

IN THE  
**Supreme Court of the United States**

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MEAD JOHNSON & COMPANY, LLC, *et al.*,

*Petitioners,*

*v.*

CLARISSA GREEAR, INDIVIDUALLY AND ON  
BEHALF OF HER MINOR CHILD B. H., *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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**MOTION FOR LEAVE TO FILE, AND BRIEF OF  
THE DRI CENTER FOR LAW AND PUBLIC POLICY  
AND THE ILLINOIS DEFENSE COUNSEL AS  
*AMICI CURIAE* IN SUPPORT OF PETITIONERS**

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**MOTION FOR LEAVE TO FILE BRIEF OF  
*AMICI CURIAE***

*Amici curiae* the DRI Center for Law and Public Policy (“DRI”) and the Illinois Defense Counsel (“IDC”) move under Rule 21.2(b) for waiver of Rule 37.2’s ten-day notice requirement and for leave to file the accompanying Brief of *Amici Curiae* in Support of Petitioners. Counsel of record for all parties received written notice of *Amici’s* intent to file this brief seven days before the due date, three days short of Rule 37.2’s ten-day notice period. No party is prejudiced: counsel for Petitioners and counsel for one Respondent affirmatively stated that they do not object to the filing, and no counsel has objected.

*Amici* offer a unique perspective concerning the practical consequences of the Illinois Appellate Court’s decision that neither the parties nor any other *amicus curiae* can provide. *Amici’s* brief addresses how the decision below affects the administration of mass-tort litigation, improperly disregards Due Process limits on personal jurisdiction, and concentrates thousands of claims in two Illinois counties with little to no connection to the underlying injuries. The brief will help the Court evaluate the jurisdictional questions presented by the Petition.

*Amici* have substantial expertise concerning the issues presented, and their brief offers a unique perspective not otherwise available to the Court, so granting leave to file the brief will help the Court resolve the Petition by providing that perspective. *Amici* therefore respectfully ask the Court to grant this Motion, waive Rule 37.2’s ten-day notice requirement, and accept the accompanying brief.

Respectfully submitted,

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Dated: August 7, 2026

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

An Illinois appellate panel held that a company that left the State years ago is still at home there for every claim that accrued while present there (general jurisdiction), and that any company selling in Illinois may be sued there by plaintiffs from anywhere, forever, for injuries suffered anywhere (specific jurisdiction). On those two holdings, more than 12,500 aggregated claims by nationwide plaintiffs now sit in two Illinois counties where almost none lives or was injured. And while this case involves personal jurisdiction over a manufacturer of allegedly defective infant formula, nothing in the lower court's rule is product- or industry-specific. Just the opposite: it applies to any mass-tort claim against any nationwide-selling company.

The DRI Center for Law and Public Policy is the public-policy arm of DRI, an international organization of approximately 16,000 civil-defense attorneys and in-house counsel. The Center regularly appears as *amicus curiae* in this Court, the federal courts of appeals, and state appellate courts on the constitutional limits of state-court personal jurisdiction. DRI's members defend multistate

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than the *amici curiae*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received written notice of *amici*'s intent to file seven days before the due date, three days short of Rule 37.2's ten-day notice period. An accompanying motion asks the Court to waive the notice requirement and grant leave to file this brief.

businesses in mass-tort litigation and depend on uniform enforcement of the Due Process Clause's limits on where they can be sued.

The Illinois Defense Counsel is the statewide association of attorneys defending business, insurance, professional, and individual defendants in Illinois civil litigation. Founded in 1964, the IDC serves hundreds of members and regularly appears as *amicus curiae* on civil-justice administration in Illinois, including the two counties where this litigation is concentrated.

*Amici* speak from a vantage the parties cannot supply. When thousands of nonresident claims are aggregated in a forum with almost no connection to any plaintiff's injury, the businesses absorbing the cost are the ones *Amici*'s members defend.

Those costs are concrete: defense budgets scaled to the aggregation's size and not any claim's strength, two counties' lockstep rulings operating in tandem as national precedent, and litigation risk that cannot be priced because it cannot be placed.

### SUMMARY OF ARGUMENT

This case is about where a company can be sued, and the decision below answers: wherever the plaintiffs choose. But Congress built one system for gathering a nationwide mass tort into a single courtroom, and guarded it with conditions: a neutral panel, a common-question finding, and a statutory guarantee that no transferred case may be tried in the transferee court. 28 U.S.C. § 1407. The Illinois Appellate Court's decision produces a bootleg MDL version beside it, with none of the federal law

safeguards. Under its rules, thousands of families nationwide may sue companies that left Illinois years before suit, in two counties where almost none was injured—and nearly all this litigation now sits there.

This outcome is possible only because the lower court deleted the two elements this Court’s due-process cases require. It made corporate “home” a plaintiff-by-plaintiff historical fact: a company may be sued in a State it left, on every claim accruing while there. And it erased the plaintiff-forum connection required under *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255 (2017) and *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), when it held that sales and marketing to nonparties suffice though no infant here was fed, fell ill, or was treated in Illinois.

Each deletion alone would warrant review. Together they compel it. The decision below breaks with the Illinois Supreme Court’s own *Bristol-Myers* holding in *Rios v. Bayer Corp.*, 2020 IL 125020, 178 N.E.3d 1088, and with the federal court that reached the opposite answer for the same defendant. This Court alone can resolve that conflict.

The system insulates itself from review: cases pleaded never to become federal, an appellate district that plaintiffs never leave, and settlements that never yield a judgment to appeal. Joining an Illinois co-defendant blocks removal; the federal multidistrict litigation (MDL) cannot reach cases built never to become federal; and the Illinois Supreme Court declined review. The interlocutory posture is a reason to grant review, not to wait. American businesses absorb costs of this system *before* any court ever

reaches the merits: duplicative threshold motion practice under now-controlling adverse precedent, discovery coordinated from a forum holding none of the injury proof, and the “intense pressure to settle” that exists in mass tort litigation regardless of any defenses. *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995).

Those costs recur wherever the rule travels. Nor is the error isolated. It reaches every company that once operated somewhere and sold products everywhere. Infant formula just happens to be the first industry put through it. Litigation dynamics like these have emptied essential markets before: childhood vaccines, general aviation, materials for lifesaving medical devices. Each time, the correction came from Congress. No Congress can correct this one. The boundary at issue is constitutional, and it belongs to this Court. The petition should be granted.

### **REASONS FOR GRANTING THE PETITION**

The Illinois Appellate Court’s decision, *Toles v. Mead Johnson & Co.*, 2025 IL App (5th) 231205, 278 N.E.3d 298, approved the aggregation of more than 12,500 nonresident claims into two Illinois counties, without the safeguards of the federal MDL. Two holdings make that possible: general jurisdiction over a company that moved its headquarters years before suit, and specific jurisdiction built on Illinois sales to nonparty families. Both holdings violate this Court’s precedent and the Due Process Clause of the Fourteenth Amendment. Only this Court can correct the error. Two manufacturers supplying the Nation’s neonatal intensive care units (NICUs) are weighing whether to leave the market.

**I. The decision below erects a bootleg MDL without the safeguards of 28 U.S.C. § 1407**

Congress built one instrument for gathering a nationwide mass tort into a single courtroom: 28 U.S.C. § 1407, and it comes with conditions. A neutral panel must find “common questions of fact” pending in different districts. 28 U.S.C. § 1407(a). Transfer must be “for the convenience of parties and witnesses” and must “promote the just and efficient conduct of such actions.” *Id.* And every transferred case that survives consolidated pretrial is remanded home “at or before the conclusion” of pretrial proceedings. *Id.*

In April 2022, the federal Judicial Panel on Multidistrict Litigation consolidated all federal litigation involving necrotizing enterocolitis (NEC), a life-threatening intestinal disease in newborns. Cases were transferred to the Northern District of Illinois to “streamline pretrial proceedings; reduce duplicative discovery and conflicting pretrial obligations; prevent inconsistent rulings on common Daubert challenges and summary judgment motions.” Transfer Order at 1, *In re Abbott Labs., Preterm Infant Nutrition Prods. Liab. Litig.*, MDL No. 3026, 2022 WL 1053663 (J.P.M.L. Apr. 8, 2022).

But these unremovable state-court cases are not in the federal MDL. They are in the bootleg version of it. Under Section 1407, a neutral panel chooses the court for pre-trial proceedings. Here, the plaintiffs choose, and they overwhelmingly choose two Illinois county circuit courts. This state court system has no panel, no common-question finding, and no remand right. These counties serve 514,000 residents who absorb a nationwide docket that no judicial panel assigned

them. The federal MDL system is governed by statute and rule, but the only limit on the Illinois version is Due Process, and the decision below discarded it. The questions presented ask whether any boundary is left.

**A. Nearly every suit sits in two counties where almost no plaintiff was injured—and this outcome is by design, not determined by geography**

The petition supplies the numbers. More than 13,000 plaintiffs have sued petitioner Mead Johnson nationwide, and 97% of those with pending suits filed in St. Clair or Madison County, Illinois: more than 12,500 families in two adjacent counties. Pet. 8. Only nine of the 12,500 allege an injury in either county. Fewer than 6% allege one anywhere in Illinois. *Ibid.* By comparison, the federal MDL centralizing the same allegations holds 810 actions as of July 1, 2026. *See JPML, MDL Statistics Report: Distribution of Pending MDL Dockets by Actions Pending* (July 1, 2026).<sup>2</sup>

The 51 Respondents here reside in 22 States; none lives in Illinois, and “not even one of their preterm infants consumed Mead Johnson’s products in Illinois, developed NEC in Illinois, or received treatment for NEC in Illinois.” Pet. 9 (citing Pet. App. 13a-14a). The two counties are home to 0.15% of the Nation’s population.<sup>3</sup>

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<sup>2</sup> <https://perma.cc/3MNB-CXDR>.

<sup>3</sup> U.S. Census Bureau, *QuickFacts: Madison County, Illinois; St. Clair County, Illinois; United States*, <https://bit.ly/4hNqx21> (July 1, 2025 population estimates (V2025) of 263,110, 250,708, and 341,784,857, respectively).

These counties drew mass filings long before the NEC suits began. For example, in 2015, asbestos suits alone were 72% of the civil cases filed in Madison County, and just six of the 1,224 plaintiffs lived in the county.<sup>4</sup> By 2022, in cases of known residency, foreign plaintiffs filed 93.8% of Madison County cases and 95.3% of St. Clair County cases.<sup>5</sup> In 2024, the two counties alone drew 1,702 of the 3,931 asbestos suits filed nationwide—43%—with St. Clair filings up 22% in a single year.<sup>6</sup>

Mead Johnson’s products are used in NICUs nationwide. Pet. 8. If geography or medicine drove filing patterns, cases would be spread across fifty States. The sorting variable is not where infants were born, fed, diagnosed, or treated. It is where plaintiffs want to litigate, preferring “juries renowned throughout the country for their willingness to deliver big verdicts to plaintiffs.” Jonathan Bilyk, *23 NEC lawsuits vs baby formula makers tossed from Cook County court*, Legal Newsline, Dec. 16, 2025.<sup>7</sup>

The Illinois system is still churning out litigation. On average, four new out-of-state plaintiffs *daily* have sued Mead Johnson for NEC claims in these counties since the decision. Pet. 12, 30.

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<sup>4</sup> Am. Tort Reform Found., *Judicial Hellholes 2016–2017* (2016).

<sup>5</sup> KCIC, *Asbestos Litigation: 2022 Year in Review* 22 (2023), <https://perma.cc/3YAR-T56R>.

<sup>6</sup> KCIC, *Asbestos Litigation: 2024 Year in Review* 5 (2025), <https://perma.cc/XJ76-9L7Q>.

<sup>7</sup> Available at <https://perma.cc/2LJT-BZXX>.

**B. Forum-shopping exacts its costs beyond any one case and before the merits are heard**

Those are the numbers. These are the costs. RAND calculated that of the roughly \$70 billion asbestos litigation consumed through 2002, more than half went to transaction costs, not compensation. RAND Inst. for Civil Justice, *Asbestos Litigation*, at xvii & fig. S.1 (2005).<sup>8</sup>

Personal jurisdiction is “an essential element of the jurisdiction of a district ... court,” without which a court is “powerless to proceed to an adjudication.” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999). The decision below controls that threshold question for every later-filed complaint, so each out-of-state defendant litigates the same jurisdictional objection toward a foreclosed answer.

The plaintiffs’ jurisdictional theory, tested against a different Mead Johnson product, produced the opposite result in federal court. *Compare* Pet. App. 12a-13a, *with Harden v. Mead Johnson & Co.*, No. 1:24-cv-00108, 2024 U.S. Dist. LEXIS 101963, at \*14-16 (N.D. Ill. June 7, 2024).

Duplicative motion practice and inconsistent rulings are why the Panel centralized NEC cases in an MDL—but Illinois’s system multiplies them. In a case about a preterm infant, the evidence that matters is located where the infant was born, fed, diagnosed, and treated: hospital records, NICU feeding protocols,

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<sup>8</sup> Available at <https://perma.cc/HPC6-4WXD>.

treating neonatologists, and family witnesses. For these claims, none of that is in Illinois. Pet. 9.

The federal system shares evidence for pretrial and remands cases for trial, 28 U.S.C. § 1407(a), but the two-county system keeps them, so local juries decide them. This docket shows it: the first St. Clair County NEC trial produced a \$60 million verdict that the appellate court reversed this year, finding a substantial danger the verdict rested on the defendant's size rather than on causation, defect, or warnings. *Watson v. Mead Johnson & Co.*, 2026 IL App (5th) 240936, 2026 Ill. App. LEXIS 207, ¶ 154. The result is forced capitulation: defendants in this bootleg MDL system experience "intense pressure to settle" regardless of their defenses, for reasons similar to those described in *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995).

A business defending more than 12,500 cases merged into two courts in cherry-picked Illinois counties skewed for the adversary prices the venue, not the merits of any claim.

## **II. Aggregating 12,500 nationwide mass tort claims in two counties works only because the decision below violates Due Process**

Illinois owes no duty to mimic the federal MDL processes of 28 U.S.C. § 1407. States run their own courts but may not violate Due Process. This Court's precedents (from *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011) through *Ford*) delimit where a company may be sued.

The lower court did not merely apply these limits and construe them differently. It effectively rewrote them, twice.

First, the Illinois Appellate Court held that any company once headquartered in Illinois may be sued there forever on any claim arising while it was there. Second, it held that a company that sells and markets in Illinois may be sued there by plaintiffs from anywhere, for injuries suffered anywhere. Both holdings transform personal jurisdiction from a limit on judicial power over a nonresident into a menu of forum choice favoring the plaintiff. Specific jurisdiction requires a strong “relationship among the defendant, the forum, and the litigation.” *Ford*, 592 U.S. at 365.

Each holding below severs the third element: general jurisdiction is measured by the era of another’s claim rather than the suit before the court, and specific jurisdiction is measured by contacts with strangers to it. *See* Pet. 13-14, 23.

**A. *Daimler* says a company’s home is fixed—the lower court makes it a moving target**

This Court’s general-jurisdiction cases prize one virtue: a corporation must know, in advance, where it can be sued on any claim. The paradigm forums, place of incorporation and principal place of business, “have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Anything looser “would scarcely permit out-of-state defendants ‘to structure their primary conduct with some minimum assurance as to where

that conduct will and will not render them liable to suit.” *Id.* at 139 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

The rule is stable by design. The decision below unmoored it. Relying on *Riemer v. KSL Recreation Corp.*, 348 Ill. App. 3d 26 (2004), an Illinois appellate decision predating *Goodyear, Daimler*, and *BNSF Railway Co. v. Tyrrell*, 581 U.S. 402 (2017), the court held that “the inquiry into general jurisdiction is not a snapshot of a defendant only at the time of filing,” and that the relevant time “begins approximately when the claims arose and extends to when suit was filed and service of process was attempted.” Pet. App. 12a.

The Illinois Appellate Court’s accompanying citation to *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), does not carry that weight. By the court’s own description, *Helicopteros* “examin[ed] jurisdictional evidence dating back seven years from suit,” *ibid.*, and a lookback tests whether contacts are continuous and systematic as of filing. *See Helicopteros*, 466 U.S. at 409-11, 416. The lookback is not the answer; it is how the court reaches the answer. The difference decides this case. Under settled law, past contacts are evidence of whether a company is at home today. But the Illinois rule says past contacts are determinative: a company that moved from Illinois years ago is subject to suit there forever, on all claims that accrued when it was there, no matter where it lives now, and no matter if the claimant has zero connection with Illinois.

The decision below treats earlier contacts not as evidence of present affiliation, but as affiliation itself. The court determined that *Riemer* made Mead

Johnson amenable to all-purpose jurisdiction for the 38 infants born during its 2009-2018 headquarters period, because “Mead Johnson was not a nonresident defendant during this period.” Pet. App. 13a.

Under this rule, “home” is no longer a fact about the corporation. It is a fact about the plaintiff. A company headquartered in three States over three decades is at home in all three at once, for different plaintiffs, in the same coordinated docket.

The rule is as unworkable as it is unbounded. *Daimler* asks one question with one answer: where is the defendant at home now? The decision below requires an era-by-era audit of corporate history for every plaintiff, and a jurisdictional minitrial to sort the eras. This docket shows the price: the court below sorted 64 plaintiff infants into three birth-date bins before reaching any question of law. Pet. App. 3a, 11a.

A rule that adds a proceeding before litigation begins shares the defect this Court called “unacceptably grasping.” *Daimler*, 571 U.S. at 138; see Pet. 17. There is no mass-tort exception. The Due Process constraint “does not vary with the type of claim asserted or business enterprise sued,” *BNSF*, 581 U.S. at 414, and it does not soften because thousands of claims arrive at once.

The court below alternatively held that Mead Johnson remained “essentially at home” in Illinois after 2018, resting on a retained office, “dozens” of Illinois employees with national roles, and public filings: above all, a March 2021 filing affirming to the Illinois Secretary of State “under penalties of perjury”

that the company's principal place of business was Chicago. Pet. App. 10a, 12a-13a.

*Amici* do not minimize that filing, but it cannot carry the weight the decision assigns it. A corporation's principal place of business is its nerve center, "the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (quoted at Pet. App. 8a). *Hertz* rejected the notion that a publicly filed form listing a corporation's "principal executive offices" could, without more, establish its nerve center: "[s]uch possibilities would readily permit jurisdictional manipulation." 559 U.S. at 97. A Secretary of State form cannot relocate a nerve center and was not consent to all-purpose jurisdiction.

What remained after 2018 was an office and a few dozen employees. That record could only support general jurisdiction through *Daimler*'s "exceptional case" for operations "so substantial and of such a nature as to render the corporation at home in that State." 571 U.S. at 139 n.19. This is no such case. This Court answered a harder version of this fact-pattern in *BNSF*: the railroad maintained "over 2,000 miles of railroad track and more than 2,000 employees in Montana," and was still not "so heavily engaged in activity in Montana 'as to render [it] essentially at home' in that State." 581 U.S. at 414. If two thousand employees and two thousand miles of track do not make a railroad at home, an office and dozens of employees do not make a formula manufacturer at home or this case an exceptional one.

Nor does consent fill the gap. In *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), this Court

sustained a Pennsylvania statute that conditions corporate registration on consent to general jurisdiction. Illinois law runs the other way: registering to do business and appointing an agent are not consent to general jurisdiction. *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶¶ 22-27, 90 N.E.3d 440. The decision below cites *Aspen* and rests on minimum contacts, not consent. Pet. App. 12a, 14a. *Mallory* does not apply here. What applies here is the principle established in this Court’s precedent from *Goodyear* through *Ford*, and the decision below sits on the wrong side of it.

**B. The lower court gutted the forum-claim connection *Bristol-Myers* requires and *Ford* reaffirmed**

*Bristol-Myers* states the requirement in one sentence: “What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.” 582 U.S. at 265. The nonresident Plavix plaintiffs there lost on strong facts. *Bristol-Myers Squibb* operated five research and laboratory facilities with roughly 160 employees in California, sold more than \$900 million in Plavix pills there, and distributed the drug through McKesson, its California-based co-defendant. 582 U.S. at 259. None of these facts helped the nonresidents, because they were not prescribed Plavix in California, did not take it there, and were not injured there. *Ibid.*; *see also* Pet. 23-24.

*Ford* marks the same line from the other side. Montana and Minnesota could hear their own residents’ claims: those plaintiffs lived in the forum, were injured there, and sued over vehicles of the very

kind Ford had spent years marketing, selling, and servicing in the forum. 592 U.S. at 365, 370. The two cases draw one clear margin: the defendant’s forum conduct must connect to the plaintiff’s own claim.

Mead Johnson argued below that “none of the plaintiffs allege that any infant at issue consumed any Mead Johnson product in Illinois, got sick in Illinois, or was treated in Illinois.” Pet. App. 20a. The Illinois Appellate Court held that this did not matter. The jurisdictional analysis, it said, “focuses ‘on the defendant’s activities within the forum State, not on those of the plaintiff,’” and Mead Johnson “cites no authority for the proposition that a plaintiff must reside or be injured in a forum state for the state to assert personal jurisdiction.” Pet. App. 20a.

*Bristol-Myers* demands a connection between the forum and each plaintiff’s claims. Residence and injury are not prerequisites, but some claim-specific connection is, and these claims have none. And the Illinois Appellate Court’s opinion never cites *Bristol-Myers*. The only court below to confront it was the circuit court, which distinguished the case as unlike the “sporadic and isolated forum contacts in *Bristol-Myer[s]* and *Rios*.” Pet. App. 84a. But sporadic does not describe five research facilities, 160 employees, and \$900 million in sales. And *Bristol-Myers* rejected the plaintiffs’ argument that McKesson’s contract supplied the missing link for all defendants, holding that jurisdictional requirements “must be met as to each defendant.” *Bristol-Myers*, 582 U.S. at 268 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

In *Bristol-Myers*, 592 of 678 plaintiffs—87%—were nonresidents, and California could not hear their claims. *Id.* at 259. Here the figure is 97%. Pet. 8.

Illinois law as articulated in *Rios v. Bayer Corp.*, 2020 IL 125020, 178 N.E.3d 1088, forecloses this move. In *Rios*, the Illinois Supreme Court applied *Bristol-Myers* to the claims of nonresident Essure plaintiffs joined in Madison County suits, and it held that “courts in Illinois may not exercise specific personal jurisdiction under these circumstances”: the nonresidents’ claims “did not arise out of or relate to defendants’ in-state activities.” *Id.* ¶¶ 1, 34. Illinois “has no particular interest in resolving claims that did not arise out of or relate to activities that occurred here.” *Id.* ¶ 31. The lower court’s decision cannot coexist with *Rios*: same forum county, aggregation, and nonparty contacts, but the exact opposite answer.

*Ford* does not rescue the holding. The court below block-quoted *Ford*’s caution (“the phrase ‘relate to’ incorporates real limits,” 592 U.S. at 362) then adopted a rule with none. *Ford*’s plaintiffs were everything these are not: forum residents, injured there, by products used there. 592 U.S. at 370; *see* Pet. 24-25. A rule of law without limits is not a rule; it is the “anything goes” *Ford* disclaimed.

To justify personal jurisdiction, the lower court principally relied on Mead Johnson’s exclusive contract to supply Illinois’s Women, Infants, and Children (WIC) program. Pet. App. 17a-19a. But the WIC contract is Illinois-specific because federal law requires state WIC agencies to use a single supplier. 42 U.S.C. § 1786(h)(8)(A)(i)(I); 7 C.F.R. § 246.16a (2026). A manufacturer bids by state because

Congress built the program that way. If each contract won was a forum-directed contact sufficient for specific jurisdiction, Mead Johnson would be subject to suit in every State that took its bid.

The WIC contract connects Mead Johnson to Illinois infants not before the court, exactly the conduct *Bristol-Myers* holds insufficient. If same-product sales and marketing to nonparties satisfied relatedness for plaintiffs who have never set foot in the forum, then specific jurisdiction would exist for every national manufacturer, in every State, for every mass tort. If so, *Bristol-Myers* decided nothing. The law then collapses into the doing-business jurisdiction this Court has rejected for years. *BNSF*, 581 U.S. at 414.

The federal district court's decision in *Harden*, 2024 U.S. Dist. LEXIS 101963, illustrates the Illinois Appellate Court's departure from this Court's precedent. That case involved the same defendant, the same headquarters move, and the same Illinois sales and marketing. The U.S. District Court for the Northern District of Illinois held that Mead Johnson's "ties to Illinois generally or to customers based in Illinois" could not support specific jurisdiction over a nonresident's claim. *Id.* at \*16.

The Illinois Appellate Court distinguished *Harden* because these plaintiffs took jurisdictional discovery and *Harden*'s did not. Pet. App. 11a. But the distinction proves the point. The discovery produced evidence of a retained office, "dozens" of employees, and training sessions, but that evidence is immaterial. Volume of contacts has never been the test. *BNSF* held that in-state business "does not suffice to permit

the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in” the state, and that the inquiry “calls for an appraisal of a corporation’s activities in their entirety.” 581 U.S. at 414 (*quoting Daimler*, 571 U. S., at 140, n. 20).

The federal court in *Harden* enforced *Bristol-Myers*, requiring a link between the forum and the claim. The Illinois Appellate Court did not.

### **III. No other court will reach this question, so the interlocutory posture supports granting certiorari**

Five mechanisms ordinarily contain a threshold error like this: (i) removal, (ii) the federal MDL, (iii) venue and (iv) forum non *conveniens*, and (v) state appellate review.

Every such avenue is closed here. Removal is blocked at the pleading stage. Most plaintiffs who filed in these counties “name Abbott and vaguely plead consumption of a Mead Johnson ‘and/or’ an Abbott product,” and respondents “have also sued Abbott Laboratories, an Illinois company.” Pet. 9 n.6.

The block is structural: whether a complaint destroys complete diversity or triggers the forum-defendant rule, there is no removal. 28 U.S.C. §§ 1332(a), 1441(b)(2). The MDL cannot reach the claims either. Section 1407 reaches only “civil actions . . . pending in different districts.” 28 U.S.C. § 1407(a). The safeguards of § 1407 do not fail by accident; the complaints are drafted to avoid them.

Illinois’s own doctrines will not solve this problem. Mead Johnson pressed venue and forum non

conveniens below and was denied. The Illinois Appellate Court affirmed. Pet. App. 48a. Mead Johnson sought and obtained discretionary interlocutory review. The Illinois Appellate Court sustained jurisdiction and the Illinois Supreme Court denied leave to appeal. Pet. App. 94a (No. 132713, Mar. 25, 2026). The accrual-date at-home rule and the nonparty-contacts theory are now controlling precedent where nearly all these suits sit. The conflicts this Court waits for already exist.

A conventional split will never form here, because the machinery that produces one is disconnected. No federal court of appeals will see these cases. No other Illinois appellate district will either. The plaintiffs chose as their forum two counties that sit within the same Illinois appellate district. And sister States cannot check Illinois, because no State's courts rule on what another State may do. This Court granted review in the same circumstance in *Goodyear*, from a state intermediate court after the State's highest court declined review. 564 U.S. at 922-23.

This Court does not wait in this posture. *Bristol-Myers* arrived on interlocutory review of a California writ proceeding. 582 U.S. at 259-61. Both *Ford* cases arrived the same way, on state supreme court review of pretrial denials of dismissal. 592 U.S. at 356-58. That the judgment here comes from a State intermediate court changes nothing. Once the Illinois Supreme Court denied leave to appeal, the Illinois Appellate Court's ruling became the judgment "rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a).

It is also final under that section. The ruling conclusively decides the federal question, and no later Illinois review can undo the aggregation it authorizes. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975). That aggregation operates now, before any court reaches a single claim's merits. If these cases settle under that pressure, as mass torts of this size often do, no final judgment will ever carry the question here. The questions presented are rules of law and are facially complete. A trial adds nothing. Most questions this Court leaves for another day return later. This one will not. Review is now or never.

#### **IV. The rule below drives essential products from markets Congress cannot protect**

The rule below does not just raise the cost of defending a case. It threatens supply. When defending an essential product costs a business more than it earns, the product leaves the market.

Each time that has happened, Congress has answered: for vaccines, for general aviation, and for implant materials. In 1976, manufacturers refused to produce the swine-flu vaccine until Congress made the United States the exclusive defendant. National Swine Flu Immunization Program of 1976, Pub. L. No. 94-380, 90 Stat. 1113; *In re Swine Flu Immunization Prods. Liab. Litig.*, 533 F. Supp. 703, 717 (D. Utah 1982). Between 1978 and 1981, makers of DTP, a standard childhood vaccine, faced “only nine products-liability suits,” but by the mid-1980s suits “numbered more than 200 each year,” destabilizing the market and forcing two of three domestic manufacturers to withdraw. *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 226-27 (2011). Congress answered with the National

Childhood Vaccine Injury Act of 1986. *See Bruesewitz*, 562 U.S. at 226-27; 42 U.S.C. § 300aa-1 *et seq.* It later did the same for general aviation with the General Aviation Revitalization Act of 1994, after skyrocketing liability costs had left manufacturers “being driven to the wall.” *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1084 (9th Cir. 2001); *see* 140 Cong. Rec. 4002 (1994) (statement of Sen. Kassebaum).<sup>9</sup> And in 1998, when suppliers of implant-grade raw materials stopped selling to device makers, Congress shielded them with the Biomaterials Access Assurance Act, finding “a threatened shortage of raw materials and component parts for lifesaving medical devices” a matter of national interest. 21 U.S.C. § 1601(16).

These manufacturers had not lost in court—they lost the war of attrition. The rule below imparts the same pressure, aimed at a market thinner than any of those. Two manufacturers supply the cow’s-milk-based preterm formulas and fortifiers used in American NICUs, with no new entrant in prospect. FDA, *Exempt Infant Formulas Marketed in the United States By Manufacturer and Category*;<sup>10</sup> Letter from Rep. Rosa DeLauro to FDA (Nov. 19, 2024)<sup>11</sup>; Garg, P.M., Rodriguez, R.J. & Shenberger, J.S., *Legal, Clinical, and Scientific Perspectives on Formula Use and NEC Risk in Preterm Infants*, 99 *Pediatric Rsch.* 1255 (2026).<sup>12</sup> Alternative milk products have limited

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<sup>9</sup> <https://perma.cc/6P7R-9TED>.

<sup>10</sup> <https://bit.ly/3TRrtbK>.

<sup>11</sup> <https://perma.cc/4HT4-KSER>.

<sup>12</sup> <https://perma.cc/5WR2-VR4P>.

availability and are “unlikely to meet the needs of most preterm infants” requiring them.<sup>13</sup> Roughly one in ten American infants is born preterm, and NEC kills one almost every day, a toll that predates this litigation. CDC, *Nat’l Vital Statistics Reports* Vol. 74, No. 1 (2025)<sup>14</sup>; National Institute of Child Health and Human Development, *NEC Working Group Report* (Sept. 16, 2024).<sup>15</sup>

The federal consensus statement reports “no conclusive evidence that preterm infant formula causes NEC” and calls these formulas “part of the standard of care” where human milk is insufficient. FDA/CDC/NIH *Consensus Statement on Preterm Infant Nutrition* (Oct. 3, 2024).<sup>16</sup> An essential, lifesaving product could be forced off the market by aggregated NEC claims. The American Academy of Pediatrics has warned that “[r]ecent court cases ... may jeopardize the availability of these formulas,” because “[c]ourtsrooms are not the best place to

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<sup>13</sup> Steven A. Abrams & Robert J. Shulman, *What Would Happen in the United States if There Were No Cow Milk-Based Preterm Infant Nutritional Products: Historical Perspective and Evaluation of Nutrient-Related Challenges*, 120 Am. J. Clinical Nutrition 781, 781-82 (2024).

<sup>14</sup> <https://perma.cc/PG56-SYFY>.

<sup>15</sup> <https://perma.cc/59T5-XBNS>.

<sup>16</sup> <https://bit.ly/3RQO07T>.

determine clinical recommendations for the care of infants.”<sup>17</sup>

The manufacturers are already behaving as that history would predict. Reckitt has designated its Mead Johnson nutrition division “non-core” and is weighing “all strategic options” including sale. Analysts have priced its NEC liability exposure in the billions.<sup>18</sup> Abbott’s chief executive has warned that the company may be forced to withdraw its preterm formula from the market. The product line generates about \$9 million a year against a litigation exposure analysts estimate at up to \$4 billion industrywide.<sup>19</sup>

But Congress cannot answer here. Each of those statutes rewrote substantive liability rules for a single product market: who could be sued, on what claims, and for how much. The defect below is neither substantive nor confined to one product. It is a rule about personal jurisdiction and where any national company can be haled into court, announced in the two counties that draw more than forty percent of the

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<sup>17</sup> Press Release, Am. Acad. of Pediatrics, *Statement in Response to NEC Lawsuit Verdicts* (July 27, 2024), <https://perma.cc/EQ3G-FH6R>; Garg et al., *supra*, at 1255, <https://perma.cc/5WR2-VR4P>.

<sup>18</sup> Press Release, Reckitt Benckiser Grp. plc, *Reckitt to Sharpen Its Portfolio and Simplify Organisation for Accelerated Growth and Value Creation* (July 24, 2024), <https://perma.cc/GE8L-EWZ2>; Reckitt Benckiser Grp. plc, *Half Year Results 2026* (July 29, 2026), <https://perma.cc/AV72-V3AS>.

<sup>19</sup> T. Reed, *Lawsuits Threaten Infant Formula for Premies*, *Axios* (Sept. 19, 2024), <https://bit.ly/4pU9AF6>; A. Edney, *Abbott Presses Congress for Legal Shield Over Premie Baby Formula Lawsuits*, *Insurance Journal* (Dec. 11, 2025), <https://perma.cc/2CC9-3UWY>.

Nation's asbestos filings. A formula statute would protect formula; the jurisdictional error would sit intact, waiting for the next essential product.

What remains is the Constitution itself. The limit on a state court's reach is the Fourteenth Amendment's Due Process Clause. That boundary has one custodian: this Court. As in *BNSF* and *Bristol-Myers*, a state court bypassed Due Process and the error stands unless this Court grants review.

### CONCLUSION

Multistate defendants ask one question before every product decision, every insurance renewal, and every compliance program: where can we be sued? The lower court made that question unanswerable.

The petition should be granted.

Respectfully submitted,

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August 2026