

**In the Supreme Court of the United States**

---

**No. 23A-\_\_\_**

VOLKSWAGEN AKTIENGESELLSCHAFT,  
AUDI AKTIENGESELLSCHAFT,  
APPLICANTS

v.

STATE OF TEXAS

---

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION  
FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS**

---

TO THE HONORABLE SAMUEL A. ALITO, JR.,  
ASSOCIATE JUSTICE OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

---

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Volkswagen Aktiengesellschaft and Audi Aktiengesellschaft respectfully request a 60-day extension of time, to and including October 2, 2023, within which to file a petition for writ of certiorari to review the judgments of the Supreme Court of Texas in this case (App., *infra*, 1a-4a). The majority opinion of the Supreme Court of Texas (App., *infra*, 5a-62a) and the dissenting opinion (App., *infra*, 63a-99a) are reported at 669 S.W.3d 399.

The Supreme Court of Texas entered its judgments on May 5, 2023. Unless extended, the time within which to file a petition for writ of certiorari will expire on August 3, 2023. This application is being filed more than ten days prior to the date on which the time for filing the petition would expire. The jurisdiction of this Court

would be invoked under 28 U.S.C. § 1257(a). The State of Texas consents to this request.

1. This case presents the jurisdictional question that the Court agreed to review but did not definitively resolve in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011): whether a foreign manufacturer is subject to jurisdiction based on conduct directed to the United States as a whole. In this case, two German auto manufacturers ordered a nationwide recall of vehicles here in the United States. The relevant conduct occurred overseas and targeted the American market as a whole—not any particular State—although the effects of the recall were felt in each of the 50 States. Over a dissent, a majority of the Supreme Court of Texas held that the nationwide recall was a sufficient basis to exercise personal jurisdiction over applicants in Texas. As the dissent recognized, the majority’s ruling is in conflict with this Court’s “plurality opinion in *Nicastro*,” which “ma[de] clear that a defendant’s intent to serve the U.S. market as a whole does not necessarily amount to targeting each of the fifty states.” App., *infra*, 65a; *see id.* at 90a (“The [Supreme Court of Texas]. . . gravely misinterprets *Nicastro*.”); *id.* at 94a (“If the [Supreme Court of Texas] wishes to repudiate the *Nicastro* plurality opinion, it should do so explicitly.”). The Supreme Court of Texas’s ruling also conflicts with decisions of federal and other state courts.\*

---

\* *See, e.g., Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018) (holding that “nationally directed efforts” to “sell products in the United States generally—not in Pennsylvania specifically” are insufficient to exercise personal jurisdiction over non-resident defendant in Pennsylvania even where the products

2. The parties have now reached a settlement-in-principle to resolve all claims in this matter. The parties have been working diligently to finalize the settlement. Once the settlement is finalized, it must be approved by the state court overseeing the pretrial proceedings in Texas, and will then be subject to an administrative notice-and-comment process required by Texas law.

3. If the settlement is not finalized and approved, applicants intend to seek review in this Court of the Texas Supreme Court's decision. To allow the parties time to finalize and obtain necessary approvals for the settlement, applicants respectfully request a 60-day extension of time, to and including October 2, 2023, within which to file a petition for writ of certiorari. The requested extension is warranted because it would potentially obviate the need to file a petition for writ of certiorari, while protecting applicants' right to seek this Court's review if the settlement is not finalized and approved. *See, e.g., Postmates, LLC v. Winns*, No. 21-1246 (Jan. 5, 2022) (granting a "60-day extension" based on applicant's representation that it "[might] obviate the need for Postmates to file a petition for a writ of certiorari, and thus save the parties' and Court's resources, if the settlement is finally approved").

---

were sold in Pennsylvania as part of that nationwide effort); *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 333-334 (Minn. 2016) ("*Nicastro* provides a guiding principle that efforts to target the national market of the United States do not equate to contacts with a particular state simply because that state is a part of the national market."); *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726, 754-755 (Tenn. 2013) (noting that under "Justice Kennedy's plurality opinion" in *Nicastro*, "targeting the national market provides an insufficient basis for jurisdiction in particular states").

Respectfully submitted.

/s/ Jeffrey B. Wall

JEFFREY B. WALL

*Counsel of Record*

JUDSON O. LITTLETON

SULLIVAN & CROMWELL LLP

1700 New York Ave., N.W.

Washington, DC 20006

(202) 956-7500

wallj@sullcrom.com

ROBERT J. GIUFFRA, JR.  
WILLIAM B. MONAHAN  
NICHOLAS F. MENILLO  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004

MICHAEL H. STEINBERG  
SULLIVAN & CROMWELL LLP  
1888 Century Park East  
Los Angeles, CA 90067

*Counsel for Applicants Volkswagen Aktiengesellschaft and  
Audi Aktiengesellschaft*

JULY 21, 2023

**CORPORATE DISCLOSURE STATEMENT**

Volkswagen Aktiengesellschaft is the parent corporation of Audi Aktiengesellschaft. Volkswagen Aktiengesellschaft is a publicly held German corporation that owns 10% or more of the stock of Audi Aktiengesellschaft.

*/s/ Jeffrey B. Wall*

JEFFREY B. WALL

*Counsel for Applicants*

JULY 21, 2023