Defendants TV Azteca S.A.B. de C.V., Patricia Chapoy, and Publimax S.A. de C.V. are hereby, in all things, DENIED.

SIGNED this 2nd day of August, 2012.

/s/ RICARDO RODRIGUEZ, JR.
JUDGE PRESIDING

IN THE SUPREME COURT OF TEXAS

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No. 14-0186

TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V.,
*Petitioners*,

v.

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF A MINOR CHILD, A.G.J.T, AND ARMANDO ISMAEL GOMEZ MARTINEZ,
*Respondents*.

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On Petition for Review from the
Court of Appeals for the Thirteenth District of Texas

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[Filed June 10, 2016]

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Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause. The Court's opinion issued February 26, 2016 is corrected.

## STATUTORY PROVISIONS INVOLVED

The Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code Ann. § 17.042, provides:

**Sec. 17.042. Acts Constituting Business in This State.**

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) commits a tort in whole or in part in this state; or

(3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

**Supreme Court of the United States**
**Office of the Clerk**
**Washington, DC 20543-0001**

**SCOTT S. HARRIS**
Clerk of the Court
(202) 479-3011

August 29, 2016

Mr. David C. Frederick
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036

Re: TV Azteca, et al.
v. Gloria De Los Angeles Trevino Ruiz,
Individually and on Behalf of Her Minor Child,
A. G. J. T., et al.
Application No. 16A210

Dear Mr. Frederick:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to the Justice Thomas, who on August 29, 2016, extended the time to and including October 8, 2016.

This letter has been sent to those designated on the attached notification list.

Sincerely,

**Scott S. Harris**, Clerk
by /s/ JACOB A. LEVITAN
Jacob A. Levitan
Case Analyst

[attached notification list omitted]