

No.

In the Supreme Court of the United States

DENNIS A. REID,

Petitioner,

v.

ALENIA SPAZIO, S.P.A. AND FINMECCANICA, S.P.A.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Texas-based USRT developed a plan to commercialize Russian satellite orbital slots. Alenia, a foreign company, valued that plan at \$5 billion and agreed to be USRT's joint venture partner to implement it. Alenia led USRT to believe the project was going forward as planned, but in reality, Alenia was developing its own plan to implement the project without USRT. Then, in concert with others, Alenia did precisely that: usurping the entire business opportunity USRT had created while transforming USRT into a shell of a business with no remaining operations of its own. Separately, but during the same time period, Alenia maintained a constant business presence in Texas at the request of other parties under lucrative service agreements it had entered, including one worth \$300 million.

The question presented is whether the Constitution permits Texas to assert personal jurisdiction over Alenia in litigation arising from Alenia's breach of fiduciary duty and participation in a conspiracy to oust USRT from the joint venture. In the present case, this question embraces three issues that have divided lower courts regarding the proper way to assess a defendant's forum contacts when deciding issues of personal jurisdiction:

1. Whether courts may ignore a defendant's imputed or actual participation in a conspiracy to harm a forum business.
2. Whether courts may weigh a defendant's forum contacts in isolation from each other.
3. Whether courts may ignore a defendant's voluntary business activities in a forum because another party initially chose the forum as the site for those activities.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dennis A. Reid respectfully petitions for a writ of certiorari to review the judgment of the Fourteenth Court of Appeals of Texas.

OPINIONS BELOW

The order of the district court denying respondents' special appearance (App. 32-33) is unreported. The opinion of the court of appeals reversing the district court's order (App. 1-30) is reported at 130 S.W.3d 201, and the associated judgment (App. 31) is unreported.

PARTIES TO THE PROCEEDING

The caption includes the names of all parties in the court of appeals. In addition, petitioner derivatively represents two companies: U.S. Russian Telecommunications, LLC and its parent, USRT Holdings, LLC (which has no parent). No publicly-held company owns 10% or more of either company.

JURISDICTION

The court of appeals entered judgment on December 23, 2003. App. 31. Petitioner filed a timely motion for rehearing or en banc consideration, which was denied on April 8, 2004. App. 34-35. Petitioner filed a timely petition for review with the Supreme Court of Texas, which was denied on August 26, 2005. App. 36. Petitioner filed a timely motion for rehearing, which was denied on March 10, 2006. App. 37. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a). See *Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984) (holding that an interlocutory state court judgment is "final" under § 1257 if, on the relevant federal issue, the judgment is final and not subject to further state court review).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part that "[n]o State shall * * * deprive any person of life, liberty, or property,

without due process of law * * * .”

STATEMENT

A. Facts Supporting Specific Jurisdiction.

In 1995, Texas scientist Dr. Valery Aksamentov learned from his contacts in the Russian space industry that Russia could not afford to replace several of its geosynchronous satellites that were becoming obsolete. As a result, Russia was at risk of losing valuable international rights to the orbital slots associated with these satellites. Recognizing that this presented an unusual business opportunity, Dr. Aksamentov explained to the Russian government how a partnership with private interests could enable it to keep its orbital slots and obtain new satellites by leasing a portion of the satellites’ capacity to commercial interests. SCR 66-68.¹

Encouraged, Russia enacted legislation allowing this concept to proceed, and Dr. Aksamentov established U.S. Russian Telecommunications, LLC (“USRT”) to coordinate the financing, leasing, and operation of new Russian satellites. *Id.* at 67-68. As found by the court of appeals (App. 11-12), USRT’s principal place of business was Texas from its inception until August 1999, when its business operations effectively ceased. See *infra* at 5 (explaining ultimate termination of USRT’s active managers).

After its formation, USRT sought a financial partner for the satellite project. One of the first entities that expressed interest was the Italian government. To facilitate discussions, the government designated Giorgio Capra, an advisor to its Ministry of Defense, to serve as a project liaison with USRT. Capra was assisted in this role by another Italian, Vincenzo Davide Siniscalchi. CR 5.

Although the government was interested in financing the project, it wanted an Italian company to be involved. Capra

¹ The district court clerk’s record is cited as CR #, and the supplemental clerk’s record is cited as SCR #.

introduced USRT to respondent Alenia Spazio, S.p.A., a major player in the worldwide space industry, who also conducted substantial business at the Johnson Space Center in Houston, Texas. CR 5; SCR 450; *infra* Part B. At the time, Alenia Spazio was a division of respondent Finmeccanica, S.p.A., which in turn was owned by the Italian government. SCR 69-70, 175-76, 450. This petition refers to respondents collectively as “Alenia.”

In December 1997, USRT presented its confidential business plan to Alenia, who agreed to be USRT’s joint-venture partner and promised to obtain government financing for the project. SCR 63, 69-71, 78.

Shortly thereafter, in January 1998, Alenia’s representatives traveled to Texas to meet with USRT, negotiate additional terms for the joint venture, outline the parties’ rights and responsibilities, and develop a plan of action. Alenia subsequently discussed and negotiated other aspects of the joint venture through calls and correspondence with USRT in Texas. SCR 70-72, 81, 91-92, 95-96, 105, 108-10, 180-83, 307, 367.

Alenia estimated that revenues for the project’s initial phase would be \$5 billion. Based on the parties’ agreements, USRT’s share would have been \$1.5 billion, which reflected USRT’s contribution to the venture in terms of formulating the original concept and putting the deal together, among other things. SCR 68, 70-71.

Things appeared to be going as planned, but in hindsight, Alenia’s initial promises were a way to lull USRT into curtailing further search for project financing while Alenia learned the details of USRT’s confidential plan and developed a scheme to convert that plan for itself. To that end, Alenia engaged in various delay tactics while maintaining a superficial commitment to the project. First, Alenia engaged USRT in repeated negotiations of subsidiary agreements as a precursor to project financing. SCR 32-37, 39-42, 44-47, 49-

55, 57-61.² Then, when financing still was not forthcoming, Alenia loaned USRT \$50,000 to cover interim operating expenses as an apparent show of good faith. *Id.* at 19, 74, 108-10. Finally, during that summer, project liaison Capra and his assistant Siniscalchi began suggesting to USRT that the Italian government might be more willing to provide project financing to Alenia if USRT was owned in name by an Italian. By the fall, this suggestion became an ultimatum. *Id.* at 71.

Given a lack of other financing options at this stage and a fear that Russia might give the project to others if USRT did not come through, USRT's owners eventually agreed to transfer the company's shares to a holding company owned by Capra in exchange for a \$300 million stake in USRT's future revenues, to be paid from the first revenues earned from the project. SCR 377.

Although USRT's ownership structure had changed, the company retained certain key managers, including Dr. Ak-samentov, who became USRT's Chief Operating Officer for Russian Affairs, and Jon Reed, a former manager who became USRT's President. Also at that time, petitioner Dennis A. Reid became USRT's Chief Financial Officer. In addition, both he and USRT's President received a minority interest in the holding company itself. SCR 66, 123, 137.

Despite the change in ownership, USRT still appeared to be positioned to earn substantial fees from the satellite project for its former and current owners. Unfortunately, however, the "required" sale of USRT to obtain project financing

² One of those agreements provided that disputes arising in connection with it would be subject to arbitration in England. SCR 53-54. An enforceable arbitration clause would be a relevant fact in any minimum-contacts analysis, but Alenia did not seek a finding that the clause was enforceable in the trial court and disclaimed that the present dispute was subject to mandatory arbitration by contending that the cited agreements were "precontractual" and not "binding" and that the appropriate forum for this dispute was not in a chosen arbitral forum, but rather in Italy. CR 78, 184, 195.

had been the first step in Alenia's plan to prevent USRT from earning any project fees. Specifically, after distancing most of USRT's former owners and management from further control of the company, Alenia offered USRT's remaining management a \$20+ million kickback to transfer USRT's satellite project rights to Alenia. SCR 124-25.

Such a deal would have been personally lucrative for the individual managers, but it was not in USRT's best interests because it would prevent USRT from earning satellite revenues for itself or its former owners, who were owed "best efforts" on the \$300 million obligation described above. Consequently, both USRT's President and its CFO refused to participate in Alenia's plan. Given Capra's majority ownership of the new holding company, their resistance ultimately proved futile, and in the fall of 1999, Capra had them fired by Siniscalchi, who had become USRT's Chief Operating Officer. SCR 123-25, 377.

Alenia still owed joint-venture obligations to USRT, but it was now free, at least as a practical matter, to usurp the business opportunity USRT had created because USRT's remaining management (Capra and Siniscalchi) was loyal to Alenia rather than USRT. To that end, Alenia proceeded to commercialize Russian satellites slots without USRT, launching the first satellite in late 1999. Since then, several additional satellites have been or are planned to be launched in accordance with USRT's original plan, to the substantial detriment of USRT and its former and present owners, including petitioner. SCR 125, 276.

B. Facts Supporting General Jurisdiction.

Before the events giving rise to this dispute, Alenia contracted to perform ongoing activities and services at the Johnson Space Center in Texas in connection with Alenia's work on the International Space Station. SCR 196-99. Alenia's primary contract was a \$300 million agreement with the Italian Space Agency ("ISA"), which Alenia characterized as one of its "most important" contracts. *Id.* at 258. Under that contract, Alenia agreed to maintain a "continuous and constant

presence” at the Johnson Space Center in Texas. *Id.* at 454. Alenia met this obligation by stationing certain employees in Texas on a permanent basis. *Id.* at 306.

In addition to those permanent Texas employees, Alenia sent numerous other employees to Texas to perform work related to the International Space Station, both under the ISA contract as well as multi-million dollar contracts it had with the European Space Agency and a German company. SCR 197-99. Specifically, between 1998 and 2002, Alenia sent over a hundred employees to Texas for individual stays averaging between one and three weeks each to support Alenia’s work on the International Space Station. *Id.* at 298-306, 322-33. Finally, to support Alenia’s work in Texas during this time, sixty Alenia employees regularly directed phone, fax, mail, or email communications to individuals at the Johnson Space Center in Texas. *Id.* at 306-18, 335-40, 342-52.

C. Procedural History.

In March 2002, petitioner filed suit on behalf of USRT in Texas district court, raising derivative claims against Alenia, Capra, and Siniscalchi, including claims for civil conspiracy and breach of fiduciary duty. Capra never appeared and Siniscalchi was non-suited because of a bankruptcy. Alenia challenged personal jurisdiction by a special appearance, which the trial court heard and denied. CR 2-14, 15, 66, 180; App. 32-33.

In a divided opinion, the court of appeals reversed. The majority first considered whether Alenia had established minimum contacts with Texas to support the assertion of specific jurisdiction. App. 8-18. On that front, the court held that several of Alenia’s Texas contacts did not support jurisdiction because none standing alone was enough to establish minimum contacts:

- Alenia’s formation of a joint venture with USRT, a Texas business, did not support jurisdiction because “[c]ontracting with a Texas entity alone does not satisfy the minimum-contacts requirement.” App. 13.

- Alenia’s project-related communications directed at USRT in Texas did not support jurisdiction because “numerous telephone and facsimile communications with people in Texas relating to an alleged contract do not establish minimum contacts.” *Ibid.*
- Alenia’s loan of funds to USRT did not support jurisdiction because “sending funds to Texas is not determinative.” *Ibid.*

In addition, the court held that Alenia’s in-state negotiations of a subsidiary agreement with USRT did not support jurisdiction because it had been superseded by a later agreement. App. 14. As to all of these Texas contacts, the court held that the same analysis applied regardless of which substantive claim was at issue. *Id.* at 14 n.10.

The court then held that Alenia’s launch of a satellite without USRT in late 1999 did not support jurisdiction. App. 15-16. The court reasoned that, even if Alenia’s pursuit of the satellite project was a breach of fiduciary duty, it had not occurred in Texas, and the associated harm to USRT had not been directed at Texas because the launch occurred after USRT’s Texas operations ceased in August 1999. *Ibid.*

The court also held that specific jurisdiction could not be based on Alenia’s participation in a conspiracy to oust USRT from the joint venture. On that front, the court acknowledged that Alenia’s proposed kickback to USRT’s management was arguable evidence of a conspiracy, App. 4, 15-16, but held that such a conspiracy was irrelevant because:

- Alenia’s conspiratorial conduct did not occur in Texas (App. 16);
- the conduct of Alenia’s co-conspirators could not be imputed to Alenia (*id.* at 15-16), citing *National Industrial Sand Association v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995) (orig. proceeding), for the proposition that an “alleged co-conspirator’s contacts with Texas cannot be counted as contact[s] of other alleged co-conspirators”; and

- Alenia’s *own* participation in a conspiracy to harm a Texas business could not be used to establish specific jurisdiction. App. 16 n.12 (rejecting proposition that “a defendant who participates in a conspiracy known to impact Texas has satisfied the requirements for specific jurisdiction”).

The court next considered the question of general jurisdiction. App. 18-25. It acknowledged that a defendant’s maintenance of “a permanent general business office through which it solicits business in Texas * * * weigh[s] strongly in favor of general jurisdiction,” but held that Alenia did not maintain such an office in Texas because it did not use its office at the Johnson Space Center “to promote or market its goods or services in Texas[] or for any purpose other than supporting the Space Station Project.” *Id.* at 21.

The court then considered Alenia’s in-state activities under the service agreements it had with foreign entities. App. 22-25. The court recognized that Alenia knew in advance that it would have to perform work *in* Texas under those agreements. Yet it held that Alenia’s resulting Texas presence did not support general jurisdiction because a third party, rather than Alenia, had initially chosen Texas as the site for Alenia’s services. *Ibid.*

Finally, the majority held that asserting personal jurisdiction over Alenia would be unreasonable given traditional notions of fair play and substantial justice. App. 25-29. It concluded that Texas had no significant interest in the dispute because USRT had had no Texas operations since August 1999. *Id.* at 27. The court also found that some witnesses were not in Texas; that litigation in Texas would burden Alenia; that a Texas judgment for the plaintiff might not be effective relief because it might not be honored in Italy; and that asserting jurisdiction would raise foreign-relations concerns given the multinational nature of the satellite project. *Id.* at 28.³

³ Petitioner submits that the court of appeals’ fair play analysis was

Justice Edelman dissented from the court of appeals' judgment but did not file a written opinion. App. 30. The court of appeals denied petitioner's motions for rehearing and en banc consideration. App. 34-35. The Supreme Court of Texas denied petitioner's petition for review and motion for rehearing. App. 36-37.

APPLICABLE LEGAL STANDARD

Under the Due Process Clause, state courts may assert personal jurisdiction over a nonresident defendant if the defendant has established "minimum contacts" with the state

erroneous, but that issue is not further discussed herein because it does not implicate a conflict of authority among lower courts on the underlying legal standard and, as such, does not provide a substantial basis for this Court's review. Even so, it is important to note that the court of appeals' fair play determination is not a basis to deny review because it does not independently support the court's judgment. This is because the proper resolution of the fairness issue depends as a threshold matter on a correct resolution of the minimum contacts question. For example, a defendant's burden of proving that jurisdiction is unfair is significantly heightened once minimum contacts are found. See *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 114 (1987) ("When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant."); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985) ("[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable."). As such, if this Court grants the petition and ultimately holds that the court of appeals erred in failing to find minimum contacts, the fairness issue would need to be re-assessed, either by this Court or the court of appeals on remand. If this petition is granted, petitioner will brief the fairness issue since this Court could address it as fairly included in the question presented: "[W]hether the Constitution permits Texas to assert personal jurisdiction over Alenia * * * ." *Supra* at I.

and “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’ ” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The federal “minimum contacts” standard is at issue here because the personal jurisdiction of Texas state courts extends to the limits of federal due process. See *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

Under federal law, a defendant establishes minimum contacts with a forum when it “purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotations marks omitted). Such “purposeful availment” occurs when a defendant deliberately conducts significant activities in the forum, creates continuing obligations with forum residents, or intentionally targets forum residents through tortious out-of-state activity. See *id.* at 475-76; *Calder v. Jones*, 465 U.S. 783, 789-90 (1984).

When conducting minimum contacts analyses, courts often use the concepts of “specific” and “general” jurisdiction. “Specific jurisdiction” denotes jurisdiction for a particular case. Such jurisdiction exists when litigation arises from or relates to the defendant’s minimum contacts. *Burger King*, 471 U.S. at 472-73. In contrast, “general jurisdiction” denotes jurisdiction for any case against a particular defendant. General jurisdiction exists if a defendant’s forum contacts are continuous and systematic, whether they relate to particular litigation or not. *Id.* at 473 n.15.

REASONS FOR GRANTING THE PETITION

USRT, a Texas business, developed an innovative plan to commercialize Russian satellite orbital slots. Alenia valued that plan at more than \$5 billion and agreed to be USRT’s joint venture partner to implement the plan and share in those revenues. Alenia’s subsequent actions suggested the venture would go forward as planned: Alenia traveled to Texas to negotiate a subsidiary agreement, directed project-related communications to USRT over a period of months as the par-

ties negotiated other subsidiary agreements, and loaned USRT operating funds to keep it going as project financing was continually delayed.

In reality, Alenia's forum and forum-directed actions were the first step in an orchestrated plan to usurp the entire business opportunity USRT had created – a plan that eventually turned USRT into an empty shell with no operations of its own, thereby leaving Alenia “free” to implement the satellite project without it.

Separately, but during the same time period, Alenia conducted continuous and systematic business *in* Texas under service agreements it had with foreign parties.

On these facts, the trial court found it could assert personal jurisdiction over Alenia, but a divided panel of the court of appeals reversed, holding that Alenia had not established minimum contacts with Texas to support specific or general jurisdiction.

The majority's holding was a foregone conclusion given its flawed analysis. In terms of specific jurisdiction, the majority examined Alenia's primary Texas contacts in isolation from each other and the litigation as a whole. Then the majority ignored Alenia's imputed and actual participation in a conspiracy to harm its Texas partner, USRT. This led the majority to excuse Alenia's ultimate breach of fiduciary duty because that breach conveniently occurred after the conspiracy had shut USRT down.

On the general jurisdiction issue, the majority ignored Alenia's continuous and systematic Texas contacts that arose under service agreements with other entities because a third party had chosen Texas as the worksite, even though Alenia's Texas presence nonetheless resulted from Alenia's voluntary decision to conduct business in the forum through activities that invoked the benefits and protections of Texas law.

As explained below, the court of appeals' analysis implicate multiple splits of authority concerning the proper way to assess a defendant's forum contacts in resolving questions of

personal jurisdiction. In addition, the court's analysis is facially unsound because it allows a foreign defendant to assume fiduciary obligations to a forum business, purposefully cultivate that relationship through forum and forum-directed activities, breach those obligations through actions that destroy the forum business, and separately conduct other substantial business activities in the forum, all without being called to the forum to account for its tortious conduct.

Because the court of appeals' decision implicates multiple splits of authority on recurring constitutional issues and does so in a way that leads to unsound results, this Court should grant the petition and reverse the court of appeals' judgment.

I. Appellate courts are divided on whether a defendant's imputed or actual participation in a conspiracy to harm a forum business supports specific jurisdiction.

A conspiracy commonly is defined as “[a]n agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement.” BLACK'S LAW DICTIONARY 329 (8th ed. 2004). In Texas, like most jurisdictions, “each co-conspirator [in a civil conspiracy] is responsible for the action of any of the co-conspirators which is in furtherance of the unlawful combination.” *Akin v. Dahl*, 661 S.W.2d 917, 921 (Tex. 1983); see, e.g., WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF Torts § 46, at 322-24 (5th ed. 1984). The imposition of liability for the unlawful acts of co-conspirators is based on the concept that, when an individual joins a conspiracy, he ratifies the prior acts of his co-conspirators and appoints them as agents for their future acts. As explained by Judge Learned Hand:

“When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made a ‘partnership in crime.’ What one does pursuant to their common purpose, all do * * * .”

Van Riper v. United States, 13 F.2d 961, 967 (2d Cir. 1926).

When litigation arises in connection with a conspiracy, that conspiracy provides two potential bases for establishing personal jurisdiction over a defendant conspirator. First, if the acts of the defendant's co-conspirators may be imputed to the defendant, those acts can increase the universe of forum and forum-directed contacts a court must consider in a minimum contacts analysis. See, e.g., *Textor v. Bd. of Regents*, 711 F.2d 1387, 1392-93 (7th Cir. 1983) (“The ‘conspiracy theory’ of personal jurisdiction is based on the ‘time honored notion that the acts of [a] conspirator in furtherance of a conspiracy may be attributed to the other members of the conspiracy.’ ”).⁴ Second, insofar as a defendant's *own* participation in a conspiracy represents intentionally tortious activity, that tortious conduct would support the assertion of personal jurisdiction in the forum where it occurred or where it was directed. See *Calder*, 465 U.S. at 789-90.

These two potential bases for jurisdiction are distinct because the first relies on concepts of agency to impute the actions of one conspirator to another, while the second focuses on the direction of a defendant's own intentionally tortious conduct. To see how these differences could arise in practice, consider a conspiracy between businesses in California and Texas whose object is to improperly obtain trade secrets from a New York business. Under an imputation theory, the acts of the California business in California could be attributed to the Texas business and provide a basis for jurisdiction over it in California. In contrast, under an actual participation theory, the Texas business's own role in the conspiracy could constitute intentionally tortious activity directed at New York and provide a basis for jurisdiction over it in New York. As next explained, lower appellate courts are divided on whether

⁴ Cf. *Burger King*, 471 U.S. at 479 n.22 (“[W]hen commercial activities are carried on in behalf of an out-of-state party those activities may sometimes be ascribed to the party [for personal jurisdiction purposes], at least where he is a primary participant in the enterprise and has acted purposefully in directing those activities.” (internal quotation marks and citations omitted)).

either of these bases for establishing personal jurisdiction comports with federal due process.

Imputation.—One circuit and the appellate courts of nine States have held that due process allows the imputation of a conspirator’s forum contacts to his co-conspirators. See *Textor*, 711 F.2d at 1392-93; *Mackey v. Compass Mktg., Inc.*, 892 A.2d 479, 487-92 (Md.), *petition for cert. filed*, 74 U.S.L.W. 3655 (U.S. May 10, 2006) (No. 05-1433); *Santa Fe Techs., Inc. v. Argus Networks, Inc.*, 42 P.3d 1221, 1233-34 (N.M. Ct. App. 2001); *Chenault v. Walker*, 36 S.W.3d 45, 53-54 (Tenn. 2001); *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582, 583-84, 586 (Fla. 2000); *Cameron v. Owens-Corning Fiberglas Corp.*, 695 N.E.2d 572, 577-78 (Ill. App. Ct. 1998); *Rudo v. Stubbs*, 472 S.E.2d 515, 517 (Ga. Ct. App. 1996); *Istituto Bancario Italiano SpA v. Hunter Eng’g Co.*, 449 A.2d 210, 225 (Del. 1982); *Reeves v. Phillips*, 388 N.Y.S.2d 294, 294 (N.Y. App. Div. 1976).

With one exception,⁵ each of the above cases imputed the forum contacts of one conspirator to a defendant co-conspirator, asserted personal jurisdiction over the defendant co-conspirator, and held that the assertion of jurisdiction comported with federal due process. See, e.g., *New Oji Paper*, 752 So. 2d at 585-86. There, the Supreme Court of Florida upheld the assertion of personal jurisdiction against a foreign defendant who had conspired with others to fix the wholesale price of thermal fax paper. *Ibid.* Although the plaintiff had not shown that the defendant had sold any paper in Florida at an inflated price, the court nevertheless held that jurisdiction was proper through imputation because the defendant’s conspirators had sold such paper in Florida. *Ibid.*

In conflict with the above cases, the Supreme Court of Texas, along with appellate courts in Washington and Cali-

⁵ *Mackey* held that imputation did not violate due process but had no occasion to actually impute contacts to a defendant because the court’s jurisdiction had been invoked solely to answer a question of state law certified by a federal district court. 892 A.2d at 481.

fornia, have rejected the imputation theory as inconsistent with federal due process. See *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769 (Tex. 1995) (orig. proceeding); *Hewitt v. Hewitt*, 896 P.2d 1312, 1315-16 (Wash. Ct. App. 1995); *Kaiser Aetna v. Deal*, 86 Cal. App. 3d 896, 901 (Cal. Ct. App. 1978).

Actual Participation.—Four state appellate courts have held that a defendant's participation in a conspiracy to harm a forum resident constitutes intentionally tortious conduct that can said to be "directed" at the forum:

- *Istituto Bancario Italiano SpA v. Hunter Eng'g Co.*, 449 A.2d 210, 225 (Del. 1982) ("[A] defendant who has so voluntarily participated in a conspiracy with knowledge of its acts in or effects in the forum state can be said to have purposefully availed himself of the privilege of conducting activities in the forum state, thereby fairly invoking the benefits and burdens of its laws.").
- *Santa Fe Techs., Inc. v. Argus Networks, Inc.*, 42 P.3d 1221, 1233-34 (N.M. Ct. App. 2001) (following *Istituto Bancario Italiano*, 449 A.2d at 225).
- *Rudo v. Stubbs*, 472 S.E.2d 515, 517 (Ga. App. 1996) ("When the purpose of a conspiracy is to commit an intentional tort against a [forum resident], all of the co-conspirators are purposefully directing their activities toward [the forum] and should reasonably anticipate being haled into court here.").
- *Hunt v. Nev. State Bank*, 172 N.W.2d 292, 312 (Minn. 1969) ("[T]o suggest that it is unfair to require [the defendants] to respond to an action in this jurisdiction would seem to say that they may rely on our contract law to uphold the terms of lawful agreements but that they may not be required to defend an action based on injury to our citizens as a result of [the defendants'] unlawful agreement.").

In conflict, the Supreme Court of Texas has broadly held

that due process concerns prevent it from “recogniz[ing] the assertion of personal jurisdiction over a nonresident defendant based solely upon the effects or consequences of an alleged conspiracy.” *Nat’l Indus. Sand*, 897 S.W.2d at 773.

* * *

Both of the above splits are implicated here because the underlying facts (notably, the coerced sale of USRT by Capra and Siniscalchi, Alenia’s proposed bribe to USRT’s management, the termination of those managers who would not go along by Capra and Siniscalchi, and Alenia’s subsequent launch of a satellite without USRT) provide circumstantial evidence that these parties conspired to remove USRT from the joint venture, thereby breaching the fiduciary duties they owed to it.⁶ As such, in jurisdictions where a defendant’s own participation in a conspiracy may be used to establish personal jurisdiction, Alenia’s proposed bribe and subsequent pursuit of the satellite project without USRT would have been treated as tortious, forum-directed conduct that was relevant to the jurisdictional inquiry. Likewise, in jurisdictions where one conspirator’s actions may be imputed to his co-conspirators, the actions of Capra and Siniscalchi in terminating USRT’s loyal management and inducing the initial sale of USRT through false pretenses would have been imputed to Alenia, thus increasing the number of tortious, forum-directed contacts relevant to the jurisdictional inquiry.

The court of appeals agreed that Alenia’s proposed bribe to obtain USRT’s project rights provided arguable evidence of a conspiracy to oust USRT from the joint venture. App. 4, 15. Nevertheless, the court ignored this evidence of Alenia’s own participation in the conspiracy while USRT still had Texas operations based on its view that a defendant’s “participat[ion] in a conspiracy known to impact Texas” does not

⁶ Capra and Siniscalchi owed fiduciary duties to USRT as corporate officers, while Alenia owed such duties to USRT as its joint venture partner. See *Rankin v. Naftalis*, 557 S.W.2d 940, 945 (Tex. 1977).

serve as a basis to establish specific jurisdiction.⁷ *Id.* at 16 n.12. In addition, the court refused to impute to Alenia any acts of its co-conspirators (Capra and Siniscalchi) because the court believed it was precluded from doing so under *National Industrial Sand*. *Id.* at 15.⁸

These holdings greatly affected the court’s minimum contacts analysis. Most notably, they prevented the court from giving any weight to a key fact supporting specific jurisdiction: Alenia’s pursuit of the satellite project without USRT. In any other situation, such a breach of a fiduciary duty would provide a basis for jurisdiction all by itself.⁹ Here, however, the court viewed that breach as jurisdictionally irrelevant because it occurred *after* the conspiracy had shut down USRT.

⁷ The court of appeals noted that it is unknown whether Capra and Siniscalchi ever executed a formal transfer of USRT’s project rights to Alenia, App. 17, suggesting that the tortious character of Alenia’s conduct might depend on the existence of such a transfer. Such a suggestion is flawed, however, because Alenia’s conduct achieved the same result whether it induced Capra and Siniscalchi to execute a formal transfer or merely to refrain from asserting USRT’s project rights as Alenia pursued the project without it.

⁸ In its imputation analysis, the court of appeals discussed only one potential Texas contact involving Alenia’s co-conspirators (a phone call from Siniscalchi). App. 15. The court’s reliance on *National Industrial Sand*, however, makes clear that it also believed it was precluded from imputing to Alenia any Texas-directed contacts of Siniscalchi or Capra, which would include their coerced sale of USRT and termination of USRT’s loyal management.

⁹ See, e.g., *Burger King*, 471 U.S. at 473 (“[P]arties who reach out beyond one state and create continuing relationships . . . with citizens of another state’ are subject to regulation and sanctions in the other state for the consequences of their activities.” (internal quotation marks omitted)); *ibid.* (“A State generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” (internal quotation marks omitted)).

App. 17. But it defies common sense that Alenia can participate in a conspiracy to usurp the business opportunity developed by its Texas partner, yet incur no jurisdictional consequences so long as that overall scheme is not completed until its partner has been effectively silenced by the same conspiracy. If the court of appeals been able to given any weight to Alenia's actual and imputed participation in the conspiracy to oust USRT from the joint venture, such an unsound result would not have occurred.

Because the court of appeals' decision implicates two related but distinct due process issues that have divided appellate courts, this Court should grant this petition. Because parties like Alenia should not be able to disclaim the consequences of the conspiracies they participate in or the actions of their co-conspirators in furtherance of them, this Court should reverse the court of appeals' judgment.

II. Appellate courts are divided on whether a defendant's forum contacts may be weighed in isolation when assessing personal jurisdiction.

Appellate courts are divided on how to assess a defendant's forum and forum-directed contacts that relate to particular litigation. One method is to consider all such contacts collectively. At least four circuits follow this approach:

- *Mid-America Tablewares, Inc. v. Mogi Trading Co.*, 100 F.3d 1353, 1360-62 (7th Cir. 1996).

In *Mogi Trading*, a Japanese defendant traveled to Wisconsin for "preliminary discussions" with a potential customer, then sent follow-up faxes and product samples to it. *Id.* at 1361. In litigation concerning the parties' agreement, the Seventh Circuit found that these facts established minimum contacts because "[v]iewed collectively" they established that the defendant's "conduct * * * reflected a purposeful effort to obtain [the plaintiff's] business." *Ibid.* The court stressed that the defendant's trip to the forum "must be considered in conjunction with [the defendant's] other efforts toward obtaining [the plaintiff's] business." *Ibid.*

- *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1388 (8th Cir. 1995).

In *Northrup King*, a Spanish defendant attended meetings in Minnesota with the plaintiff and directed written communications to it regarding the sale of certain seeds. *Id.* at 1385-86. In litigation concerning those sales, the Eighth Circuit rejected the defendant's "attempt[] to treat each category of [its] numerous and significant communications separately":

"[A]lthough [the defendant] correctly notes that letters and faxes alone do not establish personal jurisdiction, in conjunction with other contacts they may support the exercise of personal jurisdiction. In determining whether there is personal jurisdiction, the courts consider the defendant's contacts with the forum in the aggregate, not individually; they look at the totality of the circumstances. * * * Although [the defendant] contends that the meetings in [the forum] and some of the letters had nothing to do with the subject matter of this litigation * * * they were an essential part of the course of dealing between the two companies that resulted in the [relevant] sales * * * . [T]hey show that [the defendant] purposefully availed itself of the privilege of conducting activities within [the forum] * * * by seeking out [the plaintiff] in [the forum], endeavoring to foster a continuation of the business relationship that [the defendant] enjoyed with the previous owner of [the plaintiff's line of business], including the purchase of [the product], and carrying out the transaction."

Id. at 1388-89 (internal quotation marks and citations omitted).

- *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1207-11 (9th Cir. 2006) (per curiam) (en banc), *cert. denied*, 74 U.S.L.W. 3599 (U.S. May 30, 2006) (No. 05-1302).

In *Yahoo!*, the California plaintiff received a cease-and-desist letter from a French defendant and was served in California with documents from a French lawsuit brought by that defendant. 433 F.3d at 1201-02. The defendant also had obtained interim orders from the French court purporting to enjoin aspects of the plaintiff's business in California. *Id.* at 1202-04. The plaintiff filed suit, seeking a declaration that the foreign orders were unenforceable. *Id.* at 1204. A majority of the en banc Ninth Circuit held that California could assert jurisdiction over the French defendant based on the court orders when "considered in conjunction" with the cease-and-desist letter and service documents. *Id.* at 1208. The court expressly held that neither the letter nor the service documents would have supported personal jurisdiction themselves. *Ibid.*

- *Polythane Sys., Inc. v. Marina Ventures Int'l, Ltd.*, 993 F.2d 1201, 1205-06 (5th Cir. 1993).

In *Polythane Systems*, the defendants were Maryland businesses who built marinas in Maryland using foam bought from the plaintiff, a Texas business. *Id.* at 1204. The litigation concerned the alleged defectiveness of the foam after the marinas collapsed in Maryland. *Ibid.* The plaintiff made the foam in Texas, transferred title to the foam in Texas when selling it to the defendants, and received payments from them in Texas. *Id.* at 1204-05. The defendants also had engaged a Texas business to apply the foam in Maryland. *Ibid.* The Fifth Circuit held that Texas had personal jurisdiction over the defendants because "[a]ggregating the [defendants'] contacts with Texas, it is clear that their connections were deliberate, rather than fortuitous, so that the possible need to invoke the benefits and protections of the forum's laws was reasonably foreseeable." *Id.* at 1206 (internal quotation marks omitted).

In contrast to this collective approach, several Texas appellate courts routinely consider a defendant's contacts in isolation from each other when assessing specific jurisdiction:

- *Magnolia Gas Co. v. Knight Equip. & Mfg. Corp.*,

994 S.W.2d 684, 691-92 (Tex. App.—San Antonio 1998, no pet.), *disapproved on other grounds by BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 n.1 (Tex. 2002).

In *Magnolia Gas*, the court concluded that out-of-state defendants who contracted with a Texas resident, sent payments to a Texas resident, and partially performed a contract in Texas “did not purposefully avail themselves of the benefits and protections of Texas law” because “[m]erely contracting with a Texas corporation does not satisfy the minimum contacts requirement,” “payments sent to the forum state are not determinative,” “minimum contacts may not be satisfied by merely engaging in communications with a Texas corporation during performance of the contract,” and “partial performance of a contract in Texas is not the *sine qua non* of personal jurisdiction.” 994 S.W.2d at 691-92.

- *TeleVentures, Inc. v. Int’l Game Tech.*, 12 S.W.3d 900, 908-12 (Tex. App.—Austin 2000, pet. denied).

This case concerned an agreement between a Texas plaintiff and an out-of-state defendant that was to be partially performed in Texas; in addition, the plaintiff had prepared a business summary at the defendant’s request “to serve as a marketing tool and to solicit and attract interest from third-party investors.” *Id.* at 904-05, 909. The court held that the defendant had not established minimum contacts because “merely contracting with a Texas corporation does not satisfy the minimum-contacts requirement,” “partial performance of a contract in Texas is not the *sine qua non* of personal jurisdiction,” and the defendant’s “request [for the business summary] does not establish jurisdiction.” *Id.* at 908-09 (internal quotation marks omitted).

The plaintiff also had argued that numerous phone, mail, and facsimile contacts between it and the defendant established minimum contacts. *Id.* at 910. The defendant “admit[ted] that decisions regarding the [parties’] project were made while in communication with” the Texas plaintiff, *ibid.*, but the court found these contacts insufficient to

establish jurisdiction. *See ibid.* (“Minimum contacts may not be satisfied by merely engaging in communications with a Texas corporation during performance of a contract.”).

- *Shell Compañia Argentina de Petroleo, S.A. v. Reef Exploration, Inc.*, 84 S.W.3d 830, 838-40 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

In *Reef Exploration*, the plaintiff asserted that Texas had personal jurisdiction over a foreign defendant in litigation concerning the defendant’s purchase of stock previously owned by the plaintiff. *Id.* at 834-35. The defendant had been a party to an agreement with Texas connections and had conducted related due diligence activities that had Texas connections, as well, but the court held that minimum contacts had not been established. *Id.* at 838-39. In so holding, the court considered the contacts arising from the agreement separately from those arising from the due diligence, *ibid.*, and then considered the due-diligence contacts separately from each other. *See id.* at 839 (“[P]ayments sent to the forum state are not determinative.”); *ibid.* (“[E]ngaging in negotiations with a party’s attorney is not enough to establish minimum contacts.”).

* * *

The court of appeals did not deny that Alenia had invoked the benefits and protections of forum law through several forum and forum-directed activities, including: (1) forming a joint venture with a Texas business, (2) directing project-related communications to a Texas business, (3) loaning funds to a Texas business, and (4) conducting business negotiations in Texas on an agreement related to the litigation. Nevertheless, as in the above Texas cases, the court of appeals weighed these contacts separately from each other and the rest of the litigation. As to (1), (2), and (3), the court held that none supported jurisdiction because none was sufficient, standing alone, to establish minimum contacts:

- “Contracting with a Texas entity alone does not satisfy the minimum-contacts requirement.” App. 13.

- “[N]umerous telephone and facsimile communications with people in Texas relating to an alleged contract do not establish minimum contacts.” *Ibid.*
- “[S]ending funds to Texas is not determinative.” *Ibid.*

The court then concluded that Alenia’s in-state negotiation of an agreement related to the joint venture was irrelevant because it was later superseded by another agreement between the parties. App. 14. If the prior agreement may be considered in a vacuum, such an analysis might make sense. Viewed in context, however, Alenia’s in-state negotiations further demonstrated its purposeful efforts to cultivate a fiduciary relationship with an entity it later betrayed. Moreover, those efforts in particular “enhance[d]” and “reinforced” Alenia’s affiliation with Texas given that they occurred *in* the forum. *Burger King*, 471 U.S. at 476, 482.

By viewing Alenia’s Texas contacts in isolation from each other and the rest of the litigation, the court of appeals contravened the underlying due process standard. The relevant question is not whether one of a defendant’s forum or forum-directed contacts establishes “minimum contacts” by itself. The question is whether a defendant should reasonably anticipate being called to the forum to defend itself in litigation related to its forum and forum-directed conduct. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). As recognized by the Fifth, Seventh, Eighth, and Ninth Circuits, that kind of determination requires a collective examination of a defendant’s contacts because the existence of multiple, related contacts increases and reinforces the foreseeability of litigation.

Here, by isolating Alenia’s forum contacts from each other and the litigation as a whole, the court of appeals cut down each tree while ignoring the forest: that Alenia repeatedly invoked the benefits and protections of forum law to develop a close relationship with a Texas business that it later betrayed. Viewed in that context, Alenia’s contacts provide a compelling basis for jurisdiction. See *Burger King*, 471 U.S. at 475-76 (“[W]here the defendant * * * has created ‘continu-

ing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." (citations omitted)).

Because the court of appeals' decision conflicts with the underlying due process standard, implicates the minority view of a longstanding split of authority, and leads to the unsound result that a foreign defendant need not defend itself in litigation related to its purposeful attempts to cultivate a joint-venture relationship with a partner it later betrays, this petition should be granted and the judgment below reversed.

III. Appellate courts are divided on whether a defendant's voluntary business activities in a forum may be ignored if a third party initially chose the forum.

A defendant establishes minimum contacts to support general jurisdiction if its contacts with a forum are "continuous and systematic." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16 & n.9 (1984). Alenia met this standard because it contractually agreed to maintain a "continuous and constant presence" in Texas under a contract worth \$300 million dollars and then fulfilled that obligation by stationing full-time employees in Texas. In addition, Alenia supported its "continuous and constant" Texas presence through hundreds of trips to Texas and out-of-state communications directed at Texas. By maintaining and supporting this in-state presence, Alenia purposefully availed itself of the privilege of conducting business in Texas on a continuous and systematic basis.

The court of appeals did not deny that Alenia's contacts were continuous and systematic but held they should be ignored because a third party, rather than Alenia, had chosen Texas as the site for the services Alenia had agreed to per-

form under its service contracts.¹⁰ App. 22. The court reasoned that, although Alenia knew in advance that its contractual performance required work in Texas, *ibid.*, the third party's choice of Texas somehow transformed Alenia's subsequent in-state conduct into "unilateral third-party activity" that cannot be considered in a minimum contacts analysis. See *Burger King*, 471 U.S. at 474 ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." (internal quotation marks omitted)).

The court of appeals' holding profoundly distorts an otherwise sound principle. Properly understood, the unilateral activity principle just means that a third party's forum contacts cannot be attributed to the defendant if there is only a unilateral relationship between the third party and the defendant. For example, if a California resident travels to Texas and, out of the blue, calls a Michigan resident, the call would be a Texas contact for the California resident, but it would not be a Texas contact for the Michigan resident because it resulted from the unilateral actions of the California resident.

In contrast, assume the California resident offered to pay the Michigan resident to do work in Texas and the Michigan resident voluntarily agreed to do so. The California resident's choice of Texas as the worksite could still be classified as "unilateral third-party activity," but the Michigan resident's subsequent work in Texas would not. It would not be third-party activity because it would be the first-party actions of the Michigan resident himself. It would not be unilateral because it would have resulted from the Michigan resident's

¹⁰ The court also found that Alenia did not solicit business from Texas residents through a Texas office. App. 21. That holding does not independently support the court of appeals' judgment, however, because a defendant may invoke the benefits and protections of a forum's law on a continuous and systematic basis by doing substantial business in the forum, regardless of whether it solicits business from forum residents. See *Burger King*, 471 U.S. at 475-76.

voluntary decision to create a bilateral agreement by accepting an offer of work from another.

To be sure, this suggests that a foreign defendant must accept certain jurisdictional consequences when it voluntarily assumes obligations that require it to work in a forum chosen by another. But that makes sense: by voluntarily working *in* the forum, the defendant necessarily invokes the benefits and protections of the forum's law – regardless of who initially chose the forum – so long as the defendant's presence in the forum is ultimately a result of its own voluntary decision to enter such an agreement. Any other view would let a foreign defendant establish a continuous and systematic business presence in a forum for its own financial gain and accept the benefits and protections of forum law, yet avoid any jurisdictional consequences for its activities by claiming that a voluntarily-entered contract was the “unilateral” reason for its being there.

Such an unsound interpretation of the unilateral activity principle has been correctly rejected by five circuits:

- *Mesalic v. Fiberfloat Corp.*, 897 F.2d 696, 700-01 (3d Cir. 1990).

In *Mesalic*, the plaintiff sued an out-of-state manufacturer for breach of contract involving the purchase of a boat. *Id.* at 697-98. The Third Circuit held that the defendant's visit to the forum was not unilateral activity even though it had been requested by the plaintiff:

“We conclude that the fact that [the defendant] delivered the boat to [the forum] and repaired the vessel in [the forum] as an accommodation to [the plaintiff] does not preclude such contacts from being sufficient minimum contacts to establish personal jurisdiction. * * * While the contract between the parties may not have obligated [the defendant] to deliver and repair the boat in [the forum], nonetheless they did. * * * This conduct – accommodating the buyer – is not surprising in view of today's commercial realities.”

Id. at 700.

- *Myers v. John Deere Ltd.*, 683 F.2d 270, 272 (8th Cir. 1982).

In *Myers*, a Canadian defendant loaded a wooden pallet onto a train bound for Iowa. *Id.* at 271. In North Dakota, the pallet collapsed and injured a customs inspector, who sued the defendant. *Ibid.* In upholding jurisdiction over the defendant in North Dakota, the Eight Circuit rejected the defendant's argument that the presence of the pallet in North Dakota had been the "unilateral activity" of another, for even if the defendant did not control the train's route, it knew the train was going through North Dakota and could have made other shipping arrangements if it did not want its pallet to travel through that forum. *Id.* at 272.

- *Trinity Indus., Inc. v. Myers & Assocs., Ltd.*, 41 F.3d 229, 231 (5th Cir. 1995).

In *Trinity Industries*, the Fifth Circuit held that Texas could assert jurisdiction over an out-of-state law firm in an action by a Texas client. *Id.* at 230. Although the Texas client unilaterally solicited the services of the law firm (and thus unilaterally determined that the law firm's obligations would attach in Texas rather than elsewhere), the Fifth Circuit held that this did not prevent the law firm's representation of the client from being a relevant Texas contact:

"That [the plaintiff] initially solicited the services of the [defendant] firm does not change this result. Although personal jurisdiction does not lie when the defendant cannot control vulnerability to suit, the defendants at bar voluntarily assumed and continued the obligation of representing the Texas client."

Id. at 231.

- *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 128-29 (2d Cir. 2002).

As in *Trinity Industries*, the defendant in *Bank Brussels Lambert* was an out-of-state law firm that agreed to represent

a forum resident. 305 F.3d at 123. In finding personal jurisdiction over the defendant, the Second Circuit rejected the argument that the defendant’s New York representation was “unilateral activity” because, among other reasons, it was a relationship “the firm voluntarily undertook.” *Id.* at 128-29.

- *Madison Consulting Group v. South Carolina*, 752 F.2d 1193, 1204 (7th Cir. 1985).

In *Madison Consulting Group*, the plaintiff agreed to perform consulting services for the defendants and then performed them in Wisconsin. *Id.* at 1195. The court treated the plaintiff’s performance as a relevant Wisconsin contact of the defendants because that location had been “contemplated by the defendants at the time of contracting.” *Id.* at 1204. In so holding, the court rejected the argument that the plaintiff’s actions should be considered unilateral activity. See *id.* at 1206 (Swygert, J., concurring in judgment).

In conflict with the above cases is the court of appeals’ view that the unilateral activity principle reaches all acts performed in the forum at the behest of a third party, even those performed by the defendant himself. As explained above, this view represents an unsound distortion of the underlying due process principle. Moreover, this erroneous view is entrenched in Texas jurisprudence. See *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 809 (Tex. 2002) (“[The defendant’s] attendance at * * * five Texas conferences does not support the exercise of general jurisdiction. The record reflects that the scientific community, not [the defendant], selected the conference locations.”); *Reyes v. Marine Drilling Cos.*, 944 S.W.2d 401, 404-05 (Tex. App.—Houston [14th Dist.] 1997, no writ) (finding no minimum contacts where the defendant “sent representatives to companies in Texas when visits were necessitated by [third-party] contractual obligations to the federal government”); *Conner v. ContiCarriers & Terminals, Inc.*, 944 S.W.2d 405, 417-18 (Tex. App.—Houston [14th Dist.] 1997, no writ) (plurality op.) (ignoring fact that defendant operated barges that traveled to Texas because “barge loads only go to Texas upon

customer request”). In addition, the Florida court of appeals has similarly misconstrued the unilateral activity principle in a case nearly identical to *Conner*. See *Am. Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1126-30 (Fla. Dist. Ct. App. 1994).¹¹

Because the court of appeals ignored Alenia’s continuous and systematic activities in Texas on an unsound basis that implicates a longstanding split of authority on the scope of an important due process principle, this Court should grant this petition and reverse the court of appeals’ judgment.

IV. This case presents a good vehicle for resolving these conflicts of authority.

Since *International Shoe*, personal jurisdiction has become one of the most litigated issues in state and federal courts. See Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 531 (1995). One explanation for this litigation boom is that the standards for assessing minimum contacts are neither clear nor easy to apply. This case presents a good vehicle to help clarify some of those standards because the court of appeals’ judgment implicates the minority view on multiple, long-standing conflicts of authority. In addition, the fact that both the trial court and one member of the appellate panel determined that Texas could assert jurisdiction over Alenia suggests that a resolution of any one of these issues in petitioner’s favor is likely to be outcome determinative.

Petitioner notes that another pending petition raises the imputation issue, see *Mackey v. Compass Mktg., Inc.*, No. 05-1433, which further demonstrates the recurring importance of that particular question. The present case presents a better vehicle for this Court, however, because it implicates addi-

¹¹ The relevant customer in *Patterson* was the U.S. military rather than a private party, but that does not change the analysis because in both *Patterson* and *Conner*, the defendant boat operators apparently had agreed to take their boats wherever customers requested.

tional due process issues that have divided lower courts. In addition, because *Mackey* arises from a federal district court's certification of a state law issue to a state supreme court, there may be a threshold question as to whether the relevant federal issue there is final for purposes of 28 U.S.C. § 1257.

The present case also is a good example of the way in which Texas jurisprudence has made it increasingly difficult for Texas businesses and individuals to obtain relief when harmed by out-of-state defendants. The isolated examination of a defendant's forum contacts causes Texas courts to incorrectly discount forum activities that collectively evidence purposeful availment. At the same time, perceived due process restrictions prevent Texas courts from giving any weight to a defendant's imputed or actual participation in a conspiracy to harm a forum resident. As can be seen, these methods of analysis make it a simple matter to hold that the assertion of personal jurisdiction is unconstitutional in cases involving even the most deceptive forum-directed conduct.

Finally, this case reflects an internally inconsistent approach to federal due process. Although Texas courts will not impute the contacts of one conspirator to his co-conspirator because of due process concerns, those same courts allow foreign defendants to impute their own forum contacts to a third party who asked them to come to the forum, thereby allowing defendants like Alenia to work in the forum and invoke the benefits and protections of forum law in order to earn hundreds of millions of dollars on important contracts, all while avoiding any jurisdictional repercussions.

For these reasons, this case presents a good vehicle for resolving multiple splits of authority on recurring federal due process issues of substantial importance to litigants in both state and federal courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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