

No. 19-368

In the Supreme Court of the United States

FORD MOTOR COMPANY,

Petitioner,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al.*,

Respondents.

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

**BRIEF OF THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA, THE
NATIONAL ASSOCIATION OF MANUFACTURERS,
AND THE AMERICAN TORT REFORM
ASSOCIATION AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world’s largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation’s business community, and has participated as *amicus curiae* in numerous cases addressing personal jurisdiction, including *Bristol-Myers Squibb Co. v. Superior Court* (“*BMS*”), 137 S. Ct. 1773 (2017), and *Walden v. Fiore*, 571 U.S. 277 (2014).¹

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the

¹ Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief. All parties consented to the filing of the brief.

manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

Many of *amici's* members conduct business in States other than their State of incorporation and State of principal place of business (the forums in which they are subject to general personal jurisdiction, see *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)). They therefore have a substantial interest in the rules governing the extent to which a State can subject nonresident corporations to specific personal jurisdiction.

Subjecting corporations to specific jurisdiction for claims that lack the requisite relation to the forum State would eviscerate the due process limits on personal jurisdiction recognized by this Court in numerous cases dating back to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)—and could well expose corporations that do business nationwide to what amounts to general personal jurisdiction in all fifty States.

Amici file this brief to explain that the decision below is irreconcilable with this Court's precedents and would have harmful consequences for companies that, like petitioner, conduct activities or have relationships with entities in many States. The Court

should grant the petition to address this important issue.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court in recent years has reined-in lower courts' expansive views of general personal jurisdiction. It held in *Daimler* that general jurisdiction is available only where a "corporation's 'affiliations with the State are so "continuous and systematic" as to render it "essentially at home in the forum State," which—absent unusual circumstances—restricts general jurisdiction to a corporation's State of incorporation and State of principal place of business. 571 U.S. at 127 (quotation marks omitted). And it reaffirmed that holding in *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017), rejecting the Montana Supreme Court's narrow interpretation of *Daimler*.

The Court's rejection of lower court decisions "stretch[ing] general jurisdiction beyond limits traditionally recognized" means that "general jurisdiction has come to occupy a less dominant place in the contemporary [personal jurisdiction] scheme." *Daimler*, 571 U.S. at 132-33. Instead, specific jurisdiction typically provides the basis for lower courts' adjudicatory authority.

The linchpin of specific jurisdiction is "the 'relationship among the defendant, the forum, and the litigation.'" *Daimler*, 571 U.S. at 133. "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." *Walden*, 571 U.S. at 284 (emphases added; quotation marks omitted). In *BMS*, the Court explained that this standard must be applied on a claim-by-claim basis:

the defendant's suit-related conduct must create a connection with the forum State for "the specific claims at issue." 137 S. Ct. at 1781.

But, as the holding below demonstrates, some lower courts are responding to this Court's reaffirmation of the limited availability of general jurisdiction by interpreting the "substantial connection" standard to require almost no connection between the defendant's activities within the State and the claims asserted in the litigation—effectively converting specific jurisdiction into a species of general jurisdiction.

This Court's intervention is needed to provide essential guidance to lower courts regarding the core of the specific jurisdiction test: how to determine whether a defendant's activities within the forum are sufficiently related to the plaintiff's claim to permit the exercise of specific jurisdiction. In other words, what standard should courts apply in determining whether the facts of a particular case provide the required "substantial connection" to the forum.

The petition explains in detail (at 10-21) the conflicting approaches lower courts currently take. And this case presents an excellent vehicle for elucidating the proper test, because the court below allowed respondent Lucero to maintain a lawsuit against Ford in Montana even though *all* of Ford's conduct that allegedly gave rise to his claims occurred outside the State.

The impermissibly sweeping approach to specific personal jurisdiction applied below does not simply nullify this Court's precedent. It also imposes new and unwarranted burdens on businesses, the courts, and the federal system. If permitted to stand, that

approach means that companies that do business in a large number of States would have no ability to predict where, and to what extent, they might be haled into court. States would be newly empowered to regulate conduct that occurred entirely outside their borders—contrary to the principles of federalism that animate this Court’s personal jurisdiction precedents. Moreover, the court’s authority to exercise personal jurisdiction over a defendant is an issue in every case, and the experience of *amici*’s members is that, despite this Court’s recent decisions, plaintiffs’ forum-shopping remains rampant and the question of what standards should be applied to assess specific personal jurisdiction therefore arises with extraordinary frequency. Indeed, it is telling that Ford alone has simultaneously filed two petitions presenting the same issue. See *Ford Motor Co. v. Bandemer*, No. 19-369 (filed Sept. 18, 2019).

The Court should grant review to prevent these harmful consequences and resolve the conflict on this fundamental issue that arises with great frequency.

ARGUMENT

I. Specific Personal Jurisdiction Requires A Substantial Causal Connection Between The Defendant’s Forum Contacts And The Asserted Claim.

This case presents a critically-important question that this Court did not address in *BMS*: what standard should courts apply to determine whether contacts between a defendant and the forum State are sufficiently related to a claim to support specific jurisdiction. In the absence of guidance from this Court, the lower courts have adopted conflicting approaches. See Pet. 10-21.

This Court's precedents provide a clear path for further delineation of the proper standard for determining whether a claim has the necessary "substantial connection" with the forum. They establish that the defendant must purposefully engage in forum activity that is a cause of the asserted claim and that also has a sufficiently significant relationship to that claim. And the facts of this case will enable this Court to illustrate the application of that test, because they fall far short of satisfying these requirements.

A. The Relationship Between The Defendant's Forum Activity And The Asserted Claim Must Be Sufficiently Significant To Create A Substantial Connection With The Forum State.

This Court has consistently held that in order for an exercise of specific jurisdiction to comport with due process, "the defendant's *suit-related* conduct must create a *substantial connection* with the forum State." *Walden*, 571 U.S. at 284 (emphasis added). This substantial connection is required to ensure that the forum State has a legitimate interest in regulating the defendant's conduct on which the claim is based. And the Court should grant review to clarify that in order to satisfy this requirement, there must be (i) a meaningful causal connection between the defendant's forum activity and the asserted claim; and (ii) the forum State must have a substantial connection to the claim relative to any connection other States may have.

1. *Specific jurisdiction rests on the forum's legitimate interest in regulating the defendant's underlying conduct.*

Explaining why specific jurisdiction comports with due process, the *International Shoe* Court observed that when “a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state.” 326 U.S. at 319. “The exercise of that privilege,” the Court reasoned, “may give rise to obligations; and, so far as those obligations arise out of or are connected with the *activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.” *Ibid.* (emphasis added).

The Court went on to conclude that Washington's exercise of specific jurisdiction over the defendant was permissible because the defendant had engaged in activities within the State and “[t]he obligation which is here sued upon arose out of *those very activities*,” making it “reasonable and just * * * to permit the state to enforce *the obligations which [the defendant] ha[d] incurred there.*” *Id.* at 320 (emphases added).

The *International Shoe* framework thus rests on the principle that due process permits a defendant to be haled into court on a specific jurisdiction theory only for claims that arise out of “the very activities” that the defendant engaged in within the forum State, or that enforce the “obligations” that the defendant incurred in the State—because of the forum's legitimate interest in regulating a corporation's activities within the forum.

This Court has repeatedly reaffirmed that rationale for specific jurisdiction. In *J. McIntyre Machinery, Ltd. v. Nicastro*, for example, the plurality opinion contrasted specific jurisdiction with general jurisdiction. General jurisdiction allows a State “to resolve both matters that originate within the State and those based on activities and events elsewhere.” 564 U.S. 873, 881 (2011) (plurality opinion). By contrast, the plurality explained, specific jurisdiction involves a “more limited form of submission to a State’s authority,” whereby the defendant subjects itself “to the judicial power of an otherwise foreign sovereign *to the extent that power is exercised in connection with the defendant’s activities touching on the State.*” *Ibid.* (emphasis added).

Then, in a pair of decisions outlining the limitations on general (or all-purpose) personal jurisdiction, this Court reiterated the very different role played by specific personal jurisdiction. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Court explained that specific jurisdiction “depends on an affiliation between the forum and the underlying controversy.” 564 U.S. 915, 919 (2011) (alterations and quotation marks omitted). Thus, specific jurisdiction exists only where a defendant engages in continuous activity in the state “and *that activity gave rise to the episode-in-suit,*” *id.* at 923, or where the defendant commits “single or occasional acts’ in a State [that are] sufficient to render [it] answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections,” *ibid.* (quoting *Int’l Shoe*, 326 U.S. at 318).

Next, in *Daimler*, the Court reaffirmed that specific jurisdiction is available only where the defendant’s in-State activities “g[i]ve rise to the liabilities

sued on” (571 U.S. at 126) (quotation marks omitted), or where the suit “relat[es] to that in-state activity” (*id.* at 127).

Most recently, in *BMS*, this Court made it unmistakably clear that a court may not exercise specific jurisdiction unless the defendant has itself engaged in in-state activity that gives rise to the *particular plaintiff’s* own claims. The plaintiffs in *BMS* included both California and non-California residents who sued a drug company in California on product liability claims. The Court held that the out-of-state plaintiffs could not invoke specific jurisdiction, because “all the conduct giving rise to [their] claims occurred elsewhere.” 137 S. Ct. at 1782. The Court explained that specific jurisdiction requires a substantial connection between the plaintiff’s claims and the defendant’s conduct in the forum and that, “[w]hen there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” *Id.* at 1781 (emphasis added).

In short, the Court has repeatedly held that specific jurisdiction is available only when the defendant’s suit-related contacts with the forum are sufficient to give that State a legitimate interest in regulating the actions by the defendant that gave rise to the plaintiff’s claim.

2. *The standard for assessing the sufficiency of the defendant’s forum contacts.*

This Court’s decision in *BMS* underscores that, at a minimum, there must be *some* causal connection between the defendant’s forum activity and the asserted claim for specific jurisdiction to comport with due process. But as the petition explains (Pet. 10-21),

the lower courts remain divided over the degree of connection that is required. Some, like the decision below, hold—directly contrary to this Court’s decisions—that no causal relationship between a defendant’s forum contacts and the plaintiff’s own claims is required; others hold that the in-forum activity need only be a but-for cause of the plaintiff’s injury; others require a more substantial relationship between the defendant’s in-forum conduct and the asserted claim—framing the test as “proximate” causation; and others hold that some unspecified causal connection is required.

We agree with petitioner that this Court should resolve the conflict among lower courts on causation.

Moreover, causation alone is only one element of the necessary inquiry. The Court has repeatedly emphasized that the connection between the defendant’s in-forum activity and the asserted claim is relevant for two distinct reasons. First, fairness to the defendant: a company that avails itself of the privilege of conducting business within a State may legitimately be subjected to jurisdiction only when those in-state activities “give rise to obligations”—*i.e.*, legal claims. *Int’l Shoe*, 326 U.S. at 319.

Second, the substantial connection requirement respects each State’s “sovereign power to try causes in their courts. The sovereignty of each State . . . implicate[s] a limitation on the sovereignty of all its sister States.” *BMS*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)) (alterations in original). Requiring a defendant to “submit[] to the coercive power of a State that may have little legitimate interest in the claims in question,” *ibid.*, would allow “the States[,] through their courts,” to “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.

The standard governing exercises of specific jurisdiction must therefore serve two functions. *First*, it must ensure that the defendant’s forum activity is sufficiently connected to the asserted claim, from a causal standpoint, to conclude that the activity created an “obligation” on the defendant’s part to respond to the claim in the forum State’s courts. And *second*, the analysis must ensure that the connection between the forum State and the claim is “*substantial*” (*Walden*, 571 U.S. at 284 (emphasis added)) relative to any connection that *other* States might have to that claim. This second step is necessary to avoid allowing States with little or no real interest in the dispute to displace States with a much more significant interest.

A court analyzing the permissibility of exercising specific jurisdiction should therefore proceed as follows:

- Identify the defendant’s purposeful² claim-related activity within the forum;
- Determine whether that activity gave rise to the asserted claim; and
- Assess whether the causal connection between the activity and the claim is sufficient to create the “substantial relationship” required by due process.

² As this Court explained in *Walden*, the “defendant *himself*” (571 U.S. at 284) (quotation marks omitted) must be the one who “form[s] the necessary connection with the forum State” (*id.* at 285).

The latter inquiry, as explained above, should consider both (a) whether the in-forum activity is sufficiently causally connected to the claim to warrant a conclusion that the defendant incurred obligations in the forum State; and (b) whether the forum State's connection to the claim is substantial relative to the connections to other States, such that permitting an assertion of specific jurisdiction based on that activity will not intrude on the sovereignty of other States.

In most cases, this test is easy to apply. For example, where there is no causal link between the defendant's in-forum activity and the claim being asserted, specific jurisdiction is impermissible. That was the situation in *Goodyear* and *BMS* (and is also the situation here)—the claims at issue were entirely unrelated to the defendants' in-forum activities.

Where, on the other hand, the defendant sold a product in the forum State to a plaintiff who was injured by the product in the forum State, specific jurisdiction is usually proper. In such situations, there is a strong causal link between the claim and the defendant's in-forum activity—and the forum's connection to the claim is substantial relative to other States.

This Court's decision in *Burger King Corp. v. Rudzewicz* provides another example. The dispute in that case arose out of a contract in which the defendant's counterparty (the plaintiff in the lawsuit) was located in the forum. The Court observed that the defendant negotiated the agreement by reaching out to the forum, the contract itself indicated that the plaintiff was located in the forum, and "the parties' actual course of dealing repeatedly confirmed that [the plaintiff's] decisionmaking authority" resided in the forum. 471 U.S. 462, 480-81 (1985). The defend-

ant’s purposeful interaction with the forum resident plainly constituted a cause of the plaintiff’s claim. Given these facts, the forum had a substantial connection with the dispute, and there could be no doubt that the forum State’s assertion of jurisdiction would not interfere with the sovereignty of other States that might have a connection to the claim.³

In short, specific jurisdiction depends on a connection between a claim and the forum State that is “substantial”—in both a causal sense and taking into account the competing interests of different States in adjudicating the matter. This Court should make clear that both of these inquiries are part of the substantial-connection requirement—and reaffirm that where, as here, there is no such substantial connection, specific jurisdiction is not available.

B. The Expansive Standard Applied Below Extended Montana’s Authority Far Beyond The Bounds Permitted By The Constitution.

One key reason for a rigorous specific jurisdiction standard is to prevent illegitimate exercises of a State’s authority. The facts of this case provide a clear example of such abuse.

³ As these examples indicate, a proximate relation between the forum activity and the claim will virtually always permit the exercise of specific jurisdiction, because there will be a causal relationship and the relationship typically will be substantial if the in-forum activity was a proximate cause of the claim. If the causal relationship is not proximate, it is more likely that the court will have to assess separately whether the defendant’s in-forum activity nonetheless provides a sufficiently substantial connection to permit the exercise of jurisdiction.

The car involved in the accident that is the subject of this lawsuit was not designed, made, sold, or serviced by Ford in Montana. Respondent Lucero's claims thus relate entirely to Ford's *out-of-state* conduct—and therefore fail to satisfy the constitutional requirement of a substantial connection between the defendant's in-state activities and the claims in the lawsuit.

The court below held that specific jurisdiction was proper because Ford *generally* “advertises, sells, and services vehicles in Montana.” Pet. App. 17a. But Ford's marketing conduct in Montana had nothing to do with the claims in the lawsuit. Respondent Lucero's claims are product liability claims: He alleges that Ford was negligent in its manufacturing and design of the car in which the accident occurred and that Ford failed to warn consumers about the car's alleged defects. Even if these claims arguably had some connection to Ford's advertising—and they do not—respondent Lucero did not (and likely could not) allege that advertising in Montana is relevant to *his own* claims. In short, Ford's in-state marketing did not give rise to respondent Lucero's claims in any way.

The same is true of Ford's general business contacts with Montana. For the reasons explained in the petition (at 23), the majority below erred in basing specific jurisdiction on Ford's sales and servicing of vehicles in Montana even though Ford took no action in Montana involving the actual vehicle at issue in this case or its owner. See *BMS*, 137 S. Ct. at 1781 (holding that the fact that defendant “conducted research in California on matters unrelated” to plaintiff's claims did not support specific jurisdiction). Indeed, large companies like Ford do business in all

states. Subjecting them to “specific” jurisdiction in each one of those states based on business activities unconnected to the plaintiff’s claims would effectively create a new form of general jurisdiction, undermining decisions like *Daimler* that hold that general jurisdiction should be limited to the fora in which a defendant is truly at home. See, e.g., *Adv. Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014) (noting that finding specific jurisdiction over a company based on contacts that exist in every state “would violate the principles on which *Walden* and *Daimler* rest”).

In short, the in-state activities of Ford upon which the court below relied lacked a connection to respondent Lucero’s claims, and thus do not permit Montana courts to exercise specific personal jurisdiction over those claims. The Court should therefore grant review and repudiate the overly expansive approach to specific jurisdiction adopted by the court below.

II. Exercising Specific Jurisdiction Over Matters That Do Not Relate Substantially To A Defendant’s Forum Contacts Harms Businesses, Courts, And The Federal System.

Decisions such as the ruling below not only violate due process principles—they inflict severe burdens on the business community, the courts, and the federal system. This Court’s intervention is urgently needed to correct the erroneous standards applied by lower courts and eliminate these unjustified burdens.

A. Overly Expansive Approaches To Jurisdiction Impose Greater Uncertainty On Businesses.

This Court has long recognized that the standards governing specific jurisdiction “give[] a degree of predictability to the legal system that allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *World-Wide Volkswagen*, 444 U.S. at 297. Companies know that they generally have a “due process right not to be subjected to judgment in [the] courts” of a State other than their home State, or States, unless they have affirmatively established contacts with the State itself that make them subject to specific jurisdiction there. *Nicastro*, 564 U.S. at 881; see also *Walden*, 571 U.S. at 284.

This “[p]redictability is valuable to corporations making business and investment decisions.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). For example, “[i]f a business entity chooses to enter a state on a minimal level, it knows that under the relationship standard, its potential for suit will be limited to suits concerning the activities that it initiates in the state.” Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About “Class Action Fairness,”* 58 S.M.U. L. Rev. 1313, 1346 (2005).

The approach to specific jurisdiction embodied in the decision below is completely unpredictable, making it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be sued by any plaintiff residing anywhere. Many corporations advertise their products in a large number of states—and often do so nationwide. If

merely advertising products in a forum were deemed sufficient to give rise to specific jurisdiction on any claim related to those products—even products made and sold *outside* the state—a corporation could be sued throughout the country when the company’s in-state activity had no connection to a particular claim. The plaintiff here, for example, could on that theory sue in California, Alaska, Missouri, or Texas. Yet “[s]uch exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants” to structure their affairs to provide some assurances about where they could be sued. *Daimler*, 571 U.S. at 139.

Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to businesses that do business throughout the country and irreconcilable with the Due Process Clause. See *Nicastro*, 564 U.S. at 885 (explaining that “[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible”); *Burger King*, 471 U.S. at 475 n.17 (explaining that due process is violated when a defendant “has had no ‘clear notice that it is subject to suit’ in the forum and thus no opportunity to ‘alleviate the risk of burdensome litigation’ there” (quoting *World-Wide Volkswagen*, 444 U.S. at 297)). And consumers would ultimately bear the increase in legal costs produced by this unbridled approach to specific jurisdiction.⁴

⁴ The fact that the accident occurred in Montana does not cabin the overbroad approach to specific jurisdiction reflected in the decision below. The accident had no connection to Ford’s in-state conduct, and therefore Ford could not structure its conduct to avoid being haled into court in *any* forum where an accident happens to occur. And exercising specific jurisdiction based on the location of an accident rather than the defendant’s

B. Permitting Specific Jurisdiction Without A Substantial Connection Between The Forum State And The Claim Would Intrude On Other States' Sovereignty.

The minimum-contacts requirement for exercising specific jurisdiction “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.

But that is exactly what States would be able to do under the approach to specific jurisdiction employed below. That test permits a State with no real interest in the defendant’s allegedly tortious conduct to intrude on the sovereignty of those States that have a substantial connection to the claim and therefore a real interest in adjudicating it.

There are no offsetting benefits to permitting this serious erosion of federalism. States have no legitimate interest in asserting specific jurisdiction so expansively and inserting themselves into matters or disputes that are much more closely connected to other States. And a State’s ability to adjudicate claims based on a defendant’s in-State activities fully vindicates a State’s interest in protecting its citizens and regulating conduct within its borders. See, *e.g.*, *Walden*, 571 U.S. at 284. The broader approach taken by the court below is therefore not necessary to ensure that companies may be held accountable for

conduct is impermissible in any event: this Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.” *Walden*, 571 U.S. at 284.

conduct actually taking place in Montana. Rather, it serves only to consume the resources of the courts of that State in deciding disputes that—like this case—have only random or “fortuitous” connections to Montana (*World-Wide Volkswagen*, 444 U.S. at 295) while displacing the authority of States with a greater interest in the dispute.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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