
No. 20-1434

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

Gansevoort COLE,
on behalf of herself and all
others similarly situated,
Petitioner,

— *against* —

Lancelot TODD,
Respondent.

*On Writ of Certiorari to the
United States Court of Appeals
for the Thirteenth Circuit*

BRIEF FOR PETITIONER

TEAM 9
Attorneys for Petitioner

QUESTIONS PRESENTED

- I. Under the federal Telephone Consumer Protection Act, does the New Texas district court have specific personal jurisdiction of claims involving unnamed, out-of-state members of the class action suit passively participating in the litigation when specific personal jurisdiction exists over the named plaintiff's claim?
- II. Under federal choice of law rules, does the federal definition of alter ego apply in interpreting federal law?

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT	6
ARGUMENT AND AUTHORITIES	8
STANDARD OF REVIEW	8
I. THE NEW TEJAS DISTRICT COURT HAS SPECIFIC PERSONAL JURIS- DICTION OVER TODD WITH RESPECT TO THE CLAIMS OF OUT-OF-STATE CLASS MEMBERS BECAUSE HIS ACTIONS IN NEW TEJAS ARE CONNECTED TO COLE’S INJURY.....	8
A. Unnamed Class Action Members Are Irrelevant to the Specific Personal Jurisdiction Analysis Because They Play a Limited Role in Cole’s Class Action Lawsuit.....	11
1. Unnamed class action members are not part of the specific personal jurisdiction analysis because they play a passive role in Cole’s lawsuit and therefore are not full parties to the suit.....	14
2. Because unnamed class members are not full participants in Cole’s suit, Cole’s injuries establish specific personal juris- diction over Todd	20
B. Unnamed Class Action Members Play No Part in the Specific Personal Jurisdiction Evaluation Because Their Claims Add No Additional Burden to Todd Under the Due Process Clause.....	21

C. Unnamed Class Members Are Not Part of the Specific Personal Jurisdiction Equation Because They Play No Active Role in a Suit—Unlike Parties in a Mass Tort Suit.....	24
II. THE NEW TEJAS DISTRICT COURT HAS GENERAL PERSONAL JURISDICTION OVER TODD WITH RESPECT TO THE CLAIMS OF OUT-OF-STATE CLASS MEMBERS BECAUSE HE IS THE ALTER EGO OF HIS CORPORATION, SPICY COLD FOODS.....	29
A. Todd Is the Alter Ego of Spicy Cold Foods Because the Federal Common Law Definition of Alter Ego Applies to Determine General Personal Jurisdiction.....	30
B. Todd Is the Alter Ego of Spicy Cold Foods Because Todd Is Being Sued Under Federal Law, and the Federal Common Law Definition Applies to Establish General Personal Jurisdiction.....	33
CONCLUSION.....	38

TABLE OF AUTHORITIES

Page(s)

CASES:

<i>Anwar v. Dow Chem. Co.</i> , 876 F.3d 841 (6th Cir. 2017)	34, 35
<i>Boyle v. United Techs. Corp.</i> , 487 U.S. 500 (1988)	29, 31, 33, 36
<i>Bristol-Myers Squibb Co. v. Super. Ct. of Cal.</i> , 137 S. Ct. 1773 (2017)	<i>passim</i>
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985)	12, 21
<i>Corporacion Venezolana de Fomento v. Vintero Sales Corp.</i> , 629 F.2d 786 (2d Cir. 1980)	31
<i>Devlin v. Scardelletti</i> , 536 U.S. 1 (2002)	<i>passim</i>
<i>Erie R.R. Co. v. Thompkins</i> , 304 U.S. 64 (1938)	30
<i>Evans v. Portfolio Recovery Assocs.</i> , 889 F.3d 337 (7th Cir. 2018)	14
<i>Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.</i> , 141 S. Ct. 1017 (2021)	12, 21
<i>Int’l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)	11
<i>Lyngaas v. Curaden AG</i> , 992 F.3d 412 (6th Cir. 2021)	8, 9, 25, 26, 27
<i>Mussat v. Iqvia</i> , 953 F.3d 441 (7th Cir. 2020)	15, 16, 18, 19, 27, 28

<i>Oneida County v. Oneida Indian Nation of N.Y.</i> , 470 U.S. 226 (1985)	29, 33, 34, 35, 36
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985)	<i>passim</i>
<i>Ranza v. Nike Inc.</i> , 793 F.3d 1059 (9th Cir. 2015)	34
<i>Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.</i> , 559 U.S. 393 (2010)	8, 19, 20
<i>Swift & Co. Packers v. Compania Colombiana del Caribe, S.A.</i> , 339 U.S. 684 (1950)	31
<i>TransUnion LLC v. Ramirez</i> , 141 S. Ct. 2190 (2021)	14
<i>Williamson v. Recovery Ltd. P'ship</i> , 542 F.3d 43 (2d Cir. 2008)	32

CONSTITUTIONAL PROVISIONS:

U.S. Const. amend. XIV	1
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STATUTORY PROVISIONS:

28 U.S.C. § 1292(e)	1
28 U.S.C. § 1332	1, 15, 16
28 U.S.C. § 1652	1, 33
28 U.S.C. § 2072(b)	1, 20
47 U.S.C. § 227	31, 33, 35

RULES:

Fed. R. Civ. P. 4(k)(1)(A).....	12, 21, 22
Fed. R. Civ. P. 23(f)	1

LEGAL PERIODICALS:

<i>Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law,</i> 95 Harv. L. Rev. 853 (1982)	37
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OPINIONS BELOW

The order of the United States District Court for the District of New Texas that granted the motion to strike class allegations is unreported. The opinion of the United States Court of Appeals for the Thirteenth Circuit is also unreported but is set out in the record at pages 1a to 23a.

STATEMENT OF JURISDICTION

This Court has jurisdiction over the suit under 28 U.S.C. § 1292(e), as the United States Court of Appeals for the Thirteenth Circuit issued a final judgment denying the appeal. The United States Court of Appeals for the Thirteenth Circuit had jurisdiction over this suit under 28 U.S.C. § 1292(e) because the motions panel of that court granted Cole's petition for interlocutory appeal, filed on May 10, 2020, under Rule 23(f). Fed. R. Civ. P. 23(f).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV. This case also involves the following statutory provisions: 28 U.S.C. § 1292(e), 28 U.S.C. § 1332, 28 U.S.C. § 1652, 28 U.S.C. § 2072(b), 47 U.S.C. § 227, Fed. R. Civ. P. 4(k)(1)(A).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Gansevoort Cole's phone wouldn't stop ringing. R. at 3a. Over and over again, she picked up the call to hear a prerecorded message advertising strangely flavored

potato chips. R. at 3a. “Sure, can you handle the heat, but can you handle the cold? Face the challenge of spicy cold chips—the coolest chips ever made. Available online now. Ask for them in your local grocery store. Frost-bite into excitement,” the robocall suggested. R. at 3a. Cole, a resident of New Tejas, said she received at least five of the potato chip telemarketing calls on her cell phone, and another five on her personal phone. R. at 3a.

The robocalls, and the potato chips, were the brainchild of Lancelot Todd. R. at 3a. He invented the potato chip flavor that, when eaten, created a chemical reaction that caused people’s tongues and mouths to go numb and hoped to cash in on his strange edible innovation. R. at 2a. Todd christened his creation, “Spicy Cold chips” and incorporated the business, “Spicy Cold Foods,” in New Tejas in 2015. R. at 2a. He set the company’s principal place of business in New Tejas, too. R. at 3a. Still Todd, a resident of West Dakota, leased the company office space. R. at 4a. He owned all of Spicy Cold Foods stock—though it was worth nothing. R. at 4a, 5a. All of the money the company managed to make went straight to Todd, and it wasn’t much. R. at 4a. Spicy Cold Food’s bank account paid out Todd’s personal debts. R. at 5a. It operated without a board of directors. R. at 5a. Todd and Spicy Cold Foods were one and the same. R. at 5a.

Though Todd liked the chips, most people didn’t care for them. R. at 2a. Todd tried to sell Spicy Cold chips to restaurants and grocery stores, but no one was buying. R. at 3a. So Todd decided he needed to advertise his products. R. at. 3a. To gin up sales, he bought an automatic telephone dialing system in 2017, and blew up

the phones of consumers like Cole across the country. R. at 3a. “Sure, you can handle the heat, but can you handle the cold?” the prerecorded message droned when people picked up the phone. R. at. 3a. Cole, and others across the country, became fed up with the constant calls. R. at 3a. Cole never consented to the calls. R. at 3a. And the robocalls didn’t make her any more likely to buy the strange Spicy Cold chips Todd was selling, either. R. at 3a.

II. NATURE OF THE PROCEEDINGS

District Court. Cole filed a class action lawsuit in the United States District Court for the District of New Texas in 2018, which alleged Cole’s Spicy Cold Foods robocalls violated federal law under the Telephone Consumer Protection Act. R. at 3a. Cole’s action named both Todd and Spicy Cold Foods as defendants. R. at 3a. She sued seeking a remedy for her own experiences with the annoying calls, and on behalf of other consumers across the country, who also picked up the phone to hear the ad for Spicy Cold chips. R. at 3a.

The New Texas district court had general personal jurisdiction—the authority to haul the corporation into court and hand down a judgment against it—over Spicy Cold Foods as Todd incorporated it in New Texas and set up its principal place of business in there. R. at 2a–4a. But Todd moved to block the national class action lawsuit against him, personally, in New Texas, citing jurisdictional grounds. R. at 4a. He acknowledged that the New Texas district court had specific personal jurisdiction over him as it related to the claims made by the New Texas residents, like Cole. R. at 4a. But he claimed the New Texas district court did not have

personal jurisdiction over him as it related to the claims made by the out-of-state, unnamed members of the class action suit. R. at 4a. Cole rejected his argument and offered two ways that the District Court of New Tejas maintained personal jurisdiction over Todd for the entire national class action lawsuit. R. at 4a, 5a. First, Cole said the New Tejas district court had specific personal jurisdiction over Todd as it related to the entire national class action suit, because the court should not consider the claims made by the unnamed members of a class action in the personal jurisdiction analysis. R. at 4a, 5a. Specific personal jurisdiction existed as it related to Todd's actions in New Tejas and Cole—the named plaintiff who carried the action. R. at 4a, 5a. Cole argued that was enough to establish personal jurisdiction for the entire nationwide class action lawsuit, as Cole, as the named plaintiff, shouldered the claim forward for the unnamed members of the class. R. at 4a, 5a. The New Tejas district court rejected Cole's argument that specific personal jurisdiction existed over Todd as it related to the entire class action suit. R. at 7a.

Second, Cole said that the New Tejas district court had general personal jurisdiction over Todd as it related to the entire national class action suit, because under federal common law, he was the alter ego of his corporation, Spicy Cold Foods. R. at 5a. Federal common law lays out that when a person and a corporation are indistinguishable—with one controlling the other completely—the person is the alter ego of the corporation. R. at 5a. Indeed, the New Tejas district court determined that Todd was the alter ego of Spicy Cold Foods under the federal common law approach. R. at 5a. Todd and Spicy Cold Foods were the same entity—

as Todd used Spicy Cold Foods as a shell for his personal interests—even paying out his personal debts from its bank account. R. at 5a. Though the New Texas district court agreed that Cole was the alter ego of Spicy Cold Foods under the federal common law, it also agreed with Todd’s counterargument. R. at 7a. Todd argued, and the court agreed, that the New Texas interpretation of alter egos applied in determining personal jurisdiction under the federal Telephone Consumer Protection Act. R. at 6a. The New Texas district court recognized that the New Texas understanding of alter egos was unusual, as it provided that a person only becomes the alter ego of a corporation if he creates the corporation in an effort to defraud another person. R. at 6a. The New Texas district court rejected Cole’s argument that the federal common law interpretation of alter ego applied to determine general jurisdiction over a defendant accused of violating the federal Telephone Consumer Protection Act. R. at 7a. It blocked her national class action lawsuit, citing a lack of personal jurisdiction. R. at 7a.

Appellate Court. The United States Court of Appeals for the Thirteenth Circuit affirmed the New Texas district court’s decision that it lacked specific personal jurisdiction over Cole’s nationwide class action suit. R. at 11a. Further, the United States Court of Appeals for the Thirteenth Circuit affirmed the New Texas district court decision that the New Texas district court should use the New Texas interpretation of an alter ego to establish general personal jurisdiction over a defendant accused of violating the Telephone Consumer Protection Act and that it

therefore lacked general jurisdiction over Cole’s nationwide class action suit. R. at 16a.

SUMMARY OF THE ARGUMENT

I.

The New Texas district court has specific personal jurisdiction over Todd as it relates to Cole’s entire national class action suit because the connection between Todd’s activities in New Texas and Cole’s national class action suit establish specific personal jurisdiction. The district court should not consider unnamed members of a class action in the specific jurisdiction analysis. The unnamed members of a class do not factor into the specific personal jurisdiction analysis because they are passive, silent backers of the suit. The New Texas district court has personal jurisdiction over Cole’s national lawsuit because a connection exists between Todd’s actions in New Texas and Cole’s injury. That is enough to carry the entire national class action suit forward—the unnamed members of the class action suit do not factor into the personal jurisdiction analysis, because they are not full parties to the suit.

Moreover, the New Texas district court has specific personal jurisdiction over Todd as it relates to the whole of Cole’s national class action suit because the Fourteenth Amendment’s Due Process protections ordinarily provided to defendants—requiring a connection between the allegation against the defendant and his activities in a state—do not apply when the allegations are made by unnamed members of a class action lawsuit. This reality is grounded in reason: The claims of the unnamed members of the class action add no additional burden to

Todd. Moreover, the New Tejas district court has specific personal jurisdiction over Todd as it relates to the entire class action suit because unnamed members of a class action suit do not actively participate in the suit. Therefore, they are not considered during the specific personal jurisdiction analysis. Because named parties to a mass tort suit are full participants in a suit, they are considered during the specific personal jurisdiction analysis.

II.

Todd is the alter ego of Spicy Cold Foods because a federal choice of law test demonstrates that the federal common law interpretation of alter egos applies to determine general personal jurisdiction for violations of federal law, like the Telephone Consumer Protection Act at issue in this case.

The federal common law definition of alter egos applies to decide general personal jurisdiction because this Court has determined that a stronger federal interest exists in defining the meaning of alter egos. A federal choice of law inquiry shows that the federal government should apply the federal common law to federal laws like the Telephone Consumer Protection Act because the Telephone Consumer Protection Act involves no state interests. The federal government maintains the power to interpret federal laws like the Telephone Consumer Protection Act through federal common law—because understanding how these laws apply in practice is essential to the federal government’s interests. Moreover, applying federal common law to interpret federal law discourages forum shopping, as the law applies equally and evenly across the states. The federal common law interpretation of alter egos

applies to determine general personal jurisdiction for violations of federal law because the Telephone Consumer Protection Act is a federal law. And the federal government has a strong interest in filling in any gaps within its laws through federal common law.

This Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and remand for proceedings in the district court.

ARGUMENT AND AUTHORITIES

Standard of Review. This Court should review whether jurisdiction exists over the entirety of Cole’s class action suit using a de novo standard of review. *Lyngaas v. Curaden AG*, 992 F.3d 412 (6th Cir. 2021).

I. THE NEW TEJAS DISTRICT COURT HAS SPECIFIC PERSONAL JURISDICTION OVER TODD WITH RESPECT TO THE CLAIMS OF OUT-OF-STATE CLASS MEMBERS BECAUSE HIS ACTIONS IN NEW TEJAS ARE CONNECTED TO COLE’S INJURY.

Class action suits provide a way for district courts to hear many related claims at the same time. It’s a form of joinder—an invention meant to streamline the court’s caseload and ensure the court spends its time wisely. *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). It ensures the court does not waste its time hearing the same claim over and over again, unnecessarily clogging dockets with identical claims. It is a commonsense invention which works to ensure the courts run efficiently. But because of its broad nature—its design to bundle many thousands of identical claims against a single entity—this Court determined that class action suits are different creature than typical lawsuits.

Devlin v. Scardelletti, 536 U.S. 1, 9–10 (2002). These suits are treated differently than other types of suits like mass torts. *Lyngaas*, 992 F.3d at 435. Unnamed members of class action suits are not full parties in class action suits—because in many ways, they are not parties at all. *Id.* They don’t need to hire a lawyer, and don’t need to worry about getting slapped with counterclaims or cross claims. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810–11 (1985). The New Texas district court does not need to establish that it has specific personal jurisdiction over the unnamed members of Cole’s class action suit, for the claim against Todd, the defendant, to move forward. *Lyngaas*, 992 F.3d at 437.

The Court does not consider unnamed members of class action suits when it looks to establish subject matter jurisdiction in a diversity of citizenship case—and should not look to them when it considers specific personal jurisdiction. *Devlin*, 536 U.S. at 9–10. Unnamed members of a class action sign onto lawsuits in name only—but do none of the work of parties. So in most respects, this Court determined they are not parties. The New Texas district court should not consider unnamed members of a class action in the specific personal jurisdiction analysis regarding Todd—because unnamed members of a class action don’t function as parties. They are silent, anonymous backers of the named plaintiff’s claim. They are echoes—faceless members of a crowd, who repeat, “Me too.” Their presence in a lawsuit adds no additional burden to a defendant because he must defend the suit against the named plaintiff anyway. Because the unnamed class members underwrite and do not add any additional burdens to Todd’s defense, their presence in the suit does

not, and cannot, violate the specific personal jurisdiction nexus guaranteed to him as a defendant under the Fourteenth Amendment Due Process Clause. Unnamed members of a class action function to show the court the extent and breadth of an injury but do none of the work of named plaintiff. Instead, they rely on the named plaintiffs to carry their case. *Phillips*, 472 U.S. at 810–11. Requiring the named plaintiff, Cole, to ensure personal jurisdiction between Todd’s actions in New Texas and each and every unnamed party would keep this national class action lawsuit, and others like it, from ever moving forward. *Id.* This Court determined that unnamed members of a class action are not considered parties in determining subject matter jurisdiction in diversity of citizenship cases for exactly this reason—it would prevent the court from ever hearing these cases. *Id.*

Unnamed members of a class action are not part of the personal jurisdiction analysis because it would destroy national class action lawsuits, creating a barrier named plaintiffs like Cole could never overcome. It would be impossible to establish specific personal jurisdiction between every unnamed member of a class action suit and the defendant in the state where the suit is filed. That bar is too high, and it would extinguish possibility of a remedy that these named plaintiffs hope to obtain, and specifically, any remedy Cole hopes to obtain under the Telephone Consumer Protection Act. It would force plaintiffs across the country to file identical claims against the same defendant—each acting as full parties, footing the legal expenses and risks—clogging the courts with unnecessarily repetitive causes of actions. District courts should not consider unnamed members of a class action when

making a specific personal jurisdiction determination because that standard would stomp out the class action suit—a remedy Congress created to increase the efficiency of district courts and ensure they do not have to deal with thousands of the claims that say the same thing. Therefore, the New Texas district court has specific personal jurisdiction over Todd as it relates to the Cole’s entire class action suit because the connection between his actions in New Texas, and Cole’s injuries is enough to establish specific personal jurisdiction for the entire suit. Unnamed members of a class action are part of the personal jurisdiction analysis, as they play a limited role in the lawsuit.

A. Unnamed Class Action Members Are Irrelevant to the Specific Personal Jurisdiction Analysis Because They Play a Limited Role in Cole’s Class Action Lawsuit.

The New Texas district court has specific personal jurisdiction over Todd because the unnamed members of a class action suit are not full parties and do not actively participate in the suit. Therefore, the district court should not consider them as it determines if it can maintain specific personal jurisdiction over Todd as it relates to Cole’s national class action suit. Specific personal jurisdiction exists over Todd as it relates to Cole’s entire class action lawsuit because specific personal jurisdiction exists between Todd’s activities in New Texas and Cole’s injury. That is enough to provide personal jurisdiction for the entire class action suit. Unnamed members of a class action are not part of the personal jurisdiction analysis, as they do not fully participate in the suit.

Personal jurisdiction describes a court’s power to hand down a judgment to a party. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). This Court determined the Due Process Clause of the Fourteenth Amendment restricts a court’s power to render a judgment against a defendant. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). This limit protects defendants’ constitutional right to face judgment only in states where they have some connection. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985). The Federal Rules of Civil Procedure extend that constitutional limitation to the federal district courts. Fed. R. Civ. P. 4(k)(1)(A). This limitation sets out that district courts can hand down a judgment against a defendant only if the court sits in states where the defendant has “meaningful” connections. Fed. R. Civ. P. 4(k)(1)(A); *Burger King*, 471 U.S. at 471–72. One way a court can obtain personal jurisdiction under the limits set by the Due Process Clause is through specific personal jurisdiction—the ability to render a judgment against a defendant because his actions in the state caused the plaintiff’s injury. *Burger King*, 471 U.S. at 471–72. Specific personal jurisdiction requires that a claim against a defendant must have some relationship to his ties to the state. *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017).

This connection protects the defendant and ensures he does not have to defend himself in some faraway place. *Phillips*, 472 U.S. at 807. This Court in *Phillips* determined how specific jurisdiction can work in federal class action suits—which involve claims made by named parties to the suit, supported by allegations made by

unnamed individuals. *Id.* at 811. Each party’s claim against the defendant must have a connection to the defendant’s activities in the state for the court to have the specific jurisdiction to render a judgment against a defendant. *Bristol-Myers*, 137 S. Ct. at 1780. However, unnamed members of a class action are not parties in determining specific personal jurisdiction, as they are not active participants in the suit. *Devlin*, 536 U.S. at 9–10.

This Court determined a party can be a party in some ways and not in others. *Id.* The term “party” is not fixed, but rather applies under some situations, but not in others. *Id.* Unnamed members of a class action silently sign on to the suit but do not act as a party in many ways, and therefore are not considered in the specific personal jurisdiction analysis. *Mussat v. Iqvia*, 953 F.3d 441, 447 (7th Cir. 2020). They “do not hire counsel or appear.” *Phillips*, 472 U.S. at 810. The list goes on: These unnamed members of a class action suit never get hit with “counterclaims or cross claims, or liability for fees or costs.” *Id.* They won’t get slapped with punitive damages. *Id.* Unlike a party, “an absent class action plaintiff is not required to do anything. He may sit back and let the litigation run its course.” *Id.*

Because the unnamed members of a national class action suit play a limited role in the suit and are not full parties, the New Texas district court should not consider the unnamed members of Cole’s class action suit when deciding if the court has specific personal jurisdiction over Todd as it relates to Cole’s entire national class action suit. Instead, only the named plaintiff, Cole, should be evaluated in the personal jurisdiction analysis. Because Cole’s injuries relate to Todd’s actions in

New Texas, the New Texas district court has specific personal jurisdiction over Cole's entire class action lawsuit. The unnamed members of the class action do not factor into the specific personal jurisdiction analysis because they do not play an active role in the suit and therefore are not parties to the suit in determining specific personal jurisdiction.

1. Unnamed class action members are not part of the specific personal jurisdiction analysis because they play a passive role in Cole's lawsuit and therefore are not full parties to the suit.

The unnamed class members are not parties to Cole's suit when evaluating personal jurisdiction because this Court determined in many ways, they do not function as parties. *Devlin*, 536 U.S. at 9–10. To establish specific personal jurisdiction, each party's claim against the defendant must have a connection to the defendant's activities. *Bristol-Myers*, 137 S. Ct. at 1780. But this Court in *Devlin* determined that unnamed members of a class action are not full-fledged parties. 536 U.S. at 9–10. Unnamed members act as parties in some circumstances and not in others—because the term “party” is not an all-or-nothing label. *Id.* This Court determined a party is a party in some situations, and not others. *Id.*

Unnamed members of a class action suit function as parties in some context, and not in others. *Id.* For instance, they are parties in the sense that they must have Article III standing: They must show the conduct at issue in the suit invaded their legally protected rights, and that winning the suit would make it right. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021); *Evans v. Portfolio Recovery Assocs.*, 889 F.3d 337, 344 (7th Cir. 2018). Moreover, they are parties in

the sense that they are bound by any settlement stemming from the lawsuit. *Phillips*, 472 U.S. at 808. But in many respects, indeed most respects, unnamed members of a class action lawsuit do not function as parties. *Id.* at 810. This Court does not ask them to. *Devlin*, 536 U.S. at 10. Unnamed members of a class action don't have to hire a lawyer to represent them in court. *Id.* They aren't hit with counterclaims and crossclaims, fees, or costs. *Id.* Unnamed members of a class don't have to shell out damages if things in court don't go the right for the named plaintiff in the case. *Id.* This Court determined that unnamed members of a class action suit are bound to a court's decision as half parties, as long as the named parties "adequately" represent them. *Phillips*, 472 U.S. at 808. They can "sit back," because they are not required to "do anything." *Id.* at 810. Unnamed members of a class action lawsuit are not parties in many respects.

Unnamed members of a class action are not parties when evaluating specific personal jurisdiction, because this Court determined that unnamed members of a class action are not parties when evaluating subject matter jurisdiction. *Devlin*, 536 U.S. at 9–10. This Court made this call in *Devlin*, when it determined that unnamed members of a class action are not parties in determining subject matter jurisdiction in diversity of citizenship cases—because anything else would prevent the district court from hearing these cases. *Id.* For a district court to have subject matter jurisdiction to hear or consider a case under diversity of citizenship, the adverse parties must be citizens of different states, and the amount in controversy must be more than \$75,000. 28 U.S.C. § 1332. Classifying unnamed members of a

class action suit as parties would break the central requirement for subject matter jurisdiction in diversity cases: The parties must be citizens of different states. *Id.*

This Court determined that unnamed members of a class action are not parties when assessing subject matter jurisdiction in diversity of citizenship cases because “in almost all cases” categorizing unnamed members of a class action suit as parties would kick the class action out of court—preventing the court from hearing the lawsuit. *Id.* The United States Court of Appeals for the Seventh Circuit solidified its decision that unnamed class action members are not parties to lawsuits when it determined that they do not need to meet the required amount in controversy of \$75,000 required of diversity lawsuits. *Mussat*, 953 F.3d at 447. The Court in *Devlin* weighed in on whether unnamed members of a class action should be considered parties in determining subject matter jurisdiction in diversity cases—and its response boiled down to one word: No. 536 U.S. at 9–10. Unnamed members of a class action are not parties when evaluating personal jurisdiction for the same reason they are not parties when assessing subject matter jurisdiction in diversity cases: It would kill class action suits. Therefore, the New Texas district court should not consider the unnamed members of Cole’s class action in the specific personal jurisdiction analysis because they are not considered parties for the specific personal jurisdiction analysis—as it would destroy the class action suit, which this Court recognized when it determined unnamed members of a class action are not parties in the subject matter jurisdiction or venue analysis.

Unnamed members of a class action suit are not considered parties in assessing personal jurisdiction because of the policy the court set in *Devlin*: classifying unnamed members of class actions as parties to determine whether specific personal jurisdiction would exterminate class actions suits. The Court determined that unnamed members of a class action are not parties when evaluating the district court's subject matter jurisdiction in diversity of citizenship cases because it did not want to block the court from hearing all class action lawsuits—the practical effect of classifying unnamed members of a class action as parties in evaluating subject matter jurisdiction.

Similarly, the unnamed members of Cole's class action suit are not parties when assessing specific personal jurisdiction over Todd because of the underlying policy the Court set in *Devlin*: Classifying unnamed members as a class action suit as parties would essentially bar the court from hearing these class action suits, and this Court said this outcome needs to be avoided. 536 U.S. at 9–10. The jurisdictional threshold for class action lawsuits would be too high. Class action suits would be essentially abolished, barring actions like Cole's national class action suits. People, like Cole, who repeat the same essential claim against the same defendant—whose harmful conduct crossed state lines—would be unable consolidate their claims with others and have their day in court. Instead, each plaintiff would have to shoulder the burden and expense of moving forward with their own claim—clogging courts with identical claims, and defeating the goal of class action suits: to improve judicial efficiency.

Unnamed members of a class action are not parties when determining personal jurisdiction for the same reason they are not parties when evaluating subject matter jurisdiction in diversity cases: The jurisdictional standard could never be met, preventing the court from hearing “almost all class actions.” *Id.* The Court in *Devlin* said it wanted to avoid this outcome—because it would block nearly all class action lawsuits in federal court. *Id.* This Court in *Devlin* said unnamed members of a class action are not parties in determining subject matter jurisdiction in diversity cases to ensure the district court can hear any class action suits. *Id.* Similarly, unnamed members of a class action are not parties in determining personal jurisdiction so the district court can hear any class action suits.

Unnamed members of a class action are not parties when determining personal jurisdiction because this Court in *Devlin* said that unnamed members of a class action are not parties for determining subject matter jurisdiction. *Id.* The Court’s policy behind that decision—that anything less would kill all class actions sitting in diversity—supports the conclusion that unnamed members of class actions are not parties for evaluating specific personal jurisdiction. Anything less would bar the court from hearing class action suits, because the bar to achieve personal jurisdiction would be too high. Indeed, the United States Court of Appeals for the Seventh Circuit saw no reason why the court should treat unnamed members of class actions differently when it came to subject matter jurisdiction in diversity cases and specific personal jurisdiction. *Mussat*, 953 F.3d at 447. It noted that unnamed members of a class action are not treat as parties for venue, either. *Id.*

Relying on the court’s reasoning in *Devlin*, it determined that unnamed members of a class action are not parties when establishing personal jurisdiction, because they are not considered parties for similar jurisdictional issues, like subject matter jurisdiction. *Id.*

Moreover, unnamed members of a class action are not parties in determining specific personal jurisdiction because the goal of class action lawsuit is to make it easier for courts to make a decision about multiple claims at the same time. *Shady Grove*, 559 U.S. at 408. Class action suits are an administrative tool which allows the court to work more effectively. *Id.* Unnamed members of a class are not parties when assessing subject matter jurisdiction because that approach would blow up the goal of class action suits: to streamline and simplify the court’s workload. This Court determined it would be an administrative nightmare to determine if district courts had subject matter jurisdiction over all class members—especially because many are unknown. *Devlin*, 536 U.S. at 9–10. For the same reasons, this Court should find that unnamed members of a class action are not part of the specific personal jurisdiction analysis. Therefore, it should rule that unnamed members of Cole’s suit are not part of the specific personal jurisdiction analysis as they are not parties for the personal jurisdiction analysis. It should find that specific personal jurisdiction exists over Todd for the whole of Cole’s national class action lawsuit, because it exists between Cole and Todd—the only parties considered in the personal jurisdiction analysis—because Cole’s injuries center around Todd’s actions in New Tejas.

2. Because unnamed class members are not full participants in Cole’s suit, Cole’s injuries establish specific personal jurisdiction over Todd.

Because the unnamed class members are passive actors in Cole’s suit, they are not part of the specific personal jurisdiction evaluation. Therefore, Cole’s class action suit does not expand the district court’s personal jurisdiction beyond its scope. Class action suits are a procedural vehicle which allow courts to streamline its docket. *Shady Grove*, 559 U.S. at 408. Class actions suits allow the district court to make a decision about claims made by multiple parties at the same time. *Id.* These suits are authorized under Federal Rules of Civil Procedure, which are policed by the Rules of Enabling Act. *Id.* The Rules of Enabling Act says that procedural rules like class actions can “not abridge, enlarge or modify any substantive right.” 28 U.S.C. § 2072(b) This Court in *Shady Grove* determined combining parties claims together in a class action does not step on any substantive rights. 559 U.S. at 408.

Because the unnamed members of the class action are not parties when evaluating specific personal jurisdiction, they are not part of the district court’s specific personal jurisdiction analysis. Their inclusion in the suit does not expand the court’s personal jurisdiction beyond its scope, because they do not count as parties in the personal jurisdiction analysis. Cole is the only named party in the suit—therefore her claim is the only one considered in the specific personal jurisdiction analysis. The district court determines if it has specific personal jurisdiction over a claim by assessing if the claim is connected to the defendant’s

activity in the state where the suit is filed. *Bristol-Myers*, 137 S. Ct. at 1780. Because Cole’s claim centers around Todd’s activities in New Texas—the state where the suit was filed—the district court has specific personal jurisdiction over her claim. Because the unnamed members of the class action are not parties to Cole’s suit when evaluating personal jurisdiction, their claims are not part of the personal jurisdiction analysis. Their claims did not expand the court’s personal jurisdiction beyond what is authorized in the Rules of Enabling Act—because they are not parties and do not factor into the personal jurisdiction analysis. Because the court must only use the claim by Cole, the named party, in the personal jurisdiction analysis, the unnamed members of the class have no effect on personal jurisdiction. Therefore, the court’s personal jurisdiction is not expanded beyond the scope of the Rules of Enabling Act—because the unnamed members of the class action are not parties in determining personal jurisdiction.

B. Unnamed Class Action Members Play No Part in the Specific Personal Jurisdiction Evaluation Because Their Claims Add No Additional Burden to Todd Under the Due Process Clause.

Because the additional claims by unnamed members of a class pose no additional burden to Todd, the Due Process protections afforded to protect him against unreasonable claims by named parties do not apply. This Court determined the Due Process Clause of the Fourteenth Amendment restricts a court’s power to render a judgment against a defendant. *Ford*, 141 S. Ct. at 1024. This limit protects defendants’ constitutional right to face judgment only in states where they have some connection. *Burger King*, 471 U.S. at 471–72. The Federal Rules of Civil

Procedure extend that constitutional limitation to the federal district courts. Fed. R. Civ. P. 4(k)(1)(A). This limitation sets out that district courts can hand down a judgment against a defendant only if they sit in states where the defendant has “meaningful” connections. Fed. R. Civ. P. 4(k)(1)(A); *Burger King*, 471 U.S. at 471–72. This protection works to ensure defendants don’t have to carry the hefty cost of defending themselves in some faraway place. *Phillips*, 472 U.S. at 807. Because the price of mounting a defense can add up: Defendants must pay attorneys to represent them. *Id.* If they lose, they must pay damages, court costs and fees. *Id.* The Due Process requirement that a defendant have connections to the state where the claim is filed ensures he isn’t unfairly forced to shoulder these hardships. *Id.*

Unnamed members of a class action are not afforded the same Due Process protections that defendants command. *Id.* at 811–12. The Due Process Clause does not give the same protections to claims made by unnamed members of class action because they don’t face the same difficulties defendants endure when a faraway suit is filed. *Id.* Unnamed members of a class action get to avoid all the challenges defendants must face when a lawsuit is filed against them in a faraway state. *Id.* They don’t have to hire a lawyer to represent them in court. *Id.* at 810–11. They don’t have pay up if things don’t go their way. *Id.* They don’t have to worry about counterclaims or crossclaims. *Id.* Instead, they are “not required to do anything,” and can “sit back” and watch as their claim plays out. *Id.* Because navigating a faraway claim poses minimal burdens to unnamed members of a class action, the Due Process Clause does not protect unnamed members of a class action with the

same safeguards defendants receive. Unnamed members of a class action don't need to have any connection with the state where the lawsuit is filed for the court to have personal jurisdiction over their claim. *Id.* at 811–12.

Like the unnamed members of a class action—who don't do anything to file an out-of-state suit—defendants don't have to do anything to field out-of-state claims made by unnamed members of a class action suit. The claims made by the unnamed members of the class action piggyback on the claims of the named plaintiff. The defendant already needs to hire a lawyer. He already needs to travel to defend his claim. There is no additional burden placed on him by the claims made by unnamed class members, because he must already defend an out-of-state claim made by a named defendant. The additional claims by the unnamed members of a class do not add to his burden. The burden he faces in fielding additional claims by unnamed members of a class is identical to the burden placed on unnamed members of a class action in filing an out-of-state claim: nothing. Because the additional claims by unnamed members of a class pose no additional burden to the defendant, the Due Process protections afforded to him against a named party do not apply. The burden the Due Process protection seeks to protect defendants against—the cost to defend themselves, the burden of litigating faraway claims—does not apply.

In this case, the claims made by the unnamed members of the class ride Cole's action against Todd. The New Texas district court has specific jurisdiction over Todd as it relates to the entirety of Cole's class action suit, because Todd reached into the state by calling Cole ten times in New Texas: five times on her home phone, and five

on her cellphone, to advertise his chip business. Cole's claim centers around Todd's activity in the state: She alleges the robocalls she received advertising his business violated the Telephone Consumer Protection Act. Because there is no question that the New Texas district court has personal jurisdiction over Todd regarding Cole's claims, there is no additional burden giving the court specific personal jurisdiction over the unnamed members of the class's claims. Their out-of-state claims pose no additional burden to Todd—because he needs to defend against Cole's claim anyway, so the specific jurisdiction nexus protections required under the Due Process Clause of the Constitution do not apply.

C. Unnamed Class Members Are Not Part of the Specific Personal Jurisdiction Equation Because They Play No Active Role in a Suit—Unlike Parties in a Mass Tort Suit.

This Court cannot consider unnamed class members to establish personal jurisdiction because Cole filed a federal class action suit, not a state mass tort suit. This Court in *Bristol-Myers* determined a California court did not have specific personal jurisdiction over an out-of-state drug company, being sued by out-of-state parties. 137 S. Ct. at 1781. The Court made this determination because specific personal jurisdiction only stands against a defendant if the claims are related to its activity in the state. *Id.* The out-of-state parties in *Bristol-Myers* claimed they were injured by the drug company's medication—but they did not obtain the medication in California, were not injured by the medication in California, and were not treated for their injuries in California. *Id.* Moreover, the drug company did not develop, manufacture, or package the drug in California. *Id.* at 1778. In short, claims made

by the out-of-state parties against the out-of-state drug company had nothing to do with the defendant's activity in California. *Id.* at 1778, 1781. So this Court determined the state court lacked specific personal jurisdiction over the defendant—as the out-of-state claims had nothing to do with the defendant's activity in California. *Id.* at 1781.

This decision about specific personal jurisdiction in mass action torts stands, separate and siloed from, the court's views on specific personal jurisdiction in class action suits. That's because in mass tort actions every party serves as a full party in every respect—therefore every party factors into the district court's personal jurisdictional analysis. But in class action suits, unnamed members of a class are not parties when evaluating personal jurisdiction—and do not play a role in the court's personal jurisdiction analysis. In short, specific personal jurisdiction plays out differently in mass tort actions and class action suits, because in class action suits, unnamed members of the class are not parties when it comes to assessing personal jurisdiction over the defendant. And in mass tort actions, the court views all parties when making a determination about specific personal jurisdiction.

This Court treat actors in mass torts as full parties because they are full parties. They are full parties because they are all named parties. *Lyngaas*, 992 F.3d at 435. Hundreds of out-of-state plaintiffs in *Bristol-Myers* sued a drug manufacturer in California. 137 S. Ct. at 1778. The out-of-state plaintiffs' claims had nothing to do with the drug company's actions in California. *Id.*

Instead, the plaintiffs claimed medication made by the drug company injured them outside the state. *Id.* at 1781. But they sued in California. *Id.* at 1775. This Court called out out-of-state actors by their name: plaintiffs. *Id.* at 1781. This Court considered these plaintiffs as full parties because they are named parties: The defendant must challenge each of their claims—and grapple with every individual allegation, each with its own individual factual allegations and legal concerns. *Lyngaas*, 992 F.3d at 435. The plaintiffs in a mass tort action are not anonymous, nor do their claims center around the same facts or legal theories. *Id.* The plaintiffs are full parties because they are present—and while the court combines their cases to resolve any shared issues, it will also address the specific, unique concerns each claim raises. *Id.*

Because the plaintiffs in *Bristol-Myers* were full parties, a “straightforward application” of “settled principles of personal jurisdiction” applied. 137 S. Ct. at 1783. The California court did not have specific personal jurisdiction over the defendant drug company regarding the out-of-state claims: The claims failed the specific personal jurisdiction test. *Id.* at 1781. For a court to obtain specific personal jurisdiction over a defendant, the claims against him must be connected to his activities in the state. *Id.* The out-of-state plaintiffs’ claims were unrelated, and unconnected to the drug company’s activities in California. *Id.* Therefore, the California court had no authority to force the defendant drug company defend the claims in California. *Id.* And the California court had no authority to render a judgment against the defendant drug company. *Id.*

The out-of-state plaintiffs in *Bristol-Myers* were all named parties. *Lyngaas*, 992 F.3d at 435. So the California court needed to analyze specific personal jurisdiction over the defendant as it related to each claim made by the out-of-state plaintiffs. *Bristol-Myers*, 137 S. Ct. at 1783.

In contrast, this Court does not treat unnamed members of a class action as full parties. *Devlin*, 536 U.S. at 9–10. They are parties in some respects, and not in others. *Id.* They aren’t considered parties when evaluating subject matter jurisdiction in diversity cases. *Id.* This Court does not treat unnamed members of a class action suit as parties because in many respects, unnamed members of a class action do not function as full parties. They are not required to defend themselves, nor do they have to worry about counterclaims or cross claims. *Phillips*, 472 U.S. at 810. They don’t get hit with punitive damages, or any damages at all, if things don’t go the way the named plaintiff wants in court. *Id.* Unnamed members of a class action aren’t required to “do anything” and can “sit back” and watch as the litigation runs its course. *Id.* In contrast, named parties take an active role in the litigation, and have skin in the game. *Lyngaas*, 992 F.3d at 435. Class action suits are different from other types of combined actions. *Id.* at 412. While in a state mass action suit, each party to the suit is a named party, in class action suits, that’s not the case. *Id.* Further, while each party in a class action suit is a full-party—tasked with the responsibility of shepherding his claim through the court system—in class action suits, again, that’s not the way it works. *Id.* Class actions are “different from

many other types of aggregate litigation, and that difference matters in numerous ways for the unnamed members of the class.” *Mussat*, 953 F.3d at 447.

Unnamed members are not parties when determining specific personal jurisdiction in class action suits; therefore, the New Tejas district court has specific personal jurisdiction over Todd as it relates to the entirety of Cole’s class action suit, as Cole’s injuries center around Todd’s actions in New Tejas.

Unnamed members of a class action are not full parties considered in the personal jurisdiction analysis, because this Court determined they are not full parties in similar areas: They are not considered parties when conducting a subject matter jurisdiction analysis in diversity cases, nor are they considered parties when it comes to assessing venue. The rationale behind the court’s view that unnamed members of a class action are not parties in subject matter jurisdiction analysis explains why unnamed members of a class action are not parties in the specific personal jurisdiction analysis. If unnamed members of a class action were considered parties in the subject matter jurisdiction analysis for diversity of citizenship cases, this Court determined that jurisdictional bar could never be attained. Unnamed members of a class would “ruin diversity”—the requirement that all parties must be from separate states for the court to obtain subject matter jurisdiction—every time. *Devlin*, 536 U.S. at 9–10. Class action suits sitting in diversity would be abolished, because they could never meet that high jurisdictional bar. *Id.* Similarly, if unnamed members of a class action were considered parties in the specific personal jurisdiction analysis—a court could never obtain specific

personal jurisdiction over a class action suit, because of the far-flung nature of the parties' claims. It would extinguish all class action suits. Because out-of-state parties in mass action torts are full parties, they are considered in the personal jurisdiction equation. Because unnamed members of a class action suit are not parties in the personal jurisdiction analysis, they do not factor into the New Texas district court's determination of personal jurisdiction over Todd as it relates to Cole's entire class action suit. Therefore, this Court has specific personal jurisdiction over Todd as it relates to Cole's entire class action suit, because her claims center around Todd's actions in New Texas.

II. THE NEW TEXAS DISTRICT COURT HAS GENERAL PERSONAL JURISDICTION OVER TODD WITH RESPECT TO THE CLAIMS OF OUT-OF-STATE CLASS MEMBERS BECAUSE HE IS THE ALTER EGO OF HIS CORPORATION, SPICY COLD FOODS.

Federal common law serves a particular function: It's a way for the federal government to fill in the gaps of its statutes and provide guidance and clarity about practical meaning and application of the law when the statutory languages fails to fill in the gaps. When the federal government has a specific, special interest in laying out how a law should apply, and when the issue is central to the laws of the United States, federal common law applies. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988). One situation where this scenario crops up?—the statutory interpretation of federal laws. *Oneida County v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 236 (1985).

The federal government has a specific, urgent interest in interpreting the laws it creates through the federal common law—to ensure federal laws apply equally to

all citizens and discourage forum shopping. If New Texas can prescribe when alter egos can establish general personal jurisdiction in cases centered around the Federal Consumer Protection Act, it would be just as easy for West Dakota to come up with another definition—allowing plaintiffs to look around to see where their claim has the best chance of surviving. Moreover, the federal government has an interest in interpreting its own laws because they are federal laws, not state laws.

This Court requires the federal government to stay out of the state's substantive law—the federal government cannot ignore state common law and apply its own interpretation to state issues. *Erie R.R. Co. v. Thompkins*, 304 U.S. 64, 78–79 (1938). Similarly, states should not be able to flout federal common law and apply their own interpretation to federal issues. *Id.* State courts get to make their own common law in interpreting their laws. *Id.* Similarly, with the federalist ideals that ground this country demand that, the federal government can make its own common law to interpret federal laws. The federal government should apply its interpretation of alter egos in the general personal jurisdiction analysis of its own law: the Telephone Consumer Protection Act. Therefore, the New Texas district court has general personal jurisdiction over Todd, as he is the alter ego of New Texas corporation Spicy Cold Foods under the federal common law definition.

A. Todd Is the Alter Ego of Spicy Cold Foods Because the Federal Common Law Definition of Alter Ego Applies to Determine General Personal Jurisdiction.

Todd is the alter ego of Spicy Cold Foods because a federal choice of law inquiry shows that the federal common law understanding of alter egos applies to

determine general personal jurisdiction for violations of federal law. The district court should use a federal choice of law inquiry to decide if the federal common law or New Texas interpretation of alter egos applies to determine general personal jurisdiction over Todd. That's because the claim against Todd is controlled by federal law. It falls under the Telephone Consumer Protection Act, which hands the federal courts jurisdiction over all disputes that come up under the law. 47 U.S.C. § 227. Todd's claim is a federal question because it is central to the laws of the United States: It asks how a federal law, the Telephone Consumer Protection Act, should be interpreted and applied. *Boyle*, 487 U.S. at 504. And in federal question cases, a district court should employ a federal common law choice of law inquiry to pick which law to apply. *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 786, 795 (2d Cir. 1980). Here, that's a choice between the federal common law's interpretation on alter egos—that an individual can be the alter ego of a corporation if they act as essentially the same entity—or New Texas's understanding of alter egos—which views a person to be the alter ego of a corporation only when he intends to defraud someone.

This Court has historically used federal law to resolve questions surrounding federal law—and selected federal law to resolve these conflicts over the laws of defendants' place of incorporation. *Swift & Co. Packers v. Compania Colombiana del Caribe, S.A.*, 339 U.S. 684, 689–90 (1950). In *Swift*, this Court refused to apply the law of the defendant's place of incorporation, Colombia, and instead applied federal common law—because the maritime issue fell strictly under federal law. *Id.*

Similarly, this Court should reject the alter ego law of New Texas—and apply the alter ego interpretation under federal common law because the conflict centers around federal law: the Telephone Consumer Protection Act. And this Court should find the New Texas district court has general jurisdiction over Todd because under federal common law, he is the alter ego of Spicy Cold Foods—as he and the corporation are one and the same.

Further, the United States Court of Appeals for the Second Circuit determined that federal common law understanding of alter ego applies when interpreting federal law—and ignored the law of the corporation’s state—in maritime cases. In *Williamson*, this Court applied the federal common law interpretation of alter ego over Ohio law because the conflict centered around federal law. *Williamson v. Recovery Ltd. P’ship*, 542 F.3d 43, 52 (2d Cir. 2008). The court refused to apply Ohio law because the conflict was within the scope of federal law. *Id.* at 49. Similarly, this Court should apply the federal common law interpretation of alter egos to Spicy Cold Foods—because the dispute revolves around the federal Telephone Consumer Protection Act. Because the conflict arises under federal law, federal common law controls. Therefore, this Court should apply the federal common law understanding of alter egos, and New Texas district court has general personal jurisdiction over Todd.

B. Todd Is the Alter Ego of Spicy Cold Foods Because Todd Is Being Sued Under Federal Law, and the Federal Common Law Definition Applies to Establish General Personal Jurisdiction.

Todd is the alter ego of the New Tejas corporation of Spicy Cold Foods because the federal interpretation of an alter ego applies, as Todd is being sued under federal law. District courts apply state law every day—except when Congress says otherwise. 28 U.S.C. § 1652. Congress makes the call to exclusively apply federal law to a question when it is central to and controlled by the laws of the United States. *Boyle*, 487 U.S. at 504. And courts use the federal common law—a body of precedent interpreting these fundamentally federal questions—to help answer new federal questions. *Id.* One question that’s central to the laws of the United States: What did Congress mean? *Id.*; *Oneida County*, 470 U.S. at 236.

When a question before the court looks to fill in the gaps of federal statutes, federal common law applies. *Oneida County*, 470 U.S. at 236. If a question before the court contemplates something Congress didn’t mention in a statute, the district court must use federal common law to fill in the blanks. *Id.* If Congress didn’t address a question in the statute, but the federal common law provides an answer, then district courts should use the remedy the federal common law provides. *Id.*

The Telephone Consumer Protection Act provides that federal courts have exclusive jurisdiction over any conflicts that come out of the law. 47 U.S.C. § 227. This designation ensures that district courts handle any questions that come out of the law. While the statute does not include any specific language about when a district court has general personal jurisdiction over a defendant—the power to

adjudicate any claim against him because he is at home in the state—the federal common law fills in the gap. *Oneida County*, 470 U.S. at 236.

The Sixth and Ninth Circuits have found that the federal common law understanding of alter ego applies in determining the meaning of federal law. *Anwar v. Dow Chem. Co.*, 876 F.3d 841, 848–49 (6th Cir. 2017); *Ranza v. Nike Inc.*, 793 F.3d 1059, 1071 (9th Cir. 2015). Though the cases fail to lay out their reasoning, the courts likely held this way because the federal government has a strong interest in interpreting its own laws through the federal common law, which works to fill in any missing context of statutes.

The federal common law dictates that a district court has general personal jurisdiction over a defendant when he is the alter ego of a corporation—when he and the company are one and the same. *Anwar*, 876 F.3d at 848–49. An individual is the alter ego of a corporation when his business is the corporation’s business—they share employees, assets, financial statements, phone lines with the corporation to achieve the same business goal. *Id.* An individual takes on the role of an alter ego when he controls the corporation to such a degree that a district court cannot separate his interests and actions from the corporation’s interests and actions. *Id.*

The federal understanding of an alter ego applies to Todd—and he and Spicy Cold Foods are the same entity in determining general personal jurisdiction in this dispute—because he is accused of violating a federal law, the Telephone Consumer Protection Act. That law provides that the federal courts have general jurisdiction over all conflicts that come up under this law—but does not say specifically when

the federal courts have general personal jurisdiction over a defendant. Because the federal law does not lay out exactly which circumstances the district court has general personal jurisdiction, the federal common law applies to fill in the gaps. *Oneida County*, 470 U.S. at 236. Here, federal common law lays out that the district courts have general personal jurisdiction over an individual when he is the alter ego of a corporation—as Todd is to Spicy Cold Foods. The federal interpretation of alter ego applies to Todd because he is being sued under a federal statute, and when a federal statute fails to specify a particularity, federal common law steps in to fill in the gap. *Id.* And here federal common law states that when an individual functions as the alter ego of a corporation, as Todd does, the district court has the same general personal jurisdiction over that individual, as he would a corporation.

Federal law controls Cole’s claim because it arises from the Telephone Consumer Protection Act, which gives the federal district courts complete jurisdiction over any disputes that arise from the law. 47 U.S.C. § 227. Congress did not address whether the courts could have personal jurisdiction over an entity through the alter ego theory in the Act. However, the federal common law dictates that an entity is the alter ego of a corporation if shared employees conduct the same business, using the same assets to get the job done. *Anwar*, 876 F.3d at 848–49. And the federal common law dictates that if one entity is the alter ego of the other, they are viewed as one and the same in a personal jurisdiction analysis. *Id.* Because the act included no details about the circumstances under which a federal district court

had general personal jurisdiction over an entity through an alter ego theory, the federal common law steps in to fill in the gaps.

Therefore, using the federal common law analysis of alter egos, the federal district court has personal jurisdiction over Todd, because he is the alter ego of Spicy Cold Foods. He shares a bank account with Spicy Cold Foods. He owns all the Spicy Cold Foods' stock. He was Spicy Cold Foods' only employee. Todd is the alter ego of his corporation Spicy Cold Foods because he is being sued under federal law. Therefore, the federal common law—the body of law created by federal judges to help answer new federal questions—works to fill in any gaps in that law. When a question is fundamental to the laws of the United States, federal district courts must apply federal common law, the body of judge-made law created to help answer new federal questions. *Boyle*, 487 U.S. at 504. Questions surrounding gaps in federal law, where Congress failed to address a concern or issue, are queries central to the laws of the United States. *Oneida County*, 470 U.S. at 236. So the federal common law applies to fill in the blanks. *Id.* Todd is the alter ego of his corporation Spicy Cold Foods because Todd is being sued under federal law, and the federal understanding of alter ego applies in determining personal jurisdiction of a violation of federal law.

If state alter ego rules established general personal jurisdiction under the Telephone Consumer Protection Act, general jurisdiction under this federal law would vary from state to state and encourage forum shopping. Plaintiffs would file suit against defendants in states that had favorable alter ego laws, and the federal

Telephone Consumer Protection Act would apply differently to different people in different places. This Court should find that the federal understanding of alter egos applies to Todd, to ensure the same general personal jurisdiction rules apply evenly to all defendants accused of violating the Telephone Consumer Protection Act.

The federal government has an important interest in ensuring district courts apply its laws evenly across state lines. State interests in ensuring its alter ego law applies to federal law is much weaker. *Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law*, 95 Harv. L. Rev. 853, 859–63 (1982) (discussing federal common law application of alter ego). A state like New Texas has little interest in applying its alter ego law to a scheme that spanned across the country, annoying unsuspecting consumers with robocalls. But the federal interest in policing these multistate advertising schemes through the Telephone Consumer Protection Act is strong. And using the New Texas alter ego law undermines the goal of the Telephone Consumer Protection Act, as mastermind of the scheme, Todd, cannot be held accountable for his illegal advertising. *Id.* (same). Because the federal government has an important interest in interpreting its own laws, the federal common law interpretation of alter egos applies to fill in any gaps within the Telephone Consumer Protection Act. Therefore, Todd is the alter ego of the New Texas corporation Spicy Cold Foods, and New Texas district court has general personal jurisdiction over Todd.

CONCLUSION

This Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and remand to the United States District Court for the District of New Texas for a trial on the merits.

Respectfully submitted,

ATTORNEYS FOR PETITIONER