No. 19-

In The
Supreme Court of the United States

K.G.S., INDIVIDUALLY AND AS GUARDIAN AND NEXT FRIEND OF BABY DOE, A MINOR CHILD,

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITION FOR A WRIT OF CERTIORARI

Andrew P. Campbell
Yawanna McDonald
CAMPBELL PARTNERS
505 Twentieth St. North
Suite 1600
Birmingham, AL 35203
(205) 224-0750

Ruthanne M. Deutsch
Counsel of Record
Hyland Hunt
DEUTSCH HUNT PLLC
300 New Jersey Ave. N.W.
Suite 900
Washington, DC 20001
(202) 868-6915
rdeutsch@deutschhunt.com

Counsel for Petitioner

QUESTION PRESENTED

Whether, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, virtual contacts can establish specific personal jurisdiction over a nonresident defendant under the effects-based test of *Calder v. Jones*, 465 U.S. 783, 788–89 (1984), where the relevant online activity is equally accessible nationwide but its content focuses on the forum state and the tortfeasor has knowingly caused the plaintiff to suffer reputational and emotional harm in the forum state, a question left open by this Court's decision in *Walden v. Fiore*, 571 U.S. 277, 290 n.9 (2014).

PARTIES TO THE PROCEEDINGS

Petitioner was plaintiff in the Circuit Court of Jefferson County and appellee in the Supreme Court of Alabama.

Respondent Facebook, Inc., was a defendant in the Jefferson County Circuit Court and appellant in the Supreme Court of Alabama.

STATEMENT OF RELATED PROCEEDINGS

The status of the other defendants in the same originating case (Jefferson County Circuit Court, No. C.V.17-255) is as follows:

- *K.G.S., individually, and as guardian and next friend of Baby Doe, a minor child. v. Claudia D'Arcy,* (default judgment entered December 18, 2017).
- *K.G.S., individually, and as guardian and next friend of Baby Doe, a minor child v. Renee L. Gelin*, (order denying motion to dismiss and granting preliminary injunction issued December 18, 2017; reversed and remanded with instructions by the Supreme Court of Alabama on June 28, 2019 (No. 1170294); pending settlement).
- *K.G.S., individually, and as guardian and next friend of Baby Doe, a minor child v. Kim McLeod*, (order denying motion to dismiss and granting preliminary injunction issued December 18, 2017; reversed and remanded with instructions by the Supreme Court of Alabama on June 28, 2019 (No. 1170336); pending settlement).

- *K.G.S., individually, and as guardian and next friend of Baby Doe, a minor child v. Jennifer L. Wachowski*, (default judgment entered on March 26, 2019).

There are no additional proceedings in any court that are directly related to this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES AND REGULATIONS:

OTHER AUTHORITIES:

PETITION FOR A WRIT OF CERTIORARI

Petitioner K.G.S. respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Alabama in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama (Pet. App. 1a–52a) is slated to be published, __ So. 2d. __, and is currently available at 2019 Ala. LEXIS 63. That court's order denying rehearing is unpublished. (Pet. App. 60a–61a). The orders of the Circuit Court of Jefferson County granting a preliminary injunction (Pet. App. 55a–57a), denying Facebook's motion to dismiss (Pet. App. 58a–59a), and dismissing K.G.S.'s claims against Facebook with prejudice after remand (Pet. App. 53a–54a) were issued without opinion and are unpublished.

JURISDICTION

The Supreme Court of Alabama issued its opinion on June 28, 2019. Rehearing was denied on August 23, 2019. Justice Thomas, Circuit Justice for the United States Court of Appeals for the Fifth Circuit, extended the time to file a petition for writ of certiorari to and including January 17, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Due Process Clause of the Fourteenth Amendment, U.S. CONST. amend. XIV, § 1, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Alabama's long-arm rule, found in Alabama Rule of Civil Procedure 4.2, is reproduced at Pet. App. 62a–65a.

INTRODUCTION

This case raises an important and recurring question expressly left open by this Court—under what circumstances can virtual conduct provide the requisite minimum contacts to allow a forum state to exercise specific jurisdiction, when the intentional torts providing the basis of the claim are "committed via the Internet or other electronic means." *Walden v. Fiore*, 571 U.S. 277, 290 n.9 (2014).

This question is increasingly urgent. Today "the most important place[] (in a spatial sense) for the exchange of views … is clear. It is cyberspace — the vast democratic forums of the Internet in general, and social media in particular." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (internal quotation marks and citation omitted). And in commerce, "[b]etween targeted advertising and instant access to most consumers via any internet-enabled device, a business may be present in a State in a meaningful way without that presence being physical in the traditional sense of the term." *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2095 (2018) (internal quotation marks and citation omitted).

For good or for ill, many personal and business relationships now take place entirely online (servers aside). In doctrine after doctrine, this Court has grappled with the changes wrought by this digital

revolution, and the receding importance of physical presence or contacts—but not yet for personal jurisdiction.

The time to answer the question left open in *Walden* is now. In the absence of clear guidance from this Court, some courts of appeals and state courts of last resort—like the Alabama Supreme Court here—have unduly cabined the possibility of specific jurisdiction over a nonresident defendant that operates predominantly online, and therefore everywhere. As alleged below, Facebook reviewed but refused to remove, and continued to disseminate, an Alabama-focused Facebook page—about Alabama residents,[1] drawn from Alabama sources, containing articles that criticized Alabama law and videos filmed in Alabama—even after being put on notice that the content violated Alabama law (because it disclosed information specially shielded from disclosure by Alabama statute) and that it was being disseminated to Alabama users, and therefore causing harm to an Alabama resident within the state.

Other than updating the medium from a nationwide print magazine mailed throughout the country (including a large number of subscribers in the forum state) to a page disseminated nationwide online (including a large number of users in the forum state), this case is no different than *Calder v. Jones*, 465 U.S. 783 (1984). This Court's pre-internet precedents involving specific jurisdiction over the intentional dissemination of harmful material should

[1] The parties in the contested adoption that gave rise to this case—the birth mother, K.G.S., and Baby Doe—are all Alabama residents.

thus have controlled, such that the purposeful exploitation of a local market (through targeted content) with knowledge that the brunt of the harm will be suffered in the forum (given extensive readership there) should have sufficed to establish specific jurisdiction.

By holding that due process precluded jurisdiction here, the Alabama Supreme Court paid lip service to *Calder,* but effectively eviscerated it. Following other courts that have done the same, the Alabama Supreme Court misread *Walden* to effectively confine *Calder* and similar cases to their facts. Yet nothing in *Walden* purports to overrule those precedents. On the contrary, *Walden* expressly left open the question of whether and how those precedents apply in the modern world—specifically how a defendant's virtual contacts with the forum state can establish minimum contacts consistent with the Due Process Clause. This case provides an opportunity for the Court to answer the question left open in *Walden*, and to provide much needed clarity to the lower courts.

STATEMENT OF THE CASE

1. In the summer of 2015, K.G.S. filed a petition in Alabama to adopt Baby Doe, which was contested by the birth mother. Pet. App. 5a. The Alabama Court of Civil Appeals affirmed the adoption. *See K.L.R. v. K.G.S.*, 264 So. 3d 65 (Ala. Civ. App. 2018); Pet. App. 5a n.4.

The birth mother then shared her version of events with Mirah Riben, "a well-known critic of the United States' adoption system." Pet. App. 5a. In July

2015, the Huffington Post published two online articles about the Alabama adoption authored by Riben which revealed confidential information, including the identities of the birth mother and K.G.S.—kept confidential in the adoption proceedings under Alabama law—and published photographs of Baby Doe. Pet. App. 5a. The articles described the birth mother's signing of a pre-birth consent to the adoption, her change of heart after giving birth, and how her failure to legally withdraw the pre-birth consent allowed K.G.S. to adopt Baby Doe. Pet. App. 5a–6a. The article also stated that pre-birth contracts such as the one signed by Baby Doe's birth mother were legal in Alabama, but illegal in 48 other states. First Amended Complaint (FAC), Exhibit A, at 5, Record on Appeal, Vol. 2, at 336.[2]

Working with the birth mother in an attempt to pressure K.G.S. to give up the legal adoption, Claudia D'Arcy (a New York resident) created a Facebook page to disseminate the articles and to establish a discussion forum for the issues they raised regarding the Alabama adoption and Alabama's pre-birth consent rule. Pet. App. 67a, 70a–71a (FAC ¶¶ 6, 14, 19). The page's content was focused on the Baby Doe adoption. The page included photos of K.G.S., Baby Doe, and the adoption attorney, attached the articles, included K.G.S.'s full name, and revealed new details about the contested Alabama adoption, in violation of

[2] This case was originally filed under seal, but as the Alabama Supreme Court noted, Pet. App. 7a n.5, the case was later unsealed and marked "confidential." No confidential material is revealed in this petition or its appendix. The Petition Appendix contains the operative complaint, but not its exhibits, which contain confidential material.

the Alabama adoption code. Pet. App. 50a n.18; Pet. App. 71a (FAC ¶¶ 20–21).

The Facebook page was "persistently updated" with posts, news articles, and videos filmed in Jefferson County, Alabama. Pet. App. 72a (FAC ¶ 25). It was freely available to Alabama residents to access, Pet. App. 27a n.11, and was read by K.G.S.'s "business associates, friends, and certain family members." Pet. App. 73a (FAC ¶ 32). Following the launch of the Facebook page, K.G.S. was "inundated with appallingly malicious and persistent cyber-bullying," Pet. App. 6a, including "hateful messages from random individuals and organizations inside ... the State of Alabama via telephone, email, or regular mail." Pet. App. 73a (FAC ¶ 30).

K.G.S.'s attorney notified Facebook in a July 2015 letter that the Facebook page violated the confidentiality provisions of the Alabama Adoption Code, § 26-10A-1 et seq., demanding its removal. Pet. App. 6a. Facebook responded by removing the page's "cover photo, but refused to delete the [Facebook] page or otherwise prevent it from disseminating its harmful and false message." *Id.*

2. This action followed. K.G.S. filed her complaint in Jefferson County Circuit Court, Birmingham, Alabama, in July 2017, naming Facebook and various individual defendants involved in the creation, updating, and promotion of the Facebook page as defendants. Pet. App. 6a–8a. She alleged that "persistent[] updat[ing]" of the Facebook page "with various posts, news articles, and YouTube videos at K.G.S.'s expense," had made her "the poster-child for 'predatory' adoptions." *Id.*

Claims against Facebook and the other defendants included negligence per se for violation of various confidentiality provisions of the Alabama Adoption Code and the Alabama common law torts of outrage/intentional infliction of emotional distress, conspiracy, negligence, and wantonness. *Id.* The harm alleged included reputational harm because K.G.S.'s business associates, friends and family members "view[ed] [her] in a different light," as a result of viewing the Facebook page. Pet. App. 73a (FAC ¶ 32). In addition, K.G.S. alleged she suffered emotional distress from the disclosure of private information and the hateful messages received from within (and without) Alabama. Pet. App. 73a–74a (FAC ¶¶ 31–33). In a motion for a preliminary injunction seeking immediate deactivation of the Facebook page, K.G.S. described threats made against her, including one that she be "drug through the streets of Birmingham." Record on Appeal, Vol. 2, p. 309.

Facebook moved to dismiss for, *inter alia*, lack of personal jurisdiction. An affidavit from a Facebook employee confirmed Facebook's incorporation in Delaware and principal place of business in California, and stated that the Facebook web site and mobile application were "available for users to access anywhere in the country (or in the world)" where there is Internet access; "that individuals in all 50 states" have Facebook accounts; that Facebook "is qualified to do business" in all 50 states; and that Facebook "has no offices, property, or employees located in Alabama." Pet. App. 8a–9a.

Following a hearing, on December 18, 2017, the trial court denied Facebook's motion to dismiss, Pet. App. 12a, and entered a preliminary injunction

against Facebook ordering deactivation of the page given Facebook's role as the principal disseminator of confidential information and the irreparable injury to K.G.S. from the disclosure. *Id.*; *see also* Pet. App. 55a–57a.

3. Facebook appealed the grant of the preliminary injunction to the Supreme Court of Alabama arguing, as relevant here, that the trial court lacked personal jurisdiction and therefore had no authority to order deactivation of the page. Pet. App. 13a. The Supreme Court of Alabama determined that the trial court's exercise of jurisdiction did not comport with the Due Process Clause of the Fourteenth Amendment, voided the preliminary injunction, and instructed the trial court to dismiss all claims against Facebook. Pet. App. 16a–36a, 51a.[3]

a. With respect to general jurisdiction—a holding that Petitioner does not request this Court to review—the Alabama Supreme Court concluded that Facebook was not "at home" in Alabama, because it was not incorporated there, did not maintain its principal place of business there, and K.G.S. presented

[3] The reviewing court recognized as "well settled" that Alabama's long-arm rule, Rule 4.2 of the Alabama Rules of Civil Procedure (reproduced in full at Pet. App. 62a–65a) "extends the personal jurisdiction of Alabama courts to the limit[s] of due process under the United States and Alabama Constitutions." Pet. App. 15a (quoting *Hiller Invs., Inc. v. Insultech Grp., Inc.*, 957 So. 2d 1111, 1115 (Ala. 2006)). Moreover, the "due process guaranteed under the Alabama Constitution is coextensive with the due process guaranteed by the United States Constitution." *Id.* (citing *Ex parte Int'l Creative Mgmt. Partners, LLC*, 258 So. 3d 1111, 1114–15 (Ala. 2018)).

no evidence to prove otherwise. Pet. App. 17a–21a; *see also Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014).

b. Turning next to specific jurisdiction, the reviewing court relied on and quoted at length from this Court's decision in *Walden v. Fiore*, 571 U.S. 277 (2014), as guiding precedent. Pet. App. 22a–25a. The court observed that for specific jurisdiction, "the defendant's suit-related conduct must create a substantial connection with the forum State." Pet. App. 22a (quoting *Walden*, 571 U.S at 284). It focused especially on *Walden's* teaching that the "plaintiff cannot be the only link between the defendant and the forum," but "[r]ather, it is the defendant's conduct that must form the necessary connection with the forum State" for the assertion of specific jurisdiction. Pet. App. 24a (quoting *Walden*, 571 U.S. at 277, 285).

K.G.S. argued that Facebook intentionally aimed its conduct toward Alabama, causing harm to an Alabama citizen, and that its actions—including refusal to delete the page that "wholly pertained to an Alabama adoption," after learning of the harm it caused K.G.S. within Alabama—satisfied the effects-based test for specific jurisdiction that this Court set forth in *Calder v. Jones*, 465 U.S. 783 (1984). Pet. App. 26a.

The elements necessary for specific jurisdiction were satisfied, K.G.S. argued because, as alleged in the operative complaint, (1) Facebook committed an intentional tort (IIED or outrage); (2) Facebook's intentional conduct was expressly aimed at Alabama, as the Facebook page was filled with Alabama content centered around Alabama residents, Alabama's laws, and an Alabama adoption; (3) the brunt of the harm

caused by Facebook's intentional conduct was suffered in Alabama, by an Alabama resident, including in her relationships with other Alabama residents who read and commented on the page; and (4) Facebook knew the harm from its intentional conduct was likely to be suffered in Alabama. Pet. App. 26a–27a; *id.* at 73a (FAC ¶ 32); Record on Appeal, Vol. 2, 322.

Even though the general availability of the Facebook page—including its undisputed accessibility to users in Alabama—was a critical fact that precluded the exercise of general jurisdiction (because Facebook could not possibly be "at home" everywhere it was available, Pet. App. 20a n.9), the Alabama Supreme Court declined to consider "the general fact that the Facebook Web site and mobile application are available for users in Alabama to access," for purposes of specific jurisdiction. Pet. App. 27a n.11. The court reasoned that the Alabama-focused page's availability in Alabama was not pertinent to the specific jurisdiction analysis because it was not "*suit-related* conduct that was 'purposefully directed' to the forum." *Id.*

The reviewing court recited the facts in *Calder v. Jones*, 465 U.S. 783, at length and *Walden's* discussion of that case, 571 U.S. at 286–90. Pet. App. 27a–33a. It then determined that this case was closer to *Walden* than to *Calder*. Pet. App. 30a, 33a–35a. But in so doing, Alabama's highest court failed to consider Facebook's virtual contacts with the forum state through the page itself, a question expressly left open in *Walden*, 571 U.S. at 290 n.9.

The Alabama court thus concluded that Facebook's "suit-related conduct" was limited to the interchanges with K.G.S. and her attorney and was

precisely the sort of "unilateral activity" insufficient to satisfy minimum contacts under *Walden*. Pet. App. 35a. Without elaboration, the court stated that "to the extent that Facebook's failure to act to remove the Facebook page can be analyzed separately from the responses it sent to K.G.S. and her attorney, we can only conclude that this intentional conduct was expressly aimed at K.G.S. herself, and not at Alabama as a forum." Pet. App. 35a.

Disregarding the jurisdictional elephant in the room—Facebook's virtual contacts with Alabama residents by allowing the Alabama-focused page to continue to be accessed in Alabama (and the resulting reputational harm caused to K.G.S.)—the court concluded that the Fourteenth Amendment did not allow for the exercise of specific jurisdiction over Facebook, Pet. App. 36a, voided the preliminary injunction against Facebook, Pet. App. 36a; 51a, and ordered the trial court to dismiss all claims against Facebook with prejudice, Pet. App. 36a; 51a.

The Supreme Court of Alabama then denied rehearing, Pet. App. 60a–61a and upon remand, the Circuit Court of Jefferson County dismissed with prejudice all the claims against Facebook, Pet. App. 53a–54a. This petition followed.

REASONS FOR GRANTING THE WRIT

This case presents a recurring question of nationwide importance on an issue expressly left open by this Court in *Walden v. Fiore*, 571 U.S. 277 (2014). There, this Court—in response to arguments about unfairness that might arise from declining to find minimum contacts in the context of intentional torts "committed via the Internet or other electronic

means," noted that *Walden* did "not present the very different questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State." *Id.* at 290 n.9. *Walden* thus expressly left questions about virtual contacts "for another day." *Id.* That day has arrived.

Since *International Shoe*, this Court's teachings have recognized that the types of contacts that satisfy due process must evolve and adapt as technology advances. And as virtual contacts have expanded, so too have the opportunities for a defendant to reach into a state and cause harm without any physical presence. While the Information Age has transformed the ways that Americans do business and communicate with one another, this Court has yet to address the jurisdictional ramifications of that transformation.

In particular, in the absence of clear guidance from this Court, courts have struggled with what it means to "target[] the forum" in a world where conduct happens everywhere at once, but nowhere in particular. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 890 (2011) (Breyer, J., concurring, joined by Alito, J.).

Before *Walden* was decided, a fragile consensus had developed in the lower courts that intentionally tortious or infringing online content about a forum state and causing known harm within that state conferred jurisdiction, even if the publication was universally available online and not—other than its content—targeted at the forum state in any particular sense. That consensus reflected a straightforward application of this Court's print-media decision in *Calder* to electronic-media defamation and similar torts.

But after *Walden*, this consensus is eroding. In cases involving intentional misconduct carried out online, courts face a host of challenges in disentangling a defendant's contacts with a plaintiff alone (which are not sufficient) from a defendant's contact with the forum state (which are).

The wrong turns made by the Alabama Supreme Court here exemplify the disarray in the lower courts. Here, while acknowledging Facebook's broad virtual reach, Alabama's highest court gave that online accessibility zero weight in its specific jurisdiction analysis. Other courts, in contrast, have recognized that broad accessibility can actually support, not negate, a finding that a defendant purposefully targeted its (virtual) conduct toward a particular forum state. Those courts recognize that when a publication is globally accessible, its content alone can supply the necessary purposeful contacts with the forum state.

The Alabama Supreme Court, on the other hand, flatly rejected the proposition that targeted content on a globally-available website can be enough. That was wrong: Facebook's refusal to remove a page that was expressly aimed at Alabama—through its focus on an Alabama adoption, critique of Alabama law, showcasing of Alabama residents, and reputational harm in Alabama from Alabama Facebook users who read and commented on the page—was a jurisdictionally significant contact with the forum, even though the page was also viewable everywhere in the world.

This case also illustrates the need for clear rules. However this Court resolves the question, everyone involved—courts across the country, individuals

harmed by tortious or infringing online content, and the millions of individuals and businesses who engage in activity online every day and might find themselves subject to suit—need to understand where the boundaries of state authority lie. Does the expansive reach of virtual conduct provide a get-out-of-jurisdiction-free card because conduct that simultaneously occurs everywhere by definition is not targeted anywhere? Or should a defendant be subject to jurisdiction where it knowingly focuses the content of a tortious online publication on a particular state, even though the publication is simultaneously available everywhere and it makes no other particular effort to garner greater readership in that state than any other?

As Facebook's Chairman and CEO recognized before the Senate in recent testimony, the internet can be used to "give people a voice" but also to "hurt people or spread misinformation."[4] Where it is alleged that Facebook knowingly allowed its platform to spread a harmful and unlawful page—with knowledge that the page focused on a particular state, criticized and violated that state's laws, and caused harm in that state—it is critical that plaintiffs, states, and defendants alike know with certainty whether a court in that state can, consistent with due process, adjudicate that claim. This Court's intervention is

---

[4] *Facebook, Social Media Privacy, and the Use and Abuse of Data: Hearing Before the S. Comm. on the Judiciary and the S. Comm. on Commerce, Science and Transportation*, 115th Cong. 1 (2018) (statement of Mark Zuckerberg, Chairman and CEO, Facebook), https://www.judiciary.senate.gov/imo/media/doc/04-10-18%20Zuckerberg%20Testimony.pdf.

needed to answer *Walden's* open question and provide that clarity.

I. The Decision Below Presents An Important And Far-Reaching Question Of Federal Law Left Open By This Court.

This Court has long recognized that the jurisdictional inquiry is neither "mechanical [n]or quantitative." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Id.* This qualitative assessment of whether due process permits the exercise of personal jurisdiction focuses upon "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977); *see also Burnham v. Superior Court of Cal.*, 495 U.S. 604, 618 (1990) (plurality opinion) (*International Shoe* "cast ... aside" fictions of "consent" and "presence").

Changes in technology have long been part and parcel of this evolution towards relinquishing formalistic rules in favor of a more qualitative inquiry. More than half a century ago, this Court recognized that gains in "technological progress" can lead to a "similar increase" in the "need for jurisdiction over nonresidents"; that "progress in communication and transportation" has reduced the burden of defending a suit in a foreign tribunal; and that these trends explained the jettisoning of the rigid requirements of *Pennoyer v. Neff*, 95 U.S. 714 (1877), in favor of *International Shoe*'s more flexible approach. *Hansen v.*

Denckla, 357 U.S. 235, 250–51 (1958). Technological advances have thus, for decades, altered the stakes for personal jurisdiction by enhancing state interests in reaching the conduct of nonresident defendants and minimizing burdens for those haled into court outside of their "home" state. *See* Julie Cromer Young, *The Online-Contacts Gamble After* Walden v. Fiore, 19 LEWIS & CLARK L. REV. 753, 754 (2015) (hereinafter Young, *Online-Contacts Gamble*).

But this Court's personal jurisdiction jurisprudence has yet to join the Internet age, even as Justices have questioned how standards like "targeting the forum" can be applied given today's interconnected economy. *See Nicastro*, 564 U.S at 890 (Breyer, J., concurring, joined by Alito, J.); *see also id.* ("But what do those standards mean when a company targets the world by selling products from its Web site?").

In the absence of clear guidance from this Court, lower courts have plunged ahead, with some recognizing the modern reality that targeting a nationwide market can, at least in some circumstances, constitute targeting any particular state within that market and others, like the Alabama Supreme Court here, hewing to a more hidebound mode of analysis. *See infra* pp. 26–29. Lower courts have noted the Court's failure to "reconceive[] and rearticulate[]" "the due process concepts of personal jurisdiction … in light of advances in technology." *ALS Scan, Inc. v. Dig. Serv. Consultants, Inc.*, 293 F.3d 707, 713 (4th Cir. 2002). Laments are frequent "that this is an area in which the Supreme Court has not yet had the occasion to give clear guidance[.]" *Plixer Int'l, Inc. v. Scrutinizer GmbH*, 905 F.3d 1, 4 (1st Cir. 2018).

The time for that guidance has arrived. There can be no doubt that "[u]se of the internet for commercial ventures has steadily and exponentially grown since 1995, when the internet was untethered from a single National Science Foundation backbone." Young, *Online-Contacts Gamble*, at 754 & n.4. And, increasingly, virtual contacts are what connect us, as any observer of teenagers well knows. In the U.S., "adults spend more than 6 hours per day on digital media." Esteban Ortiz-Ospina, *The Rise of Social Media,* OUR WORLD IN DATA (Sept. 18, 2019), https://tinyurl.com/s3urrcn. Today, roughly seven in ten adults in the United States use Facebook. *See* John Gramlich, *10 Facts About Americans and Facebook*, PEW RESEARCH CENTER (May 16, 2019), https://tinyurl.com/y4apu58j.

Virtual exchanges provide an ever-more-attractive option for personal and business interactions in the United States. And just as constitutional limits to the reach of other state powers reflect technological advances, so too should due process constraints on the exercises of a state's adjudicatory authority. *See Wayfair*, 138 S. Ct. at 2097 ("[I]t [is] manifest that the physical presence rule as defined by *Quill* must give way to the 'far-reaching systemic and structural changes in the economy' and 'many other societal dimensions' caused by the Cyber Age.") (internal citation omitted); *see also* Allen Erbsen, *Personal Jurisdiction Based on the Local Effects of Intentional Misconduct*, 57 WM. & MARY L. REV. 385, 424–26 (2015) (hereinafter Erbsen, *Local Effects*) (discussing similarities in evolution of due process limits on personal jurisdiction and state taxing power).

Despite the ever-growing swath of interactions taking place online rather than in person—and the inevitable ever-growing stream of controversies generated by the virtual contacts that now permeate our lives—this Court has yet to resolve how to assess virtual conduct or presence for purposes of personal jurisdiction analysis—i.e., when and how virtual presence can be considered an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966)).

On the contrary, in *Walden*, the Court left for "another day" the "questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State," because there was "no question where the conduct ... took place," in that case. 571 U.S. at 290 n.9. And in *Nicastro*, 564 U.S. at 887, Justice Breyer (writing for himself and Justice Alito) cautioned against "announce[ment of] a rule of broad applicability without full consideration of the modern-day consequences" because that case did not present any of those issues. *Id.*

The five years since *Walden* have not improved the situation. As scholars have observed, and a panoply of cases demonstrate, "American courts are still virtually without guidance, left to determine for themselves the extent of *Walden*'s application to contacts that remain primarily online." Young, *Online-*

Contacts Gamble at 755; *see also* Erbsen, *Local Effects* at 415–16.[5]

In particular, the lack of guidance regarding the relevance of the effects of an intentional tortfeasor's conduct in the virtual realm has presented recurring problems. We call it the Information Age for a reason. And it is the information-based torts (copyright infringement, trademark infringement, defamation, invasion of privacy, unlawful disclosure, and so on) that have increasingly moved entirely online. The connections between the defendant's conduct, a defamatory article's content, the harmful effects on the plaintiff, and the forum state are relatively easy to articulate when a publisher physically circulates copies of a defamatory article within a state. *See Calder v. Jones*, 465 U.S. 783 (1984). In those circumstances, courts can comfortably say that "the 'effects' caused by the defendants' article—*i.e.*, the injury to the plaintiff's reputation in the estimation of the California public—connected the defendants' conduct to *California*, not just to a plaintiff who lived there." *Walden*, 571 U.S. at 288.

But what happens when a defendant can achieve precisely the same effects—harm to reputation in the

---

[5] A search for post-*Walden* cases addressing specific jurisdiction in the context of virtual contacts yielded, by conservative estimate, scores of decisions from the federal courts of appeals, state courts of last resort, and federal district courts. That so many cases have been generated since *Walden* was decided in 2014, but with no guidance from the Court for how to handle precisely the question that *Walden* left open, is strong reason to grant this petition. All the more so because *Walden* introduced more division into the lower courts regarding how to handle the issue, as detailed in Part II.

forum state—at the click of a button, merely by posting something simultaneously to the entire world? Then, can a court find that the harmful effects are the result of the defendant's conduct toward (or "in") the forum state? Or is the reputational injury merely connected to a plaintiff who lives there? The formal distinction between a defendant's contacts "with the forum State itself" and its contacts "with persons who reside there," *Id.* at 285—a distinction that drove *Walden's* jurisdictional analysis—blurs when all the contacts are electronic.

Walden expressly refused to address these issues because that case did not involve virtual conduct or presence. This Court's guidance is needed to answer the important question flagged in *Nicastro* and expressly left open in *Walden*, and to clarify that a defendant's virtual presence and conduct can sustain a state's authority to assert specific jurisdiction where, as here, the brunt of the injury is felt in the forum state and the substance of the alleged misconduct, as here, is centered around that forum.

II. This Case Presents A Recurring Question Which Has Confused And Divided The Lower Courts.

Jurisdiction is fairly clear in cases involving old media—the physical circulation of newspapers and magazines. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773–74 (1984) (finding a publisher's "regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine"). When a complaint involves the publication or dissemination of allegedly tortious or infringing

material on a website, however—even, or especially, one with millions of subscribers and a vast user base in every state—courts of appeals and state courts of last resort have struggled in the absence of clear guidance from this Court.

Courts are virtually unanimous that the mere accessibility in a state of a passive website that displays information not targeted to a particular state is not alone enough for specific jurisdiction. *See, e.g.*, *Plixer Int'l*, 905 F.3d at 8 (collecting cases); *ALS Scan*, 293 F.3d at 714 ("[A] person who simply places information on the Internet does not subject himself to jurisdiction in each State into which the electronic signal is transmitted and received."). Beyond that guidepost, however, a significant divide has emerged in the years following *Walden*.

A. Pre-*Walden*, a Fragile Consensus Held that Virtual Contacts Could Establish Specific Jurisdiction for Intentional Torts Involving Globally-Accessible, Forum-Focused Online Content.

Before *Walden*, the courts of appeals and state courts of last resort that considered the question appeared to accept that where an intentional tort was committed by means of a universally-accessible website, the online activity constituted minimum contacts with the forum state if the tortious or infringing page focused on the state or the plaintiff's in-state activities, or the defendant knew that the brunt of the harm would be suffered in the forum state, or some combination of these factors.

In the most jurisdiction-friendly camp, the Ninth and Eleventh Circuits rested jurisdiction solely on the

tortfeasor's intentional targeting of a particular plaintiff through a website accessible in the forum state, with knowledge that the plaintiff would suffer harm within that state. *See, e.g.*, *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1229 (9th Cir. 2011) (describing circuit law that "operating even a passive website in conjunction with 'something more'" can confer jurisdiction, and "something more" can turn on "whether the defendant 'individually targeted' a plaintiff known to be a forum resident") (internal citations omitted); *Licciardello v. Lovelady*, 544 F.3d 1280, 1288 (11th Cir. 2008) (finding jurisdiction based on website's infringement of copyrighted photo of Florida musician because the infringement was "an intentional tort, expressly aimed at a specific individual in the forum whose effects were suffered in the forum").

Other courts required some additional contact beyond knowledge (and intent) that harm would be suffered in the forum state. For example, the Tenth Circuit held in *Shrader v. Biddinger*, 633 F.3d 1235, 1244 (10th Cir. 2011), that "defamatory postings may give rise to personal jurisdiction if they … make the forum state the focal point of the message." *Id.* at 1244–45 (finding no jurisdiction where the forum state "was not the focal point of the email … either in terms of its audience or its content"); *accord Silver v. Brown*, 382 F. App'x 723, 729–30 (10th Cir. 2010) (holding jurisdiction could be exercised in New Mexico where a blog "was about a New Mexico resident and a New Mexico company," complained about "actions [that] occurred mainly in New Mexico," "the blog was widely available in New Mexico over the internet," and the

defendant "had knowledge that the brunt of the injury to [the plaintiff] would be felt in New Mexico").

Likewise, the Seventh Circuit held that jurisdiction was proper in Illinois where defendants used websites to defame an Illinois business, knowing that the plaintiff operated the business in Illinois and would be harmed there, listed his Illinois address, and urged readers to contact him there to complain. *Tamburo v. Dworkin*, 601 F.3d 693, 697–98 (7th Cir. 2010). But for a defendant that did nothing other than repost some defamatory messages, without either mentioning Illinois or knowing that the plaintiff's business operated there, jurisdiction did not lie. *Id.* at 698–99. Some state courts of last resort followed the same rule. *See, e.g.*, *Kauffman Racing Equip., LLC v. Roberts*, 930 N.E.2d 784, 795–96 (Ohio 2010) (holding minimum contacts satisfied where the defendant made defamatory statements online about the plaintiff's Ohio activities, harming plaintiff's reputation centered in Ohio, and there was evidence that at least five Ohioans read the postings).

Courts that rejected personal jurisdiction over virtual, intentional torts pre-*Walden* did not generally reject the content-plus-brunt-of-harm framework. Instead, they found jurisdiction impermissible where the allegedly tortious online content did not focus on the forum state, and therefore the only connection between the forum state and the tort was the happenstance of the plaintiff's residence, sometimes unknown to the alleged tortfeasor.

For example, in *Revell v. Lidov*, 317 F.3d 467 (5th Cir. 2002), the Fifth Circuit rejected Texas jurisdiction over a suit against the Massachusetts author of an allegedly defamatory article and the New York

provider of the online forum where the article was posted. *Id.* at 473. The court held that there was no specific jurisdiction in Texas because the article "contains no reference to Texas, nor does it refer to the Texas activities of" the plaintiff. *Id.* It did not draw on Texas sources and there was no indication that the article found a particular audience in Texas. *Id.* Indeed, the "[author] was apparently unaware that [the plaintiff] then resided in Texas." *Id.* at 469; *accord Cadle Co. v. Schlichtmann*, 123 F. App'x 675, 679 (6th Cir. 2005) (holding no jurisdiction in Ohio where defendant's website "specifically refers to [the plaintiff's] activities in Massachusetts" and "[n]either the site, nor any of its listed articles directly discuss [the plaintiff's] activities in Ohio"); *Griffis v. Luban*, 646 N.W.2d 527, 535–36 (Minn. 2002) (holding Alabama court lacked jurisdiction over a defamation claim where the online forum was "organized around the subjects of archeology and Egyptology, not Alabama or the University of Alabama academic community" and there was no evidence that anyone other than the plaintiff read the postings in Alabama).

There is some variation in results based on courts' differing assessments of whether location was central or incidental to the content of the tortfeasor's postings. *Compare Tamburo*, 601 F.3d at 697 (finding jurisdiction where defamatory web posting listed plaintiff's Illinois address), *with Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir. 2010) (holding that even though an allegedly defamatory posting twice referenced the location of a business, and the plaintiffs suffered reputation harm there, "the inclusion of 'Missouri' in the posting was incidental and not 'performed for the very purpose of having …

consequences' felt in Missouri" and therefore jurisdiction was not consistent with due process); *see also Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002) (holding Virginia lacked jurisdiction over defamation claim for articles published by Connecticut newspapers online that mentioned a Virginia warden's treatment of Connecticut prisoners where the "focus of the articles … was the Connecticut prisoner transfer policy and its impact … in Connecticut"). But the fragile consensus pre-*Walden* was that an intentionally tortious or infringing online publication focused on activities within a forum state and causing known harm within that state conferred jurisdiction, even if the publication was universally available online.

B. *Walden* Introduced Confusion and Eroded the Emerging Consensus.

Properly understood—especially given its express reservation of the "virtual contacts" question, 571 U.S. at 290 n.9—this Court's decision in *Walden* should not have disturbed this emerging consensus. Unfortunately, however, some courts have taken an expansive view of *Walden*'s scope, creating a new divide in authority and effectively rendering *Calder* inapplicable in the modern era. So even though *Walden* disclaimed any intent to address virtual contacts, its requirement that the defendant's ties be with the forum—not only the plaintiff—created division and confusion in the lower courts for virtual misconduct cases.

Those courts of appeals that had adopted a general rule permitting targeted harm to a known forum resident alone to satisfy due process for any

intentional tort—physical or virtual—properly recognized that *Walden* foreclosed such a blanket rule. *See, e.g.*, *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017) ("Following *Walden*, we now hold that while a theory of individualized targeting may remain relevant to the minimum contacts inquiry, it will not, on its own, support the exercise of specific jurisdiction."); *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 802 (7th Cir. 2014) ("Any decision that implies" a plaintiff can "be the only link between the defendant and the forum" "can no longer be considered authoritative" after *Walden*).

That is where the consensus ends. Some courts, such as the First, Second, and Ninth Circuits, have recognized that in a virtual contacts case, the website accessible in the forum state is itself a relevant contact—even if the site is available nationwide, and especially if it has an acknowledged user base in the state. Those circuits hold that the website, combined with known and foreseeable harm within the forum, is enough without some greater evidence of forum-state targeting. *See, e.g.*, *Plixer Int'l*, 905 F.3d at 8–9 (holding that serving U.S. market through an interactive website that accepted U.S. users and did not block web traffic from the U.S. was sufficient to confer jurisdiction over a trademark infringement suit against a German defendant even though the company targeted a global market without specific targeting of the U.S. market); *EMI Christian Music Grp., Inc. v. MP3tunes, LLC*, 844 F.3d 79, 98 (2d Cir. 2016) (approving specific jurisdiction in New York over largely free online music storage service because the executive was aware that the site had 400 users in

New York even though the website "served a national market, as opposed to a New York-specific market"); *Alpha Phoenix Indus., LLC v. SCI Int'l, Inc.*, 666 F. App'x 598, 600 (9th Cir. 2016) (holding defendants purposefully reached "into Arizona by posting allegedly defamatory statements about" an Arizona business with "intent to affect Plaintiff's business, which is based and operates in Arizona") (citing *Walden*, 571 U.S. at 285).

Consistent with this view, many state courts of last resort have continued to espouse the rule that online publication of content about the forum state or the plaintiff's forum-state activities satisfies minimum contacts for due process, even if the website is widely available. *See, e.g.*, *Harper v. BioLife Energy Sys., Inc.*, 426 P.3d 1067, 1075 (Alaska 2018) (holding online brochure did not create minimum contacts with Alaska because no "Alaska resident ever actually viewed the brochure online," it did not draw "on Alaska sources," and the author did not know "of any connection its brochure would have to Alaska"); *TV Azteca v. Ruiz*, 490 S.W.3d 29, 47 (Tex. 2016) (affirming "subject-and-sources test" but finding jurisdiction on other grounds).

Other courts, including the Seventh and Tenth Circuits, have issued decisions that effectively disregard any web activity that is nationwide in scope unless there is some evidence of targeted advertising of the website, or similar activity, in the forum state. In *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895 (10th Cir. 2017), for example, the Tenth Circuit rejected Colorado jurisdiction over a claim arising out of a subscriber's use in Colorado of allegedly defective maintenance manuals received through an online

subscription. *Id.* at 900–01. Among other reasons, the Tenth Circuit noted that the plaintiff had not proved the defendant advertised its manual-subscription program to Colorado, specifically (as opposed to nationally) and the manual subscriptions were equally available nationwide. *Id.* at 916–17. Similarly, the Seventh Circuit held that an interactive website available in Indiana that posted allegedly trademark-infringing material, coupled with infringing emails to lists that included Indiana customers and knowledge of the harm the infringement would cause in Indiana was not enough, without more, to satisfy due process. *Advanced Tactical Ordnance Sys., LLC*, 751 F.3d at 801. Because the defendant's interactive website was available nationwide, the Court concluded it evidenced no intent to target the Indiana market, but noted that "geographically-restricted online ads" might suffice to show targeting. *Id.* at 803.

The Alabama Supreme Court followed the latter model here, relying in part on the Seventh Circuit's decision, Pet. App. 27a n.11, and rejecting the decisions of other courts of appeals as swept away by *Walden,* Pet. App. 33a & n.12. Disregarding Facebook's Alabama user base, Pet. App. 27a n.11, and failing to recognize that the content of a page that "wholly pertained to an Alabama adoption," Pet. App. 26a, is itself a relevant contact, the Alabama Supreme Court reached a result that cannot be reconciled with the decisions described above that, even after *Walden*, continue to recognize that forum-state subject and sources are a relevant (and sufficient) contact satisfying due process.

III. The Alabama Supreme Court Erred By Its Overly Expansive Application Of *Walden* To Virtual Contacts, A Question That *Walden* Expressly Left Open.

Under a straightforward application of *Calder*, this case should have come out differently. The page that Facebook refused to take down, and continued to disseminate, was entirely about an Alabama adoption. Every key element described on the page was connected to Alabama: the birth mother, the adoptive mother, Baby Doe, the procedures followed and decisions issued by Alabama courts, and a purportedly unique (and much-criticized) aspect of Alabama law permitting pre-birth consent to adoption (described by the page as illegal in 48 states). Pet. App. 5a–6a; *id.* at 50a & n.18; *id.* at 71a (FAC ¶¶ 20–21); FAC, Exhibit A, at 5, Record on Appeal, Vol. 2, at 336. The videos on the page were taken in Alabama. Pet. App. 72a (FAC ¶ 25). Facebook disseminated the page widely in Alabama: it has users there, Pet. App. 9a; K.G.S.'s friends, family, and business associates saw the page, Pet. App. 73a (FAC ¶ 32); and K.G.S. received "hateful messages" in response to the page from numerous Alabama residents and organizations, Pet. App. 73a (FAC ¶ 30), including one that she should be "drug through the streets of Birmingham," Record on Appeal, Vol. 2, at 309. Facebook was given notice, moreover, that the information on the page was confidential under Alabama law and that its dissemination of the page was causing harm to K.G.S. in Alabama. Pet. App. 11a.

Put another way, the "story concerned the [Alabama] activities of a [Alabama] resident," the story centered on Alabama adoption laws and

procedures, the page "was drawn from [Alabama] sources, and the brunt of the harm, in terms both of [the plaintiff's] emotional distress and the injury to her … reputation, was suffered in [Alabama]. In sum, [Alabama] is the focal point both of the [page] and of the harm suffered." *Calder*, 465 U.S. at 788–89.

True, Facebook did not write the page. But it did review the page for compliance with its Community Standards, approved the page as compliant (reversing an initial decision), declined to remove the page, and continued to disseminate it using the Facebook platform, Pet. App. 6a—even after being given notice that the page did not comply with Alabama law and was causing harm in Alabama. *Cf. Calder*, 465 U.S. at 786 (holding California had personal jurisdiction over Florida editor who approved the subject of an article, edited it, and declined to print a retraction).

In *Walden*, the Court stressed that "the 'effects' caused by the defendants' article—*i.e.*, the injury to the plaintiff's reputation in the estimation of the California public—connected the defendants' conduct to *California*, not just to a plaintiff who lived there." 571 U.S. at 288. So, too here. The injury and emotional distress caused by disclosure of information kept confidential under Alabama law depends upon its disclosure to readers in Alabama, such as K.G.S.'s friends, neighbors, and business associates who viewed her in a different light after reading the page, Pet. App. 73a (FAC ¶ 32), just as the defamation tort in *Calder* depended upon reputational injury in California from the article's dissemination there, *Walden*, 571 U.S. at 287–88. True, the magazine at issue in *Calder* physically entered California and was circulated in print to approximately 600,000

Californians. *Calder*, 465 U.S. at 785. And given the nature of modern media, the page at issue here did not physically travel anywhere. But it was circulated virtually within Alabama, likely to a large number of Facebook's undisputed users within the state, Pet. App. 9a, many of which sent "hateful messages" to K.G.S. Pet. App. 73a (FAC ¶¶ 30–31).

The Alabama Supreme Court was thus wrong to woodenly conclude that contacts between Petitioner's attorney and Facebook were the only suit-related connection between Facebook and Alabama; and could be disregarded because they were not initiated by Facebook. Pet. App. 32a, 34a. Perhaps because *Walden* failed to address virtual contacts, the Alabama Supreme Court failed to consider the jurisdictional import of the page itself—which Facebook reviewed and made the decision to continue to disseminate. Petitioner is not arguing that jurisdiction lies in Alabama solely because of the happenstance of Petitioner's residence there—an avenue that *Walden* concededly forecloses. Petitioner is arguing that continued dissemination of a page all about Alabama—fed by Alabama sources and read and commented on by Alabama residents—with knowledge that the brunt of the injury would be suffered in Alabama, creates sufficient contacts to satisfy due process.

It is not as if the page addressed Petitioner's activities in another state—or even activities that occurred in Alabama but for which the Alabama location was irrelevant. *See Johnson*, 614 F.3d at 796 (finding insufficient contacts with Missouri where any mentions of the state were "incidental" to allegedly defamatory web posts). Rather, the page attacked

Petitioner's adoption of Baby Doe precisely *because* it occurred in Alabama, purportedly one of only two states to permit pre-birth consent to adoption. Moreover, one of the harms alleged was uniquely Alabamian, resulting from disclosure of information that Alabama protects as confidential. The location in Alabama is as central (if not more so) to the page that Facebook reviewed, refused to take down, and wrongfully continued to disseminate as the entertainment industry's California locus was to the tort at issue in *Calder*. *See Calder*, 465 U.S. at 788–89.

When the page's subject matter is properly considered, it becomes difficult to understand the Alabama Supreme Court's conclusion that Facebook's failure to remove the page was "intentional conduct … expressly aimed at K.G.S. herself and not at Alabama as a forum." Pet. App. 35a. Although the harm was suffered by K.G.S., the conduct of continuing to disseminate the page, given its subject matter, was at the very least aimed at Alabama readers as well as K.G.S. herself.

The Court's reasoning falls even wider of the mark in its refusal to consider Facebook's availability in Alabama. Pet. App. 27a n.11. First, Facebook is not merely "accessible" in Alabama; it has a base of users there who sign up for its service and are accepted (or not) by Facebook. Pet. App. 9a. Second, even if mere accessibility is not alone enough to satisfy minimum contacts—a point no one disputes—that does not make the availability of Facebook to Alabama readers wholly irrelevant to the jurisdictional inquiry, any more than "mere" availability on newsstands nationwide would make the circulation of an Alabama-focused article within Alabama irrelevant if this case

involved paper-based media. And, in any event, the complaint did not allege that the page was merely available to Alabama residents; it alleged that many of them read it and sent K.G.S. hateful messages in response. Pet. App. 73a (FAC ¶ 30).

Ultimately, and "[i]n 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 Dunlop Tires Operations,* 564 U.S. at 919 (quoting Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966)). Here, the Alabama-focused page lies at the very core of the controversy, and this Court should clarify that under such circumstances, jurisdiction is proper, even when the page was also available everywhere in the world.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Andrew P. Campbell
Yawanna McDonald
CAMPBELL PARTNERS

Ruthanne M. Deutsch
Counsel of Record
Hyland Hunt
DEUTSCH HUNT PLLC

Counsel for Petitioner

January 2020