No. 23-02964

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SIGNET BUILDERS, INC.,

Defendant-Appellant,

v.

JOSE AGEO LUNA VANEGAS,

Plaintiff-Appellee.

On Appeal from the United States District Court
for the Western District of Wisconsin
No. 3:21-CV-00054-JDP
Hon. James D. Peterson, U.S.D.J.

BRIEF OF AMICI CURIAE LAW PROFESSORS IN SUPPORT OF REHEARING

Lauren E. Bateman
Michael T. Kirkpatrick
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Amici Curiae

September 30, 2024

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 23-2964

Short Caption: Signet Builders v. Luna Vanegas

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Helen Hershkoff, Arthur Miller, Alan Morrison, John Sexton, Adam Steinman

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Attorney's Signature: /s/ Lauren Bateman Date: 9/30/24

Attorney's Printed Name: Lauren Bateman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: 1600 20th Street NW

Washington, DC 20009

Phone Number: 202-588-1000 Fax Number: 202-588-7795

E-Mail Address: lbateman@citizen.org

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N/A

Attorney's Signature: /s/ Michael Kirkpatrick Date: 9/30/24

Attorney's Printed Name: Michael Kirkpatrick

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 1600 20th Street NW

Washington, DC 20009

Phone Number: 202-588-1000 Fax Number: 202-588-7795

E-Mail Address: mkirkpatrick@citizen.org

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INTEREST OF AMICI CURIAE[1]

Amici are law professors who believe their expertise in civil procedure will assist the Court in assessing the exceptional importance of the jurisdictional issue of this appeal. Professors Helen Hershkoff, Arthur Miller, and John Sexton teach at New York University School of Law and are three of the co-authors of a leading civil procedure casebook, Friedenthal, Miller, Sexton, Hershkoff, Steinman, & McKenzie, *Civil Procedure: Cases and Materials* (13th ed. 2022). Professor Alan Morrison is an associate dean and teaches at the George Washington University Law School. Professor Adam Steinman teaches at Texas A&M University School of Law and is a co-author of the Friedenthal casebook. Professors Miller and Steinman are co-editors of the leading treatise on personal jurisdiction, Wright, Miller & Steinman, 4 *Federal Practice & Procedure* (4th ed. 2015).

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[1] This brief was not authored in whole or part by counsel for a party; no party or counsel for a party contributed money that was intended to fund this brief's preparation or submission; and no person other than the amici and their counsel contributed money intended to fund the brief's preparation or submission. Institutional affiliations of the amici curiae professors are provided for identification purposes only.

SUMMARY OF ARGUMENT

Plaintiff-appellee's petition for rehearing should be granted because the panel opinion severely circumscribes the remedial framework that Congress set forth in the Fair Labor Standards Act (FLSA). Although the panel read *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255 (2017), to compel that result, *Bristol-Myers* does not apply to FLSA collective actions in federal court.

Bristol-Myers held that the Fourteenth Amendment precludes a state court from exercising personal jurisdiction over a defendant in a tort action brought by a nonresident of the forum state who was injured elsewhere, where the contacts between the defendant and the forum are unrelated to that non-resident plaintiff's claim. That holding is limited in three respects that distinguish it from cases like these: It addresses state courts, not federal courts; it addresses state-law claims, not federal claims; and it addresses individual actions, not collective actions authorized by federal statute. These distinctions make all the difference, because, unlike the constitutional limitations on the sovereign authority of *state courts* that inhere in our federal system, the authority of federal courts is not limited by state borders. The only *constitutional* limitation

on a federal court's personal jurisdiction over a defendant is whether the defendant has sufficient national contacts with the United States as a whole.

Moreover, contrary to the panel opinion, Federal Rule of Civil Procedure 4 does not subject a federal court's exercise of personal jurisdiction over opt-in members of an FLSA collective action to the Fourteenth Amendment limits that would apply to a state court. Rather, in an FLSA collective action, as in any civil action, Rule 4's requirements apply only when the named plaintiff seeks to secure personal jurisdiction over the defendant when the plaintiff initiates the lawsuit. The Rules impose no additional requirements for the assertion of personal jurisdiction over the defendant with respect to the claims of opt-in plaintiffs. Rather, the only additional procedure required of opt-in plaintiffs is the procedure set forth in Section 216(b) of the FLSA.

ARGUMENT

I. The panel opinion incorrectly limits federal court jurisdiction with respect to the claims of out-of-state members of an FLSA collective action.

A. *Bristol-Myers* rests on constitutional principles that are inapplicable in federal court.

"It has long been established that the Fourteenth Amendment limits the personal jurisdiction of *state* courts." *Bristol-Myers*, 582 U.S. at 261 (emphasis added). The Supreme Court has emphasized that the Fourteenth Amendment's constraints on state-court personal jurisdiction reflect limits on "the power of a sovereign to resolve disputes through judicial process." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011) (plurality opinion). And those limits reflect the Court's view that a state court possesses adjudicative authority only over those who are properly subject to the state's sovereign power. *See id*. at 880–81.

The Supreme Court's holding in *Bristol-Myers* was grounded in these constitutional constraints on states. It holds that a state court cannot assert personal jurisdiction over a defendant in an individual personal-injury action when the defendant neither is "at home" in the state, *Bristol-Myers*, 582 U.S. at 262, nor has engaged in forum-related activity that is connected to a nonresident plaintiff's "specific claims"

arising outside the forum state, *id.* at 265. Such limitations on state court jurisdiction, the Court stressed, are not determined by fairness concerns, but by the "federalism interest," *id.* at 263, in confining the power of institutions of each state within the limits of their sovereign authority to avoid infringements "on the sovereignty of [their] sister States," *id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)). As the Court explicitly stated, its opinion does not address whether and to what extent "the Fifth Amendment" restricts "the exercise of personal jurisdiction by a federal court." *Id.* at 268–69 (citing *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987)).[2]

B. The Fourteenth Amendment does not by its own force limit the personal jurisdiction of federal courts.

Bristol-Myers's disclaimer of any application in federal courts reflects a wealth of precedent differentiating potential due process limits

[2] In addition, as the panel dissent notes, the exercise of state law by state courts raises due process concerns not present here, because of the risk that "such exercises of state law could punish defendants for conduct that is legal where it occurs." *Vanegas v. Signet Builders, Inc.*, No. 23-2964, 2024 WL 3841024, at *12 (7th Cir. Aug. 16, 2024) (Rovner, J., dissenting).

on federal-court personal jurisdiction from the constraints that the Fourteenth Amendment imposes on state courts. As *Bristol-Myers* notes, any due process limits on the federal courts find their source in the Fifth Amendment, not the Fourteenth. 582 U.S. at 268–69. That distinction makes a difference: The Fourteenth Amendment incorporates limits on the sovereign power of states that are inherent in a federal system. Those limits are not relevant to the authority of the federal government. *See Bd. of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1036 (7th Cir. 2000) ("No limitations on sovereignty come into play in federal courts when all litigants are citizens. It is one sovereign, the same 'judicial Power,' whether the court sits in Indianapolis or Alexandria."). The federal government has "its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it," without regard to their relationship with any particular state. *Nicastro*, 564 U.S. at 884 (plurality opinion) (citation omitted).

Thus, "personal jurisdiction requires a ... sovereign-by-sovereign analysis," *id.*, under which the power of a state court to render judgment against a defendant does not, as a constitutional matter, limit a federal

court's authority over that same defendant. "Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States," without regard to whether it may be haled into the courts "of any particular State." *Id.*

For these reasons, nothing in the Constitution prevents "the process of every District Court" from "run[ning] into every part of the United States." *Robertson v. R.R. Labor Bd.*, 268 U.S. 619, 622 (1925). And a federal court may constitutionally exercise personal jurisdiction over any person that has minimum contacts with the United States, as opposed to any particular state. *See Repub. of Argentina v. Weltover, Inc.*, 504 U.S. 607, 619–20 (1992). As this Court has stated, "[w]hen a national court applies national law, the due process clause requires only that the defendant possess sufficient contacts with the United States." *United Rope Dist., Inc. v. Seatriumph Marine Corp.*, 930 F.2d 532, 534 (7th Cir. 1991); *see Bd. of Trustees*, 212 F.3d at 1036.

Thus, here, because personal jurisdiction over the opt-in plaintiffs is governed by "constitutional limitations" applicable to federal-law claims—that is, "the Fifth Amendment—and statutory limitations governing subject matter jurisdiction and venue," *Waters v. Day &*

Zimmermann NPS, Inc., 23 F.4th 84, 99 (1st Cir. 2022), the limits that would apply in a Wisconsin *state* court have no relevance. And no party disputes that Signet has the requisite contacts with the United States in relation to the claims of out-of-state members of the FLSA collective action. The Constitution requires no more.

II. The text and structure of Rule 4 foreclose the panel's holding.

1. By its own terms, Federal Rule of Civil Procedure 4, which governs the service of a summons and complaint on a defendant, does not limit a federal court's authority with respect to out-of-state opt-in members of an FLSA collective action. Rule 4 establishes a framework for initiating a defendant's involvement in civil litigation: It provides that "[o]n or after the filing of the complaint … [a] summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served" by the clerk of the court. Fed. R. Civ. P. 4(b). It then imposes an obligation on the plaintiff: The "summons must be served with a copy of the complaint." *Id.* 4(c). And the Rule sets a strict time limit on the plaintiff's obligation to effect service, directing that a court "must dismiss the action" if a defendant "is not served within 90 days after the complaint is filed." *Id.* 4(m).

In addition, Rule 4 functions as a gatekeeper over the federal courts' exercise of personal jurisdiction. It provides that, in general, "[s]erving a summons or filing a waiver of service establishes personal jurisdiction over a defendant … who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." *Id.* 4(k)(1)(A). Accordingly, in the absence of a federal statute authorizing nationwide service, "a federal court normally looks ... to the long-arm statute of the State in which it sits to determine whether a defendant is amenable to service, a prerequisite to its exercise of personal jurisdiction." *Omni Capital*, 484 U.S. at 105. Because state long-arm jurisdiction is in turn limited by the Fourteenth Amendment's requirements, those Fourteenth Amendment limits are often relevant to whether a federal court can obtain personal jurisdiction under Rule 4. *See, e.g.*, *Walden v. Fiore*, 571 U.S. 277, 283 (2014); *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014).

Domestic defendants, by definition, have the minimum national contacts required by the Due Process Clause of the Fifth Amendment. *See Bd. of Trustees*, 212 F.3d at 1036. The scope of a federal court's personal jurisdiction over such defendants is therefore principally limited by statutes or rules promulgated pursuant to statutory authority, rather

than by the Constitution. *See Omni Capital*, 484 U.S. at 108–09. As explained above, Fourteenth Amendment limits do not apply of their own force to the federal courts, and there is thus no constitutional basis for limiting the powers of federal courts to those of the state courts. *See supra* at I. Fourteenth Amendment standards are nonetheless relevant to cases in federal court because, under Rule 4, "a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.'" *Walden*, 571 U.S. at 283 (quoting Fed. R. Civ. P. 4(k)(1)(A)). That is, Rule 4(k)(1)(A) generally restricts the geographical scope of effective service of process to the territorial limits of the corresponding state court's personal jurisdiction. Once that procedural prerequisite is satisfied at the outset of the litigation, the federal court has personal jurisdiction over the defendant for the remainder of the proceedings.

This framework applies straightforwardly to FLSA collective actions. First, the named plaintiffs file the complaint. Then they serve the summons and the complaint on the defendants pursuant to Rule 4. To be effective, the process must be served on a defendant within the

geographic limits of the personal jurisdiction of the relevant state court with respect to the named plaintiffs. Once the named plaintiffs effectuate that service, the Rule imposes no additional requirements—related to service of process or to personal jurisdiction—on the members of the collective action who subsequently opt in. *See Waters*, 23 F.4th at 94 & n.7.

2. The panel incorrectly concluded that Rule 4(k)(1)(A) requires each and every opt-in member of an FLSA collective action separately to establish the court's personal jurisdiction over the defendant through the service of process mechanisms found elsewhere in Rule 4. *See* Op. 11. But neither the Supreme Court nor this Court has previously held that every opt-in plaintiff in an FLSA collective action must separately serve the defendant.

In contrast to the service obligation imposed on the original plaintiff, opt-in members in an FLSA action must provide only "consent in writing" to join the "action." 29 U.S.C. § 216(b); *see Hoffmann-La Roche v. Sperling*, 493 U.S. 165, 170–71 (1989). "Nothing else is required to make them parties." *Waters*, 23 F.4th at 91. The grant of procedural authority in § 216(b) would be hollow, and the benefits of collective

actions would be illusory, if Rule 4 imposed a separate requirement that every opt-in member had to separately file a complaint. Such a requirement would effectively transform an FLSA collective action into a consolidated proceeding of separately initiated individual actions. Indeed, from the FLSA's enactment in 1938 until the Supreme Court's decision in *Bristol-Myers*, no court ever suggested that the opt-in procedures in section 216(b) were limited to employees who worked in the state where the federal court action was filed.

Far from supporting the panel's holding, Rule 4 forecloses the panel's rationale. Rule 4(m) requires that a plaintiff serve the complaint and summons within 90 days of the filing of the complaint. If that requirement applied to opt-in members of an FLSA collective action, it would apparently require opt-in members to serve a complaint filed by someone else: the named plaintiffs. Even more oddly, the panel opinion would require opt-in members to effect that service within 90 days of the filing of the complaint by the named plaintiffs, although opt-in members typically would not even be notified that the lawsuit exists until much later, generally after the collective action has been conditionally certified.

Neither Congress nor the drafters of the Rules could have intended such a nonsensical result.

* * *

By balkanizing FLSA collective actions into inefficient state-by-state litigation, the panel opinion undermines Congress's creation of a unified remedial statute that authorizes an employee to sue an employer on behalf of all those who are "similarly situated." 29 U.S.C. § 216(b). Congress expected that collective actions under the FLSA would remedy the misconduct of multi-state employers through the efficient procedural mechanism of aggregate litigation. *See* 29 U.S.C. §§ 203(b), 206, 207. As the Supreme Court observed, "Congress [has] left intact the 'similarly situated' language providing for collective actions, such as this one. The broad remedial goal of the statute should be enforced to the full extent of its terms." *Hoffman-La Roche*, 493 U.S. at 173.

CONCLUSION

This Court should grant en banc review and affirm the district court.

Respectfully submitted,

/s/ Lauren E. Bateman

Lauren E. Bateman
Michael T. Kirkpatrick
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

September 30, 2024

Attorneys for Amici Curiae
Law Professors

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-face and volume limitations set forth in Federal Rules of Appellate Procedure 32(a) and 29 as follows: The type face is fourteen-point Century Schoolbook font, and the word count, as determined by the word-count function of Microsoft Word for Office 365, is 2,547, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and the rules of this Court.

/s/ Lauren E. Bateman
Lauren E. Bateman

CERTIFICATE OF SERVICE

I certify that on September 30, 2024, I caused the foregoing to be filed with the Clerk of the Court through the Court's ECF system, which will serve notice of the filing on all filers registered in the case, including all parties required to be served.

/s/ Lauren E. Bateman
Lauren E. Bateman