

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

AUDI AG, APPLICANT

v.

L.W., BY AND THROUGH HIS GUARDIAN AD LITEM JARED FURZE;
M.W., BY AND THROUGH HER GUARDIAN AD LITEM CINDY GALLAGHER;
P.W., BY AND THROUGH HER GUARDIAN AD LITEM CINDY GALLAGHER;
JENNIFER WOODLAND

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

To the Honorable Elena Kagan, Circuit Justice:

Pursuant to Rules 13.5 and 30.2 of this Court, Audi AG applies for a 60-day extension of time, to and including September 20, 2025, within which to file a petition for a writ of certiorari to review the judgment of the California Court of Appeal, Third Appellate District, in this case.¹ The California Court of Appeal issued its decision on January 15, 2025, and the California Supreme Court denied a timely petition for review of that decision on April 23, 2025. App., infra, 46a. Unless extended, the time for filing a petition for a writ of certiorari will expire on July 22, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1257(a).

¹ Audi AG is a wholly owned subsidiary of Volkswagen AG, a publicly traded company. Porsche Automobil Holding SE owns 10% or more of Volkswagen AG's stock.

1. This Court's decisions establish that a court cannot assert specific personal jurisdiction over a defendant unless the defendant "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958). An out-of-state defendant ordinarily satisfies that purposeful-availment requirement by "deliberately * * * engag[ing] in significant activities within [the] State" or "creat[ing] continuing obligations between himself and [its] residents." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-476 (1985) (internal quotation marks and citations omitted).

In World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), this Court indicated that a corporation may also satisfy the purposeful-availment requirement where it "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." Id. at 297-298. The Justices of this Court, however, have been unable to produce a majority opinion on the particular circumstances under which a defendant's placement of a product in the stream of commerce will give rise to specific jurisdiction. In Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987), four Justices concluded that "[a]dditional conduct" beyond placement of a product in the stream of commerce was necessary, id. at 112 (plurality opinion); four other Justices concluded that a "regular and anticipated flow of products from manufacture to distribution to retail sale" would suffice, id. at 117 (Brennan, J., concurring in part and concurring in the judgment); and Justice Stevens concluded

that “the volume, the value, and the hazardous character” of the product was relevant to the analysis, id. at 122 (opinion concurring in part and concurring in the judgment). Twenty-five years later, the Court addressed the stream-of-commerce theory again in J. McIntyre Machinery, Limited v. Nicastro, 564 U.S. 873 (2011). The Court again produced no majority opinion, with Justice Kennedy writing an opinion for a four-justice plurality, id. at 877, and Justice Breyer, joined by Justice Alito, writing a separate opinion concurring only in the judgment, id. at 887.

In the absence of a clear rule from this Court, the federal courts of appeals and state courts of last resort have reached conflicting results on how to apply the stream-of-commerce theory to foreign manufacturers that distribute their products in the United States through American distributors. Several courts have concluded that a regular flow of products made by a foreign manufacturer sent into the forum State by a domestic distributor constitutes purposeful availment. See, e.g., Ainsworth v. Moffett Engineering, Limited, 716 F.3d 174, 177–179 (5th Cir. 2013); State v. LG Electronics, Inc., 375 P.3d 1035, 1042 (Wash. 2016). Other courts have held that a foreign manufacturer must more purposefully direct its activities at the forum State. See, e.g., Hyundam Industrial Co. v. Swacina, No. 24-0207, 2025 WL 1717010, at *3–*5 (Tex. June 20, 2025) (per curiam) (to be published).

2. Applicant Audi AG is a German car manufacturer whose cars are sold around the world, including in the United States. Applicant, however, does not itself import its vehicles into the United States or directly sell or market its vehicles to American

consumers. Instead, applicant's independent corporate affiliate, Volkswagen Group of America, Inc. (Volkswagen America), purchases vehicles directly from applicant in Germany, imports them into the United States, and sells them to local Audi-branded dealerships. Volkswagen America is incorporated in New Jersey and headquartered in Virginia. App., infra, 3a-4a.

Volkswagen America has "complete and exclusive decision-making authority, control, discretion, and oversight concerning which Audi-manufactured vehicles will be delivered, marketed, and sold" in (as relevant here) California. App., infra, 4a. Volkswagen America has "separate offices, facilities, boards of directors, officers, and employees" from applicant. Ibid. Applicant does not "exercise day-to-day control" over Volkswagen America or authorized domestic Audi-branded dealerships. Ibid. Nor does applicant "determine which dealers are authorized to sell and service Audi-manufactured vehicles in the United States." Ibid.

3. Respondents are L.W., a minor residing in California, and members of his family. On August 8, 2022, respondents sued applicant and others in California state court, alleging that L.W. suffered injuries when he was struck by his mother's Audi vehicle. The complaint asserts that the vehicle was defective because it lacked certain technologies to prevent rollaway events. App., infra, 2a-3a.

Applicant moved to quash service of the summons for lack of personal jurisdiction. App., infra, 5a. Respondents opposed the motion, arguing in relevant part that applicant had purposefully

availed itself of the privilege of doing business in California under the stream-of-commerce theory. See ibid. In particular, respondents argued that applicant "indirectly and systemically served the California automobile market by delivering its products * * * into the stream-of-commerce through its national distributor [Volkswagen America], with the expectation that the vehicles would be purchased by consumers * * * in California." Ibid.

The trial court granted applicant's motion to quash, holding that respondents had not demonstrated that applicant had purposefully availed itself of the privilege of doing business in California. App., infra, 37a-40a. Respondents' only evidence of purposeful availment, the court explained, was that the vehicle at issue was first sold at an Audi dealership in California. Id. at 39a. The court concluded that the in-state sale alone was insufficient to establish personal jurisdiction. Ibid.

4. A divided California Court of Appeal reversed. App., infra, 1a-35a. The majority determined that applicant, through Volkswagen America, had intentionally placed vehicles into a regular flow of commerce into California, thereby availing itself of the privilege of doing business there. Id. at 20a-21a. The majority concluded that Justice Breyer's opinion in J. McIntyre was controlling but reasoned that applicant's conduct was sufficient to support the exercise of personal jurisdiction under any of the articulations of the stream-of-commerce test in this Court's decisions. Id. at 16a, 21a. In particular, the majority concluded that, under World-Wide Volkswagen and Asahi, the foreseeable flow

of Audi vehicles into California supported the exercise of personal jurisdiction over applicant. Id. at 21a-22a. The court also concluded that Volkswagen America's agreement to serve as applicant's distributor in California constituted the additional conduct necessary to satisfy the purposeful-avilment requirement. Id. at 21a.

Justice Renner dissented. App., infra, 29a-35a. He agreed with the majority that Justice Breyer's separate opinion in J. McIntyre was controlling, but he concluded that the test articulated by Justice Breyer's opinion required proof that the defendant specifically established minimum contacts with a particular forum State, not merely the United States as a whole. Id. at 29a-30a. Justice Renner would have held that the isolated sale of the vehicle at issue at an Audi-branded dealership in California was insufficient to support the exercise of specific jurisdiction. Id. at 34a.

5. The California Supreme Court denied a timely petition for review of the Court of Appeal's decision. App., infra, 46a.²

6. The undersigned counsel respectfully requests a 60-day extension of time, to and including September 20, 2025, within which to file a petition for a writ of certiorari. This case presents weighty and complex issues concerning the proper interpretation of the purposeful-avilment requirement for personal jurisdiction. A petition for review in a related case presenting

² In the absence of a decision of the California Supreme Court, the Third Appellate District's decision is binding on all trial courts in California. See Auto Equity Sales, Inc. v. Superior Court, 369 P.2d 937, 940 (Cal. 1962).

similar issues is also pending in the California Supreme Court; additional time is warranted in order to allow that court to act before the petition is filed here. See Hernandez v. Volkswagen AG, No. S290421 (Cal.). In addition, counsel has a number of cases with due dates proximate to the deadline for filing the petition in this case. See State of New York ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co., Nos. 2025-02242 & 2025-03526 (N.Y. App. Div.) (brief due July 18); Suncor Energy (USA) Inc. v. Board of Commissioners of Boulder County, No. 25-____ (U.S.) (petition for certiorari due August 10); In re RML, No. 25-263 (2d Cir.) (brief due August 19). For those reasons, a 60-day extension for the time in which to file a petition for certiorari in this case is warranted.

Respectfully submitted.

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July 9, 2025