No. 12-574

In the Supreme Court of the United States

ANTHONY WALDEN, PETITIONER

v.

GINA FIORE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

Petitioner is a local Georgia police officer who was deputized as an agent of the Drug Enforcement Administration and stationed at an airport in Atlanta, Georgia. Respondents are professional gamblers who maintain a residence in Nevada. This *Bivens* case arises out of petitioner's seizure, and the government's subsequent delay in returning, $97,000 in cash that respondents were carrying through the Atlanta airport en route to Las Vegas. The questions presented are as follows:

1. Whether a federal district court in Nevada has personal jurisdiction over petitioner.

2. Whether, for purposes of establishing venue under 28 U.S.C. 1391(b)(2), "a substantial part of the events or omissions giving rise to [respondents'] claim[s]" can be said to have "occurred" in the District of Nevada.

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INTEREST OF THE UNITED STATES

This case involves the territorial limits on where a plaintiff may file an action under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against a federal law enforcement officer stationed at one of our Nation's airports. The court of appeals' decision has serious implications for all law enforcement officers who serve the Nation's transportation hubs and interact with travelers from each of the 50 States, as well as the District of Columbia, the Commonwealth of Puerto Rico, and other territories or possessions of the United States, on a daily basis. The United States therefore has a substantial interest in the proper resolution of this case.

STATEMENT

1. Petitioner is a police officer for the City of Covington, Georgia, who was deputized to work as an agent of the Drug Enforcement Administration (DEA) at the Atlanta Hartsfield-Jackson Airport. J.A. 13-14 ¶ 3, 39-40 ¶¶ 2-4. Respondents are professional gamblers who travel as part of their work and who maintained residences in California and Nevada. J.A. 13-15 ¶¶ 2, 8, 10, 18 ¶ 37. This case arises out of petitioner's seizure, and the government's subsequent delay in returning, cash that respondents were carrying through the Atlanta airport en route to Las Vegas.[1]

In July 2006, respondents left Las Vegas to begin a "gambling excursion." J.A. 14-15 ¶¶ 9, 11. Respondents traveled to Atlantic City, New Jersey; to San Juan, Puerto Rico; and then back to Las Vegas. J.A. 15 ¶ 11. On August 8, 2006, respondents arrived at the San Juan airport for their return flight, which had a connection in Atlanta, Georgia. J.A. 15 ¶ 13, 19 ¶ 43. Between them, respondents were carrying approximately $97,000 in cash in their carry-on bags and in their pockets. J.A. 15-16 ¶¶ 13, 17.

At the San Juan airport, Transportation Security Administration agents searched respondents and their carry-on bags. J.A. 16-17 ¶¶ 21-29. Upon discovering the cash, three DEA agents questioned respondents. J.A. 17-18 ¶¶ 30-38. Respondents produced California drivers' licenses as identification, informed the federal agents that they had residences in both California and Las Vegas, and explained that they had been gambling at a San Juan casino. J.A. 18 ¶¶ 35-37. Respondents

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[1] The allegations in respondents' first amended complaint were taken as true for the limited purpose of deciding petitioner's motion to dismiss. See Pet. App. 2a n.2, 68a.

were permitted to board the plane, but were told that they might be asked further questions. J.A. 19 ¶ 39.

When respondents arrived at the Atlanta airport for their connection, petitioner (who had been informed of their impending arrival by San Juan officials) met them at the departure gate. J.A. 19 ¶ 46, 41-42 ¶¶ 13-14. Petitioner asked respondents for identification, and they again produced their drivers' licenses. J.A. 42 ¶ 15. After a drug-sniffing dog alerted to the presence of contraband in respondents' bags (a false alert according to respondents), petitioner seized the cash. J.A. 21-22 ¶¶ 54-60, 65. Petitioner told respondents that the money would be returned if they produced documentation demonstrating that the cash was legitimate. J.A. 22 ¶ 62.

Respondents boarded the flight to Las Vegas; petitioner immediately transferred the funds to a secure location; and the matter was referred to the DEA in Virginia for further investigation. J.A. 25 ¶ 76, 42 ¶ 17. The next day, petitioner received a call from respondents' attorney requesting that the seized funds be returned. J.A. 43 ¶ 18. On August 30, 2006, and on September 15, 2006, petitioner received documentation sent by respondents' counsel in Las Vegas, which purported to establish the legitimacy of the funds. J.A. 23-24 ¶¶ 70-71, 43 ¶ 18. Petitioner never contacted respondents' counsel or "anyone else in Nevada" regarding respondents. J.A. 43 ¶ 19.

Respondents allege that petitioner subsequently prepared an "affidavit" in support of a forfeiture action in Georgia and forwarded that affidavit to the United States Attorney's Office in Georgia. J.A. 25 ¶ 80. According to respondents, the affidavit made false statements regarding the encounter at the airport and omit-

ted exculpatory evidence. J.A. 26-30 ¶¶ 81-87.[2] No forfeiture complaint was filed and, on March 1, 2007, the $97,000 in cash was returned to respondents in Las Vegas. J.A. 31 ¶¶ 94-95.

2. Respondents filed this *Bivens* suit in the United States District Court for the District of Nevada against petitioner and three unnamed DEA agents or attorneys.[3] Respondents alleged that petitioner and the other defendants had violated their Fourth Amendment rights by (i) initially seizing the cash without probable cause; (ii) retaining the funds after concluding they were legitimate; (iii) drafting and forwarding for prosecution a probable cause affidavit that knowingly contained false statements; (iv) willfully seeking to prosecute the funds while withholding exculpatory evidence; and (v) willfully withholding that exculpatory evidence from the United States Attorney's Office. J.A. 33-34 ¶ 102.

Petitioner moved to dismiss the complaint for lack of personal jurisdiction and improper venue. In support of that motion, petitioner submitted a sworn declaration attesting that he is a resident of Georgia who has never been to Nevada, never owned property in Nevada, and never conducted personal business in Nevada, J.A. 41 ¶¶ 7-11; that all of his interactions with respondents had occurred at the Atlanta airport, J.A. 42 ¶ 14; that when asked for identification, respondents had produced drivers' licenses not issued by the State of Nevada, J.A. 42 ¶ 15; that he had never contacted respondents' counsel or anyone else in Nevada regarding respondents, J.A. 43 ¶ 19; and that the cash had been immediately transferred to a secure location for processing, depriving him

[2] The allegedly false affidavit is not in the record. Pet. App. 93a.

[3] The other defendants were never served and were not appellants below. Pet. App. 7a n.8.

of any authority to return the money, J.A. 42-43 ¶ 17; see Pet. App. 11a n.11 (federal regulations confirm petitioner did not have legal authority to return the seized funds).

The district court granted petitioner's motion to dismiss for lack of personal jurisdiction without addressing venue. Pet. App. 65a-74a. Applying a "three part 'effects test' derived from [this] Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984)," the court concluded that "the search of [respondents'] luggage and seizure of their currency" were "expressly aimed at Georgia, not Nevada." *Id.* at 70a-71a. The court also concluded that petitioner's failure to return the seized currency did not qualify as an "affirmative, intentional act expressly aimed at Nevada" because petitioner "was not in possession of the currency for more than a short period of time after the seizure, and had no legal authority to return it." *Id.* at 71a n.1. The court acknowledged that petitioner's alleged acts may have "caused harm to [respondents] in Nevada," and that petitioner "may have known that [respondents] lived in Nevada." *Id.* at 72a. The court determined, however, that "this alone does not confer jurisdiction." *Ibid.*

3. The court of appeals reversed and remanded. Pet. App. 1a-64a.

a. The court of appeals first addressed personal jurisdiction. Pet. App. 8a-39a. Like the district court, the court of appeals applied a "three-part [effects] test" derived from *Calder*. *Id.* at 16a. The court did not dispute that the initial airport search and seizure "was expressly aimed at Georgia, not Nevada." *Id.* at 17a. Instead, the court focused on what it called "the false affidavit/forfeiture proceeding aspect of th[e] case," *i.e.*, petitioner's alleged submission of "a false and mis-

leading probable cause affidavit" and referral of "the case for forfeiture proceedings in the absence of probable cause." *Id.* at 15a, 17a.

With respect to that "aspect" of the case, the court of appeals found "strong" indications that petitioner had "expressly target[ed]" respondents "in Nevada." Pet. App. 20a. The court explained that petitioner had known "at some point *after* the seizure but *before* providing the alleged false probable cause affidavit, that [respondents] had a significant connection to Nevada." *Ibid.* And the court found that "[t]he delay in returning the funds to [respondents] in Las Vegas caused them foreseeable harm in Nevada." *Id.* at 28a.

The court of appeals also concluded that the exercise of personal jurisdiction over petitioner would not be unreasonable. Pet. App. 30a-36a. In weighing the relevant factors, the court thought it significant that, "[a]s an airport law enforcement officer, [petitioner] was necessarily aware that his actions would often have their principal impact outside of Georgia, as many of the people he investigates are in Atlanta only on their way to somewhere else." *Id.* at 31a. As for the burden of litigating in Nevada, the court acknowledged that petitioner's argument "might well have [had] force" if he had been "a local small business person or an airport employee." *Id.* at 32a. The court concluded, however, that federal agents (like petitioner) are different because "[w]hen federal employees are sued under *Bivens*, the government, as a rule, provides for their defense, and, ultimately, indemnifies them." *Ibid.*[4]

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[4] Having found that the Nevada district court had personal jurisdiction over petitioner based on the false-affidavit aspect of the case, the court of appeals suggested that the district court could exercise pendent personal jurisdiction over respondents' Fourth Amendment

Finally, the court of appeals rejected petitioner's argument that venue was improper under 28 U.S.C. 1391(b)(2). Pet. App. 40a-42a. The court held that the applicable venue requirements were satisfied because "[a]ll the economic injuries suffered by [respondents] were realized in Nevada, including their loss of use and interest on the funds for nearly seven months," and because "[t]he facts concerning the origin and legitimacy of the $97,000 are also connected to Nevada." *Id.* at 41a.

b. Judge Ikuta dissented. Pet. App. 48a-64a. In her view, the "only claim in th[e] complaint is a Fourth Amendment claim for seizure of property. There is no claim that [petitioner's] preparation of the allegedly fraudulent affidavit violated [respondents'] Fourth Amendment rights, and it is doubtful that such a constitutional tort even exists." *Id.* at 55a (footnote omitted). As for the Fourth Amendment seizure claim, Judge Ikuta concluded that petitioner did not "purposefully direct[]" his actions at respondents in Nevada because petitioner "knew only that [respondents] had California driver's licenses and were headed to Las Vegas" when he seized the cash. *Id.* at 53a-54a.

4. The court of appeals denied rehearing en banc, with eight judges dissenting in two separate opinions. Pet. App. 75a-95a.[5] The panel majority and dissent amended their respective opinions, each adding a "postscript" to respond to the en banc dissents. *Id.* at 43a-47a, 59a-64a.

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challenge to the initial seizure of the funds. The court remanded to the district court for further consideration of that issue. Pet. App. 38a-39a.

[5] Petitioner was represented by private counsel before the en banc court of appeals and is represented by private counsel in this Court.

SUMMARY OF ARGUMENT

I. The Nevada district court was not authorized to exercise personal jurisdiction over petitioner in this case. Under this Court's precedents, petitioner could appropriately be subjected to the Nevada court's jurisdiction only if, in performing the actions that respondents allege to be wrongful, petitioner purposefully directed his activities at the forum State. In this case, the conduct for which petitioner has been sued occurred entirely within Georgia.

The court of appeals attached significance to the fact that respondents experienced economic harm in Nevada when they returned to that State without the seized cash. In some circumstances, the evident likelihood of harm within the forum State may support a conclusion that the defendant purposefully directed his activities there. In this case, however, the initial deprivation of the funds occurred in Georgia. Neither respondents' *continued* lack of access to the money while they were physically present in Nevada, nor petitioner's awareness that respondents intended to travel to Nevada after their money was seized, establishes that petitioner directed his activities at that State.

The court of appeals' analysis would have particularly deleterious consequences for federal employees, like petitioner, who regularly interact with residents of many different States. Under the court of appeals' approach, a federal employee who is alleged to have performed his duties in an unconstitutional manner can be sued in any State where the plaintiff chooses to travel, at least so long as (i) the plaintiff makes her destination known to the employee, and (ii) her alleged injury remains unredressed when she reaches that destination. The court viewed that prospect as acceptable because (in

the court's view) federal employees are routinely given Justice Department representation, and are indemnified for any adverse judgment, when they are sued under *Bivens*. That analysis is flawed in multiple respects and would have serious adverse consequences for the federal government and its work force.

II. Under 28 U.S.C. 1391(b)(2), the propriety of venue in this case depends on whether "a substantial part of the events or omissions giving rise to" respondents' claims "occurred" in the District of Nevada. The court of appeals erred in finding venue proper in that district. This Court has long made clear that limitations on venue are intended "to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy* v. *Great W. United Corp.*, 443 U.S. 173, 184 (1979). That purpose is directly implicated here.

In this case, the seizure of the cash and petitioner's alleged preparation of a false affidavit both occurred in Georgia. Although the court of appeals found that respondents "suffered harm in Nevada," Pet. App. 41a, Section 1391(b)(2) does not identify the place of harm as a permissible venue for a federal civil action. In this case, moreover, respondents "suffered harm in Nevada" only in the sense that they *remained* without the $97,000 for a period of time after they returned to that State. That seven-month-long lack of access is not plausibly described as either an "event" or an "omission." To treat it as such for federal venue purposes would not only be countertextual; it would enable plaintiffs to lay venue in their own districts of residence in virtually every case, thus subverting the defendant-protective purpose of venue limitations.

The court of appeals also identified some "events," such as respondents' initial departure from Las Vegas

with cash in hand, and the post-seizure transmittal of documentation from respondents' counsel, that "occurred" in Nevada and had a tangential connection to petitioner's alleged unconstitutional conduct. Those events do not support venue in Nevada, however, because they are irrelevant to the disposition of respondents' constitutional claims and therefore are not events "giving rise to" those claims. Section 1391(b)(2), moreover, authorizes venue only in "a judicial district in which a *substantial* part of the events or omissions giving rise to the claim occurred." 28 U.S.C. 1391(b)(2) (emphasis added). Even if one or more of the Nevada connections identified by the court of appeals were properly viewed as "events" "giving rise to" respondents' claims, they are an insubstantial part of the overall set of events and omissions on which respondents' claims are based.

ARGUMENT

I. THE FEDERAL DISTRICT COURT IN NEVADA CANNOT EXERCISE PERSONAL JURISDICTION OVER PETITIONER

The Federal Rules of Civil Procedure prescribe territorial limits on the effective service of a summons by a federal district court. Under Rule 4(k)(1)(A), "[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." Fed. R. Civ. P. 4(k)(1)(A); see *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (*Omni Capital*). Nevada's long-arm statute, in turn, allows the exercise of personal jurisdiction to the full extent permitted by the Constitution. See Nev. Rev. Stat. Ann. § 14.065(1) (LexisNexis 2008); *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 131 S. Ct. 2846, 2850 (2011) (*Goodyear*)

("A state court's assertion of jurisdiction" is "subject to review for compatibility with the Fourteenth Amendment's Due Process Clause."). Whether petitioner was properly served under Rule 4(k)(1)(A) therefore turns on whether a Nevada state court could exercise jurisdiction over petitioner consistent with the Fourteenth Amendment's Due Process Clause.[6] On the facts pre-

[6] The United States has an interest in ensuring that claims under federal law brought in courts of the United States are not unduly constrained by a personal jurisdiction analysis that is narrowly focused on the fairness of subjecting the defendant to the sovereign power of a particular State, instead of the Nation as a whole. See Fed. R. Civ. P. 4(k)(2); Fed. R. Civ. P. 4(k) advisory committee's note (1993). In the service-of-process provision at issue in this case, Fed. R. Civ. P. 4(k)(1)(A), Congress has elected to limit a federal court's exercise of personal jurisdiction to "the jurisdiction of a court of general jurisdiction in the state where the district court is located" which, in turn, focuses the inquiry on the Fourteenth Amendment's Due Process Clause. But Congress can by law provide otherwise. For example, the Civil Rules also provide that service of process establishes personal jurisdiction "when authorized by a federal statute," Fed. R. Civ. P. 4(k)(1)(C), and Congress has in numerous federal statutes provided for nationwide service of process, see, *e.g.*, 15 U.S.C. 22; 15 U.S.C. 78aa (Supp. V 2011); 18 U.S.C. 1965. A due process inquiry under those distinct provisions would arise under the Fifth Amendment and must be judged by reference to the fairness of subjecting the defendant to the sovereign powers of the United States, rather than the sovereign power of a particular State. In prior cases, the Court has appropriately reserved the question whether "a federal court could exercise personal jurisdiction, consistent with the Fifth Amendment, based on an aggregation of the defendant's contacts with the Nation as a whole, rather than on its contacts with the State in which the federal court sits." *Omni Capital*, 484 U.S. at 102 n.5; see *J. McIntyre Mach., Ltd.* v. *Nicastro*, 131 S. Ct. 2780, 2790 (2011) (plurality opinion); *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 113 n.* (1987) (opinion of O'Connor, J.). The same approach is warranted here.

sented here, a Nevada state court could not constitutionally exercise personal jurisdiction over petitioner.[7]

A. A Nevada State Court Could Not Exercise Jurisdiction Over Petitioner Consistent With The Fourteenth Amendment's Due Process Clause

"The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 291 (1980). "[A] State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Goodyear*, 131 S. Ct. at 2853 (brackets, citation, and internal quotation marks omitted). This limitation on a state court's authority "protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 471-472 (1985) (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945)). It "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S.

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[7] This Court generally, though not invariably, considers questions of personal jurisdiction before addressing venue. See *Leroy* v. *Great W. United Corp.*, 443 U.S. 173, 180 (1979). Both are potential threshold non-merits grounds of decision, however, and the Court therefore may address them in whichever order it deems appropriate. See *id.* at 180-181; *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007); Pet. Br. 16.

at 297. "And it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* at 292.

1. This case presents a question of "specific jurisdiction," which the Court has described as the exercise of "personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984) (*Helicopteros*).[8] Specific jurisdiction "depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear*, 131 S. Ct. at 2851 (citation omitted).

The determination whether a state court may exercise specific jurisdiction in a particular case turns on the "relationship among the defendant, the forum, and the litigation." *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977); accord *J. McIntyre Mach., Ltd.* v. *Nicastro*, 131 S. Ct. 2780, 2793 (2011) (Breyer, J., concurring in the judgment); *id.* at 2798 (Ginsburg, J., dissenting); *Helicopteros*, 466 U.S. at 414; *Calder* v. *Jones*, 465 U.S. 783, 788 (1984); *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984); *Rush* v. *Savchuk*, 444 U.S. 320, 327 (1980). The required "substantial connection" between the defendant and the forum State exists only if the defendant has "purposefully avail[ed] [himself] of the privilege of conducting activities within the forum State,

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[8] "General jurisdiction," in contrast, is the exercise of "personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum." *Helicopteros*, 466 U.S. at 414 n.9. Respondents do not argue that petitioner is subject to the general jurisdiction of Nevada courts.

thus invoking the benefits and protections of its laws," *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958), or has "purposefully directed" his conduct "toward the forum State," *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 112 (1987) (*Asahi*) (opinion of O'Connor, J.). See *Burger King*, 471 U.S. at 475-476. Requiring such purposeful conduct "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'" *Id.* at 475 (citations omitted).

2. This Court's decision in *Calder* (on which the court below relied) fits comfortably within that framework. In *Calder*, a popular entertainer who lived and worked in California brought a defamation action in California state court against the author and editor of a *National Enquirer* article. 465 U.S. at 784-785. The article was written and edited in Florida, but was widely circulated in California. *Id*. at 785-786. The Court unanimously held that personal jurisdiction was proper in California.

The Court based that holding on three primary facts. First, California was the "focal point" of the story. *Calder*, 465 U.S. at 789. The article "concerned the California activities of a California resident" and was "drawn from California sources." *Id.* at 788. Second, California was the "focal point" of the harm suffered. *Id.* at 789. Plaintiff, an "entertainer whose television career was centered in California," had felt the "brunt of the harm, in terms both of [her] emotional distress and the injury to her professional reputation," in California. *Id.* at 788-789. Third, the defendants' "intentional, and allegedly tortious, actions were expressly aimed at California," since the defendants had written and edited an article that "they knew would have a potentially devastating

impact" on plaintiff. *Id.* at 789. The defendants also "knew that the brunt of that injury would be felt by [plaintiff] in the State in which she lives and works and in which the National Enquirer has its largest circulation." *Id.* at 789-790. The Court concluded that, because the defendants in *Calder* had "expressly aimed" their activities at California, they could "reasonably anticipate being haled into court there." *Ibid.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297).

3. The court of appeals misapplied this Court's precedents, including *Calder*, in holding that the Nevada district court could exercise personal jurisdiction over petitioner in this case.

Petitioner is a local police officer in Georgia who was deputized as a DEA agent and assigned to an airport in Georgia. He questioned respondents in Georgia; searched their bags in Georgia; and seized their cash in Georgia. He then (allegedly) executed a "false probable cause affidavit" in Georgia and forwarded it to a United States Attorney's Office in Georgia to initiate a forfeiture proceeding in Georgia.[9] And he never contacted respondents (or their attorney) outside of Georgia. See pp. 2-5, *supra*.

The purported "contacts" between petitioner and Nevada on which the court of appeals relied are patently insufficient to subject petitioner to the jurisdiction of a

[9] Respondents do not allege that petitioner was anywhere other than in Georgia when he prepared the allegedly false affidavit and forwarded it to a United States Attorney's Office in Georgia for possible use in a Georgia forfeiture proceeding. J.A. 25 ¶ 80, 29-30 ¶¶ 87-89. The first amended complaint alleges that "defendant C" and petitioner "worked together" to provide the "affidavit" "for forwarding to the U.S. attorney in Georgia." J.A. 25 ¶ 80; see J.A. 14 ¶ 7 (describing "Defendant C" as "an attorney or other person employed in Quantico, Virginia").

Nevada court. First, respondents' Las Vegas attorney contacted petitioner in Georgia on three occasions (by phone and by mail). Pet. App. 21a. That interaction did not reflect petitioner's "purposeful" decision to establish contact with Nevada, but rather was the "unilateral" act of respondents' own representative. *Burger King*, 471 U.S. at 475. It is well settled that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson*, 357 U.S. at 253; accord *Helicopteros*, 466 U.S. at 416-417; *World-Wide Volkswagen*, 444 U.S. at 298; *Kulko* v. *Superior Court*, 436 U.S. 84, 93-94 (1978).

Second, the court of appeals relied in part on respondents' allegation that some of the cash seized in Georgia had "originated" in Las Vegas. Pet. App. 20a-21a. An individual does not "purposefully direct[]" (*Asahi*, 480 U.S. at 112 (opinion of O'Connor, J.)) or "expressly aim[]" (*Calder*, 465 U.S. at 789) his activities at a particular State, however, simply by seizing property that was *previously* in that State. That is particularly clear in the present case, where the $97,000 that petitioner seized also included currency respondents had acquired in Atlantic City and San Juan. *E.g.*, J.A. 14-15 ¶¶ 9-11, 24 ¶ 72. The fact that respondents may have possessed some of those funds when they left Nevada is the sort of "random," "fortuitious," and "attenuated" contact that has no constitutional significance. *Burger King*, 471 U.S. at 475; see *World-Wide Volkswagen*, 444 U.S. at 295.

Third, the seized funds were eventually returned to respondents in Las Vegas. Pet. App. 22a. But respondents' claims do not "aris[e] out of or relate[] to" the *return* of the seized funds. *Helicopteros*, 466 U.S. at 414

n.8. It was petitioner's *failure to return* the seized funds (and the initial seizure itself) that gave rise to respondents' claims. Moreover, the funds were returned by someone other than petitioner at the direction of a Georgia Assistant United States Attorney, see J.A. 42-43 ¶ 17 (petitioner lacked authority to return cash after seizure); Pet. App. 11a n.11 (same); J.A. 31 ¶ 94, and presumably the funds were sent to Nevada (rather than to respondents' separate residence in California) because respondents chose to have the funds sent there. For all those reasons, the return of the funds does not represent the sort of contact between petitioner and the forum State that could justify the exercise of personal jurisdiction.

Fourth, the court of appeals found that petitioner's alleged wrongful conduct "caused foreseeable harm in the forum." Pet. App. 27a; see *id*. at 27a-28a. In some circumstances, as in *Calder*, the evident likelihood of harm in the forum State may support a conclusion that the defendant "purposely directed" his activities there. Here, however, respondents' initial economic injury occurred in Georgia when their cash was seized. The harm they suffered in Nevada was not any new economic loss, but simply the continuing effect of the prior seizure, and respondents experienced that harm in Nevada only because they chose to travel and remain there. Although petitioner knew that respondents were en route from San Juan to Las Vegas, see *id*. at 28a, his awareness of that fact provides no basis for concluding that petitioner "purposefully directed" his activities at that State.[10] A defendant's "amenability to suit" does

[10] Petitioner's asserted awareness of respondents' "significant connection" to Nevada is based on the facts that respondents were en route to Las Vegas; that part of the seized currency allegedly "origi-

not travel with a mobile plaintiff, any more than it travels with mobile chattel. *World-Wide Volkswagen*, 444 U.S. at 296.

The fact that respondents maintained a Nevada residence does not alter that conclusion. A plaintiff's State of residence is relevant only insofar as it "enhance[s] defendant's contacts with the forum," *Keeton*, 465 U.S. at 780—and, here, there is nothing to "enhance." See *Goodyear*, 131 S. Ct. at 2857 n.5 ("When a defendant's act outside the forum causes injury in the forum * * * a plaintiff's residence in the forum may *strengthen* the case for the exercise of *specific jurisdiction*.") (first emphasis added); *Rush*, 444 U.S. at 329, 332 (plaintiff's contacts with forum cannot be decisive in assessing defendant's due process rights). Petitioner's allegedly wrongful actions were directed at the money in Georgia, not at respondents in Nevada.

B. Adoption Of The Court Of Appeals' Analysis Would Have Significant Adverse Consequences For Many Federal Employees

Many federal law enforcement officers and other federal employees interact on a regular basis with large numbers of individuals with diverse residences. The present case, in which a local police officer deputized as a federal agent seized property from out-of-State residents at a transportation hub, involves a relatively common set of facts. Under the court of appeals' approach, a federal employee who is alleged to have performed his duties in an unconstitutional manner can be

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nated" from and was "destin[ed]" for Las Vegas; and that respondents' lawyer later sent documentation from Las Vegas. Pet. App. 20a-21a. Respondents do not allege that petitioner knew (at any time) that they maintained a second residence in Nevada. *Id.* at 51a.

sued under *Bivens* in any State where the plaintiff chooses to travel, at least so long as (i) the plaintiff makes her destination known to the employee, and (ii) her alleged injury remains unredressed when she reaches that destination.[11]

Far from appreciating the potential deleterious consequences of its holding for federal employees generally, the court of appeals treated petitioner's federal-employee status as a factor *supporting* the Nevada court's exercise of personal jurisdiction. The court acknowledged that petitioner's objection to defending this suit in Nevada "might well have force" if petitioner were "a local small business person or an airport employee." Pet. App. 32a. The court stated, however, that "[w]hen federal employees are sued under *Bivens*, the government, as a rule, provides for their defense, and, ultimately, indemnifies them." *Ibid.* The court concluded that "the traditional weight given to a defendant's inconvenience in having to litigate in a forum in which he has few contacts does not apply in this case, given that [petitioner] can be represented just as easily by the United States Attorney's Office in Nevada as by the Office in Georgia." *Id.* at 37a-38a. That analysis is wrong in at least three respects.

First, the court's premise is mistaken. The Department of Justice's guidelines make clear that the government's representation and indemnification of *Bivens* defendants are discretionary. See 28 C.F.R. 50.15; *An-*

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[11] To be sure, there are still the "reasonableness" factors, but this Court has said that only in a "compelling case" would the "minimum requirements inherent in the concept of 'fair play and substantial justice' * * * defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities." *Burger King*, 471 U.S. at 477-478 (citation omitted).

derson v. *Creighton*, 483 U.S. 635, 641 n.3 (1987); *Falkowski* v. *EEOC*, 764 F.2d 907, 910-911 (D.C. Cir. 1985), cert. denied, 478 U.S. 1014 (1986). Indeed, petitioner himself is represented by private counsel in the proceedings before this Court, as he was before the en banc court of appeals.

Second, even when the defendant employee in a particular *Bivens* suit is given Justice Department representation and is indemnified for any money judgment, the burden on the employee of defending in a distant forum may still be substantial. The defendant's personal presence may be required, for example, at pre-trial and/or trial proceedings. Thus, although the presence of a United States Attorney's Office in every federal judicial district may reduce the burden on the defendant's *lawyers* that trial of this case in Nevada would entail, it provides no sound reason for depriving petitioner himself of the protections to which other out-of-State defendants would be entitled.

Third, this Court has never suggested that established minimum-contacts requirements may be dispensed with or diluted, and a defendant forced to defend against suit in a State with which he has formed no voluntary connection, simply because the burdens associated with a particular suit are expected to be manageable. To be sure, limitations on States' exercise of personal jurisdiction over out-of-State defendants serve in part to protect defendants against inordinate burdens and inconvenience. See pp. 12-13, *supra* (noting purposes served by constitutional limitation on state authority). In applying personal-jurisdiction principles to any particular case, however, the dispositive question is not how great the burden on the particular defendant is likely to be, but whether the defendant has subjected himself to

that burden by engaging in voluntary conduct directed at the forum State. Petitioner's potential access to Justice Department representation and indemnification for any adverse judgment is simply irrelevant to that question.

In *Stafford* v. *Briggs*, 444 U.S. 527, 544 (1980), this Court held that a venue provision authorizing nationwide service of process on federal officers did not apply to "[s]uits for money damages for which an individual officeholder may be found personally liable." The Court explained that, if the provision were construed to encompass such suits, actions could "be brought against these federal officers while in Government service—and could be pressed even after the official has left federal service—in any one of the 95 federal districts covering the 50 states and other areas within federal jurisdiction." *Ibid.* The Court declined to "place federal officers, solely by reason of their Government service, in a very different posture in personal damages suits from that of all other persons." *Ibid.*

Like *Stafford*, this case involves a federal officer sued "for money damages for which an individual officeholder may be found personally liable." 444 U.S. at 544. The threat of having to defend a lawsuit in a distant forum—far from home, family, and work—could deter "able citizens from acceptance of public office," *Harlow* v. *Fitzgerald*, 457 U.S. 800, 814 (1982), and could interfere with their federal mission. That risk is heightened for the DEA and other federal agencies that rely on the cooperation of state and local police officers like petitioner to augment multi-agency task forces. The court below, however, avowedly treated petitioner's federal status as a ground for subjecting him to suit in a much broader range of fora than would be permissible if he

were "a local small business person or an airport employee." Pet. App. 32a. That aspect of the court of appeals' analysis is contrary to this Court's precedents and would have deleterious consequences for the federal government and its work force.

II. THE DISTRICT OF NEVADA IS NOT A PROPER VENUE UNDER 28 U.S.C. 1391(b)(2)

The venue provision applicable to this case states that a civil action "not founded solely on diversity of citizenship" may be brought in a judicial district where "a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. 1391(b)(2).[12] The court of appeals held that "a substantial part of the events or omissions giving rise to" respondents' claims "occurred" in the District of Nevada because respondents suffered economic "harm" in Nevada, and because other "facts" regarding "the origin and legitimacy of the $97,000" in cash were "connected" to Nevada. Pet. App. 41a. The court of appeals' decision on venue is divorced from the statutory text, inconsistent with congressional intent, and irreconcilable with this Court's decision in *Leroy* v. *Great Western United Corp.*, 443 U.S. 173, 183-187 (1979).

A. The Court Of Appeals' Decision On Venue Cannot Be Reconciled With This Court's Precedents

1. In *Leroy*, a Texas corporation brought suit in Texas against Idaho officials, challenging an Idaho statute

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[12] In 2011, Section 1391(b) was amended to apply to all civil actions. See Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, Title II, § 202, 125 Stat. 763. The 2011 amendments are inapplicable here, see *id.* § 205, 125 Stat. 764-765 (applying only to actions commenced after January 6, 2012), but they would not alter the analysis.

that imposed restrictions on takeovers of companies with assets in Idaho. 443 U.S. at 175-177. Relying on the then-current version of 28 U.S.C. 1391(b) (1976), which provided that a suit could be brought in a judicial district "in which the claim arose," the plaintiff argued that "the claim arose" in Texas because it "proposed to initiate its tender offer" in Texas and would feel the "impact" of Idaho's statute there. *Leroy*, 433 U.S. at 186. The Court rejected that argument.

The Court in *Leroy* explained that "the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." 443 U.S. at 183-184. Consistent with that purpose, in federal-question cases, Congress had historically declined to authorize venue in the district in which the plaintiff resided. *Ibid.* Indeed, before 1966, venue in a nondiversity case was generally proper *only* in the district where all of the defendants resided. 28 U.S.C. 1391(b) (1964). When Congress expanded the venue options to include the district in which "the claim arose," its objective was to identify a place more convenient for "both" of the litigants, and for the witnesses—not "to provide for venue at the residence of the plaintiff or to give that party an unfettered choice among a host of different districts." *Leroy*, 443 U.S. at 185.

The Court in *Leroy* did not dispute that the plaintiff would feel the "impact" of Idaho's statute in Dallas. 443 U.S. at 186. And the Court assumed (without deciding) that a claim could arise in more than one district. *Id.* at 184-185 & n.19. The Court nevertheless found that the plaintiff's "contacts" fell "far short" of establishing a sufficient connection between the "claim" and the Northern District of Texas. *Id.* at 186. A contrary con-

clusion, the Court explained, would subject Idaho officials to "suit in almost every district in the country." *Ibid.* Such an approach would also leave the venue decision "entirely in the hands of plaintiffs"—a result "inconsistent with the underlying purpose" of Section 1391(b). *Ibid.* Because the relevant actions (*i.e.*, the enactment and enforcement of the takeover statute) had been "taken in Idaho by Idaho residents," the claim had "only one obvious locus—the District of Idaho." *Id.* at 185.

2. The Court's reasoning in *Leroy* applies equally here. The entire interaction between petitioner and respondents occurred at the Atlanta airport. That is where respondents were questioned; where their bags were searched; and where the cash was seized. Petitioner then prepared the allegedly false probable cause affidavit and forwarded it to a United States Attorney's Office in Georgia for possible use in a Georgia forfeiture proceeding. See pp. 2-5, *supra*. The government's delay in returning the money, moreover, is properly understood as an "omission" occurring in Georgia. See *Cottman Transmission Sys., Inc.* v. *Martino*, 36 F.3d 291, 295 (3d Cir. 1994) (defendant's "failure to return various materials and failure to remit payments" to plaintiff in Pennsylvania cannot be said to have occurred in Pennsylvania, "[e]ven though the result was [plaintiff's] non-receipt of those items in Pennsylvania").

The only arguable connections between respondents' claims and the District of Nevada do not distinguish this case from *Leroy*. That petitioner's alleged conduct in Georgia had an economic impact on respondents in Nevada falls "far short" of establishing a sufficient connection to the forum district. *Leroy*, 443 U.S. at 186. The fact that "documentation of the legitimacy of the money

was sent" to petitioner in Georgia from respondents' Nevada counsel, Pet. App. 42a, also fails to establish a sufficient link. Venue was deemed improper in *Leroy* even though one of the *defendants* had sent a "telecopy letter" to the plaintiff's "offices in Dallas." 443 U.S. at 177. Treating respondents' own communication as sufficient to establish venue in the district of transmittal "would leave the venue decision entirely in the hands of plaintiffs." *Id.* at 186. And the court of appeals' decision would leave law enforcement officers who work at transportation hubs subject to suit in every judicial district in the Nation. Cf. *ibid.*; Pet. App. 31a & n.21 (noting that the Atlanta airport sees "an average of more than 240,000 passengers a day" and that many of those passengers are "on their way to somewhere else").

3. The court of appeals dismissed *Leroy* as irrelevant because it involved an earlier version of the venue statute. Pet. App. 40a n.23. The subsequent amendment, however, did nothing to undermine *Leroy*'s reasoning or its holding.

In 1990, Congress amended the general venue statute in several respects. See Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, Title III, § 311, 104 Stat. 5114 (1990 Amendments). *Inter alia*, Congress replaced the language at issue in *Leroy* ("in the judicial district * * * in which the claim arose") with the current formulation (in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred"). The amended statutory language had been recommended by the Federal Courts Study Committee. See H.R. Rep. No. 734, 101st Cong., 2d Sess. 23 (1990) (citing *Report of the Federal Courts Study Committee* 94 (Apr. 2, 1990) (Committee Report)). It had been proposed by the

American Law Institute (ALI) decades earlier. See *ibid.* (citing ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* §§ 1303, 1314 (1969)). And the same statutory language had been adopted by Congress in 1976 for suits against foreign states. *Ibid.* (citing Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, § 5, 90 Stat. 2897 (now codified at 28 U.S.C. 1391(f)(1)).

The primary purpose of the 1990 amendment was to make clear that venue may be proper in more than one judicial district. See 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3806.1, at 199 (3d ed. 2007) (Wright) (noting that ALI had "complained as early as 1969 that the 'in which the claim arose' formulation was litigation-breeding, because it implied that there was a unique, best venue for every claim"); Committee Report 94. By authorizing venue in "a" judicial district in which a "substantial part" of the events or omissions giving rise to the claim occurred, Congress "removed much of the ambiguity of the former statute." *Gulf Ins. Co.* v. *Glasbrenner*, 417 F.3d 353, 356 (2d Cir. 2005).

Although the 1990 amendment potentially expanded the number of districts in which venue could be found proper, it did not substantively modify the nexus required between the claim and the judicial district. In particular, the amended language did not suggest that venue could be premised on the plaintiff's own contacts with the forum district. To the contrary, the amended language ("events or omissions giving rise to the claim") made *more explicit* what the *Leroy* Court had already found to be implicit in the pre-amendment version—*i.e.*, that the venue inquiry should ordinarily focus on the allegedly wrongful conduct of the defendant. The 1990

amendment therefore casts no doubt on the continuing vitality of this Court's reasoning and holding in *Leroy*.

B. No "Substantial Part" Of The "Events" Or "Omissions" "Giving Rise To" Respondents' Claims "Occurred" In Nevada

For venue to be proper in the District of Nevada, a (i) "substantial part" (ii) of "the events or omissions" (iii) "giving rise to [respondents'] claim[s]" must have (iv) "occurred" in Nevada. Respondents cannot satisfy those requirements here.

1. The initial seizure of respondents' cash, and the alleged preparation of the false affidavit, were "events" within the meaning of Section 1391(b)(2). Under the plain meaning of the statutory term, however, those events "occurred" outside of Nevada. Petitioner's allegedly wrongful failure to return the money promptly, but see p. 5, *supra* (noting district court's conclusion that petitioner lacked legal authority to return the funds after the initial seizure), is plausibly described as an "omission." Section 1391(b)(2)'s reference to the district where an "omission" "occurred," however, is best read to mean the district where the defendant *ought to have* performed the required action. Given petitioner's apparent presence in Georgia throughout the relevant time period, there is no basis for treating Nevada, or any place other than Georgia, as the district where any wrongful "omission" "occurred."

The court of appeals stated that respondents "suffered harm in Nevada" because "[a]ll the economic injuries suffered by [respondents] were realized in Nevada, including their loss of use and interest on the funds for nearly seven months." Pet. App. 41a. Section 1391(b)(2), however, does not identify the locus of harm as a permissible venue for a federal civil action, but

instead refers to districts where "events" or "omissions" have "occurred." Under no accepted understanding of the word can an event or omission be said to "occur" in every place where its effects are felt. And while respondents' seven-month-long lack of access to the relevant funds may have *resulted* from petitioner's alleged wrongful conduct, the lack of access itself cannot plausibly be described as either an "event" or an "omission."

In stating that respondents "suffered harm in Nevada," Pet. App. 41a, moreover, the court of appeals relied on an expansive conception of the term "suffered." If respondents' Nevada bank accounts had been frozen, respondents would naturally be said to "suffer harm" in Nevada, even if the individual who caused the accounts to be frozen had acted in Georgia. In this case, by contrast, respondents' initial economic injury, like the actions that caused the injury, occurred in Georgia when their cash was seized. Respondents "suffered harm in Nevada" only in the sense that they *remained* without the $97,000 for a period of time after they returned to that State.[13]

[13] Different and more difficult venue questions may arise when the plaintiff's initial injury occurred in one judicial district but was caused by the defendant's action in another. A defective product, for example, could malfunction in a plaintiff's home, resulting in injury. Cf. *J. McIntyre*, 131 S. Ct. at 2798 (Ginsburg, J., dissenting) ("[T]he State in which the injury occurred would seem most suitable for litigation of a products liability tort claim.") (citing, *inter alia*, 28 U.S.C. 1391(b)); Pet. Br. 52-53. The malfunction in such a case would naturally be described as an "event," and the venue analysis would turn on whether the malfunction and accompanying injury formed "a substantial part of the events or omissions giving rise to the claim." 28 U.S.C. 1391(b)(2). No such question is presented here. Unlike the hypothetical malfunction in such a case, or the initial seizure of

To treat that continuing harm as an "event" sufficient to trigger venue would "work a transformation of the venue statute that Congress could not have intended." *Woodke* v. *Dahm*, 70 F.3d 983, 985 (8th Cir. 1995). Until 1990, the district in which the plaintiff resided was a permissible venue for diversity cases, but not for federal-question cases. See 28 U.S.C. 1391(a) and (b) (1988). In the same legislation that added the current statute's reference to "events or omissions giving rise to the claim," Congress removed the plaintiff's residence as a proper basis for venue in a diversity case. 1990 Amendments § 311, 104 Stat. 5114. As amended, the general venue statute reaffirms its fundamental purpose: to "protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy*, 443 U.S. at 183-184; *Woodke*, 70 F.3d at 985 (Congress did not abandon "the protection of defendants as a relevant consideration in venue matters.").

The practical effect of the decision below, however, is that plaintiffs will be able to lay venue in their own districts of residence in virtually every case. Even when a plaintiff is injured outside her district of residence, the effects of that injury (at least if it is worth suing about) will rarely have dissipated altogether by the time she returns home. If a Virginia resident breaks her leg in a New Jersey automobile accident, for example, her leg is unlikely to have healed entirely by the time she returns to Virginia. To hold that such a plaintiff has "suffered harm in" Virginia, and that this continuing harm is an adequate basis for venue, would substantially revive (and extend to federal-question cases) the prior ap-

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respondents' funds, respondents' continuing lack of access to the money is not properly viewed as an "event."

proach to diversity cases that Congress abandoned in 1990. See Wright § 3806.1, at 215-216; Pet. Br. 56.[14]

2. The court of appeals relied as well on other connections between Nevada and the loss and eventual return of respondents' funds. See Pet. App. 41a-42a. The court explained that respondents' " 'bank' originated in Nevada"; that "documentation of the legitimacy of the money was sent [by respondents' attorney] from Nevada"; and that "the funds eventually were returned to [respondents] in Nevada." *Ibid.* Respondents' initial departure from Las Vegas with cash in hand, the attorney's transmittal of the letters, and the return of the

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[14] The fact that defendants may contest personal jurisdiction does not eliminate the ill effects of the court of appeals' overbroad construction of Section 1391(b)(2). Although limitations on personal jurisdiction and venue both serve in part to protect defendants against trial in inconvenient fora, they are distinct concepts governed by different legal standards. See *Noxell Corp.* v. *Firehouse No. 1 Bar-B-Que Rest.*, 760 F.2d 312, 316 (D.C. Cir. 1985) (Ginsburg, J.) (personal jurisdiction and venue are concepts "independent of each other" and "should be analyzed discretely" in light of "their respective underlying objectives and rationales") (citation omitted); *Gulf Ins. Co.*, 417 F.3d at 357 ("[T]he venue statute's 'substantial part' test" does not mirror "the minimum contacts test employed in personal jurisdiction inquiries."). For example, although personal service of process on a nonresident defendant temporarily within the forum State is a constitutionally sufficient basis for exercising personal jurisdiction, see *Burnham* v. *Superior Court*, 495 U.S. 604 (1990), it alone provides no basis for venue under 28 U.S.C. 1391(b). Cf. 28 U.S.C. 1391(b)(3) (Supp. V 2011) (A civil action may be brought in "any judicial district in which any defendant is subject to the court's personal jurisdiction," but only "if there is no district in which an action may otherwise be brought."). "[M]ore activity is required in venue cases than is necessary to satisfy constitutional due process" because, *inter alia*, "[t]he nature of the events' relationship with the forum for venue purposes must be 'substantial.'" Wright § 3806.1, at 233.

money are all "events" that "occurred" in Nevada. They provide no basis for laying venue there, however, because they do not "giv[e] rise to the claim[s]" asserted in this case.

In order for a particular "event" to "giv[e] rise to" respondents' constitutional claims, proof of that event must be integral, or at least germane, to the disposition of those claims. See *Jenkins Brick Co.* v. *Bremer*, 321 F.3d 1366, 1371-1372 (11th Cir. 2003). Petitioner is alleged to have violated respondents' constitutional rights by seizing their money, by drafting a false affidavit, and by seeking to have their cash forfeited. The facts that respondents began their trip in Las Vegas with significant cash in hand, and that respondents' attorney sought return of the funds, are simply irrelevant to the determination whether respondents' constitutional rights were violated. The court of appeals' reliance on the return of the funds to Nevada was particularly misplaced. Far from "giving rise to" respondents' constitutional claims, that event brought an *end* to the allegedly unconstitutional seizure of respondents' property. Cf. Fed. R. Crim. P. 41(g) ("A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return," but that "motion must be filed in the district where the property was seized."); 18 U.S.C. 981(b)(3), 983(f)(3)(A).

3. Under Section 1391(b)(2), a federal-question suit may be brought only in "a judicial district in which *a substantial part* of the events or omissions giving rise to the claim occurred." 28 U.S.C. 1391(b)(2) (emphasis added). To establish venue in Nevada, it therefore would not be sufficient for respondents to demonstrate that some small portion of the events "giving rise to the

claim[s]" occurred in that State. Rather, a "substantial" part of those events must have occurred in the district where suit is brought. See *Gulf Ins. Co.*, 417 F.3d at 357 (courts should "take seriously the adjective 'substantial'"); *Cottman Transmission Sys.*, 36 F.3d at 294 ("Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute.").

The search of respondents' bags, the initial seizure, the drafting of the allegedly false probable cause affidavit, and the referral for forfeiture proceedings all occurred in Georgia. Even if one or more of the Nevada connections identified by the court of appeals were properly viewed as "events" "giving rise to" respondents' claims, those events are a demonstrably *in*substantial part of the overall set of events and omissions on which respondents' claims are based. Venue in Nevada was therefore improper under Section 1391(b)(2).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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