No.

In the Supreme Court of the United States

AUDI AG, PETITIONER

v.

L.W., BY AND THROUGH
HIS GUARDIAN AD LITEM, JARED FURZE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state court violates due process by exercising specific personal jurisdiction over a product-liability claim against a foreign manufacturer based on the manufacturer's sales of its products abroad to an independent American distributor, which then marketed and sold the products in the forum State.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Audi AG. 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.

Respondents are 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; and Jennifer Woodland.

RELATED PROCEEDINGS

California Superior Court (Placer County):

L.W., et al. v. *Volkswagen Group of America, Inc., et al.*, No. SCV-48888 (Apr. 27, 2023)

California Court of Appeal (Third Appellate District):

L.W., et al. v. *Audi AG*, No. C098701 (Jan. 15, 2025)

California Supreme Court:

W. (L.) v. *Audi AG*, No. S289459 (Apr. 23, 2025)

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Audi AG respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal, Third Appellate District, in this case.

OPINIONS BELOW

The opinion of the California Court of Appeal (App., *infra*, 1a-40a) is reported at 329 Cal. Rptr. 3d 111. The opinion of the California Superior Court (App., *infra*, 41a-45a) is unreported.

JURISDICTION

The California Court of Appeal entered its final judgment on January 15, 2025. On April 23, 2025, the California Supreme Court denied a petition for review of that

judgment (App., *infra*, 46a). On July 15, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 20, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). See *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 485 (1975); cf. *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, 592 U.S. 351 (2021); *BNSF Railway Co.* v. *Tyrrell*, 581 U.S. 402 (2017); *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Section 410.10 of the California Code of Civil Procedure provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

STATEMENT

This case presents an exceptionally important question that has left the federal and state courts in disarray. Under the Fourteenth Amendment's Due Process Clause, a state court may not exercise specific personal jurisdiction over a nonresident defendant unless the defendant has purposefully availed itself of the privilege of doing business in the forum State. In *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297-298 (1980), the Court suggested in dictum that a nonresident defendant may satisfy that purposeful-availment requirement if it "deliv-

ers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."

That dictum unleashed nearly a half-century of confusion. The Court has granted certiorari twice to clarify the circumstances under which a nonresident defendant's placement of a product in the stream of commerce will give rise to specific jurisdiction. But in both cases, no single opinion was able to command a majority of the Court. In their wake, litigants and lower courts have been left without guidance, resulting in ever-spreading confusion and discord in the law.

It is hard to believe that the confusion on this core aspect of personal jurisdiction has persisted for so long. And it creates particular problems with respect to foreign businesses participating in the global economy. Foreign companies frequently structure their affairs to avoid being haled into American courts thousands of miles away, often through the use of independent American distributors. Indeed, in the past, exorbitant exercises of personal jurisdiction by some domestic courts over foreign companies have caused diplomatic tensions. Yet under the expansive view adopted by some lower courts, the mere fact that a foreign company is aware that its products are ultimately purchased by consumers in the forum State is sufficient to support the exercise of personal jurisdiction over the foreign company. The question presented here is whether a state court violates due process by exercising specific jurisdiction over a product-liability claim against a foreign manufacturer based on the manufacturer's sales of its products abroad to an independent American distributor, which then marketed and sold those products in the forum State.

Petitioner is a German company; it manufactures vehicles outside the United States that are sold around the

world. It has long structured its business dealings so that it does not purposefully avail itself of the benefits and burdens of doing business in the United States. All of petitioner's vehicles sold in the United States are purchased outside the United States by an independent authorized American distributor, which ships the vehicles to the United States and then markets and sells them through authorized dealers.

Respondents are California residents who allege that a vehicle manufactured by petitioner caused injury in California. They filed suit in California state court against not only petitioner's independent American distributor but also petitioner. The trial court held that it lacked personal jurisdiction over petitioner, but the California Court of Appeal reversed in a split decision that is precedent for all trial courts in California. The court recognized that petitioner does not itself do business in California. But the court nevertheless held that petitioner was properly subject to specific jurisdiction in California because it sells its products to an American distributor in Germany and authorizes the distributor to market and sell the products across the United States, including California.

The lower court's decision implicates an entrenched and well-recognized conflict over how courts should analyze assertions of specific jurisdiction over foreign product manufacturers. The decision below is erroneous, and it contravenes many of the essential principles that have governed this Court's decisions. The lower court's decision is also exceptionally important. As the law of the land in the Nation's largest state, it drastically expands the circumstances under which state courts are permitted to hear claims against foreign and other nonresident defendants, and it poses significant risks to the United States' conduct of foreign affairs. Because this case presents an

ideal vehicle for resolving an important question of federal law, the petition for a writ of certiorari should be granted.

A. Background

The Fourteenth Amendment's Due Process Clause limits the power of state courts to exercise personal jurisdiction over non-resident defendants. See, *e.g.*, *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 923 (2011). For a state court to exercise personal jurisdiction, the defendant must have "minimum contacts" with the forum State such that the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (citation omitted). As the Court has explained, the requirements of due process ensure not only "fairness" but also the "orderly administration of the laws." *Fuld* v. *Palestine Liberation Organization*, 606 U.S. 1, 14 (2025) (citation omitted). Defendants should be "subject only to lawful power," and States, through their courts, are not permitted to "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Ibid.* (citations omitted).

The Court has recognized two categories of personal jurisdiction: general and specific. "A state court may exercise general jurisdiction only when a defendant is essentially at home in the State." *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, 592 U.S. 351, 358 (2021) (internal quotation marks and citation omitted). General jurisdiction extends to "any and all claims" brought against a defendant; those claims "need not relate to the forum State or the defendant's activity there." *Ibid.* (citation omitted).

Specific jurisdiction, by contrast, is "case-linked": it exists only when there is a sufficient relationship between

the defendant's in-forum activities and the underlying controversy. See *Bristol-Myers Squibb Co.* v. *Superior Court*, 582 U.S. 255, 262 (2017) (citation omitted). To establish specific jurisdiction, a plaintiff must show that the defendant has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State"—thus enjoying the benefits and protection of its laws—and also that the suit "arise[s] out of or relates to" those in-forum activities. *Ford Motor*, 592 U.S. at 359-360 (citations omitted). If the plaintiff makes both showings, the burden shifts to the defendant to demonstrate that exercising jurisdiction would be unreasonable under the circumstances. See *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 476-478 (1985).

In *World-Wide Volkswagen*, decided in 1980, this Court suggested in dictum that a company may satisfy the purposeful-availment requirement for specific jurisdiction when it "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." 444 U.S. at 297-298. In the nearly half-century since, however, the Court has 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—an approach referred to as the "stream-of-commerce-plus" test. *Id.* at 112 (opinion of O'Connor, J.). Four other Justices concluded that a "regular and anticipated flow of products from manufacture to distribution to retail sale" would suffice—an approach known as the "stream-of-commerce" test. *Id.* at 117 (Brennan, J., concurring in part and concurring in the judgment).

Twenty-five years later, the Court granted certiorari to revisit the stream-of-commerce theory in *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U.S. 873 (2011). But the Court again produced no majority opinion, with Justice Kennedy writing an opinion for a four-justice plurality, see *id.* at 877, and Justice Breyer, joined by Justice Alito, writing a separate opinion concurring only in the judgment, see *id.* at 887.

B. Facts And Procedural History

1. Petitioner is a German vehicle manufacturer organized under the laws of Germany. It has its principal place of business in Germany, and it conducts its operations there. App., *infra*, 3a.

Petitioner does not sell vehicles in California or anywhere else in the United States. Nor does it conduct any distribution or marketing for Audi-branded vehicles in the United States. Petitioner also does not issue new vehicle warranties to American customers for Audi-branded vehicles purchased in the United States. App., *infra*, 4a-5a.

With respect to California in particular, petitioner is not licensed, authorized, or registered to do business there. It has no offices or facilities in California; it does not own real estate or pay taxes in California; it does not have a mailing address, telephone number, or any bank accounts in California; and it does not have a registered agent or other person authorized to accept service of process in California. Petitioner does not design or manufacture vehicles to be sold to customers or dealers only in California or to appeal specifically to California residents (or those of any other State). App., *infra*, 4a-5a.

Volkswagen Group of America, Inc. (Volkswagen America), headquartered in Virginia, is the exclusive entity that imports, markets, and sells Audi-branded vehicles in the United States. Volkswagen America purchases

Audi-branded vehicles from petitioner in Germany, ships the vehicles to the United States, and then sells them to its authorized dealers, which in turn sell them to consumers. Volkswagen America has sole decisionmaking authority, control, discretion, and oversight over which of the vehicles it purchases will be marketed and sold in a particular State. App., *infra*, 4a-5a.

Petitioner does not exercise day-to-day control over Volkswagen America or any Audi dealership in the United States, and petitioner does not determine which dealers are authorized to sell and service Audi-branded vehicles in the United States. While both petitioner and Volkswagen America are subsidiaries of Volkswagen AG, they are separate, distinct, and independent corporate entities with their own procedures and policies for their respective operations. They also have their own offices, facilities, boards of directors, officers, and employees. Petitioner does not manage Volkswagen America's finances or payroll, and the companies do not share bank accounts. App., *infra*, 4a-5a.

2. On August 11, 2022, respondents filed the operative complaint against petitioner, Volkswagen America, and others in California state court, seeking to recover for injuries allegedly arising from an accident in California involving respondent L.W. (a minor) and an Audi-branded vehicle. In particular, respondents allege that, while the vehicle was in respondents' home garage, it pinned L.W. against a wall and caused him permanent injuries. App., *infra*, 2a-3a.

Petitioner moved to quash service of the summons for lack of personal jurisdiction. As is relevant here, petitioner argued that it was not subject to specific jurisdiction in California for the alleged claims because it does not conduct business in California, has no meaningful in-state

contacts relevant to the claims, and structured its business to avoid the benefits and burdens of California law. Petitioner also argued that the burden of having to defend itself in California was unreasonable. App., *infra*, 5a-7a.

The trial court granted the motion to quash. App., *infra*, 41a-45a. It concluded that respondents had not established that petitioner purposefully availed itself of the benefits of doing business in California or that any of the company's alleged California contacts were sufficiently related to respondents' claims. *Id.* at 44a-45a. It also found that respondents' admissible evidence did not establish that petitioner conducts significant business in California; that petitioner advertised, marketed, or solicited buyers in California; or that petitioner cultivated or systematically served the California consumer market. *Ibid.*

3. In a divided decision, the California Court of Appeal reversed. App., *infra*, 1a-32a. The majority did not require that petitioner itself have any contacts of its own with California to justify the exercise of specific jurisdiction. *Id.* at 20a-21a, 24a-25a. Instead, it noted that petitioner had entered into a distribution agreement with an American distributor (Volkswagen America) and knew that its vehicles were consequently being sold in California. *Ibid.* In addition, the majority observed that hundreds of thousands of Audi-branded vehicles reached American dealers every year and that the particular vehicle involved in the accident was originally sold by an authorized dealership in Santa Monica, California. *Id.* at 25a-30a. Based on those facts, the majority concluded that petitioner had purposefully availed itself of the California market under any form of the stream-of-commerce theory. *Id.* at 24a-25a.

Justice Renner dissented. App., *infra*, 33a-40a. He agreed with the trial court that respondents had "failed to

carry their burden of presenting competent evidence showing [petitioner] purposefully availed itself of the privilege of conducting business in California." *Id.* at 37a-38a. Justice Renner explained that the record before the court showed only a single California sale of the subject vehicle, not the "regular course" of in-state sales or forum-directed conduct required even under the most permissive form of the stream-of-commerce theory. *Id.* at 33a, 39a. He thus concluded there was insufficient evidence in the record to support the majority's inference of systematic contacts with the State of California. *Id.* at 39a.

4. The California Court of Appeal denied a petition for rehearing over Justice Renner's dissent. App., *infra*, 47a-48a.

5. The California Supreme Court denied petitioner's petition for review with no recorded dissent. App., *infra*, 46a.

REASONS FOR GRANTING THE PETITION

Federal and state courts are deeply divided over the circumstances under which a state court may assert specific jurisdiction over a foreign manufacturer based on the manufacturer's sales of products to an independent American distributor. In holding that petitioner was subject to specific jurisdiction in California based on petitioner's sales of its vehicles to Volkswagen America outside of the United States, the court below badly misinterpreted this Court's precedents and improperly expanded the circumstances under which personal jurisdiction may be exercised over a foreign manufacturer. Only this Court can resolve this question of immense importance and defuse the risks to foreign relations and international comity posed by the lower court's expansive decision. Because

this case presents an excellent vehicle to resolve an important question of constitutional law, the petition should be granted.

A. The Decision Below Implicates Widespread Disagreement Over The Stream-Of-Commerce Theory Of Specific Personal Jurisdiction

This Court has not yet provided clarity on the circumstances under which a foreign company that sells its products abroad to an independent American distributor that then markets and sells the products in a particular State can be subject to specific jurisdiction in that State. The Court's previous decisions in this area have been fractured, and the result has been well-documented disarray in the lower courts.

1. The Court's Decisions Have Created Significant Uncertainty Concerning The Stream-Of-Commerce Theory

The Court first articulated the stream-of-commerce theory of specific jurisdiction nearly a half-century ago. Since that time, "the viability of the stream of commerce theory has been uncertain; circuit courts have split on the issue and [this] Court has twice failed to resolve it conclusively." *J.S.T. Corp.* v. *Foxconn Interconnect Technology Ltd.*, 965 F.3d 571, 575 (7th Cir. 2020) (Barrett, J.).

a. In *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), the Court first suggested that specific jurisdiction over a nonresident manufacturer might exist based on the manufacturer's placement of its products in the stream of commerce. In that case, the plaintiffs' car, which they had purchased in New York, caught fire while they were driving in Oklahoma. See *id.* at 288. The plaintiffs filed suit in Oklahoma state court against (among others) the car's regional distributor and retail dealer. See *ibid.* Even though those entities had no connections with

Oklahoma, the Oklahoma Supreme Court upheld the exercise of specific jurisdiction over them, noting that it was foreseeable that the car they respectively distributed and sold could be used in Oklahoma. See *id.* at 290-291.

This Court reversed. Emphasizing the "total absence" of any "affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction," the Court explained that the defendants conducted no activity in Oklahoma; made no sales and performed no services there; and availed themselves of none of the privileges and benefits of Oklahoma law. 444 U.S. at 295. The Court rejected the theory that personal jurisdiction could be asserted over an out-of-state distributor merely because it was foreseeable that, having entered the stream of commerce, a product could find its way into the forum State. See *id.* at 296-297.

In dicta, however, the Court asserted that, "if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." *World-Wide Volkswagen*, 444 U.S. at 297. Specifically, the Court reasoned that a defendant could be subject to specific jurisdiction if it "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Ibid.* The Court did not explain what it meant for a defendant to serve a market "directly or indirectly." The Court thus left open the question whether a foreign manufacturer can be said to have purposefully availed itself of the privilege of doing business in a forum State when an

independent distributor markets and sells the manufacturer's products there.

b. The Court revisited the stream-of-commerce theory of specific jurisdiction in *Asahi Metal Industry Co.* v. *Superior Court*, 480 U.S. 102 (1987), a case arising out of a motorcycle accident in California. The question in that case was whether a California state court could assert specific jurisdiction over a Taiwanese tire-valve manufacturer that sold valves to a tire manufacturer in Taiwan, which in turn sold the tires to stores in the United States (including California). See *id.* at 105-106. The Court unanimously held that the California court lacked jurisdiction, but no opinion commanded a majority of the Court on the question of purposeful availment.

Relying on *World-Wide Volkswagen*, Justice Brennan, joined by Justices White, Marshall, and Blackmun, articulated what has become known as the "stream of commerce" theory of specific jurisdiction. See 480 U.S. at 116-121 (opinion concurring in part and concurring in the judgment). He took the view that a nonresident defendant purposefully avails itself of the privilege of doing business in a forum State if there is a "regular and anticipated flow" of the manufacturer's products into the State. *Id.* at 117.

Justice O'Connor, joined by Chief Justice Rehnquist and Justices Powell and Scalia, rejected that theory. See 480 U.S. at 110-113. She concluded that the "placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." *Id.* at 112. Justice O'Connor explained that "[a]dditional conduct of the defendant" should be required to "indicate an intent or purpose to serve the market in the forum State." *Ibid.* According to Justice O'Connor, examples of such conduct may include "designing the product for the market in the forum State, advertising in

the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Ibid.*

Justice Stevens wrote separately, concluding that it was unnecessary to address the question of purposeful availment and instead simply noting that "the volume, the value, and the hazardous character" of the product was relevant to the personal-jurisdiction analysis. 480 U.S. at 121-122 (opinion concurring in part and concurring in the judgment).

c. Nearly a quarter-century later, the Court returned to the subject in *J. McIntyre Machinery, Ltd.* v. *Nicastro,* 564 U.S. 873 (2011). There, the Court reversed a state court's decision to subject a foreign manufacturer to personal jurisdiction based on its conclusion that the manufacturer knew that its American distributor's "nationwide distribution system" could result in the sale of the manufacturer's products in any State yet failed to "take some reasonable step to prevent the distribution of its products in [the forum] State." *Id.* at 879 (plurality opinion) (citation omitted). But no rationale garnered the support of a majority of the Justices.

Justice Kennedy, joined by the Chief Justice and Justices Scalia and Thomas, wrote the plurality opinion. The plurality explained that a foreign manufacturer's knowledge that a distributor would sell its product in the forum State does not establish purposeful availment, because personal jurisdiction depends on "the defendant's actions, not his expectations." 564 U.S. at 882-883. Expressing the view that the stream-of-commerce "metaphor[]" has its "deficiencies," the plurality reasoned that a defendant is not subject to personal jurisdiction unless its activities "manifest an intention to submit to the power of a sovereign" by "'invoking the benefits and protections

of its law.'" *Id.* at 881-882 (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)). The plurality noted that the proper test for determining purposeful availment was "unclear" because of "decades-old questions left open" in *Asahi*, and that lower courts had "sought to reconcile the competing opinions" in that case. *Id.* at 877, 883.

Justice Breyer, joined by Justice Alito, concurred in the judgment. See 564 U.S. at 887-893. For his part, Justice Breyer emphasized that the plaintiff "ha[d] shown no specific effort by the [foreign manufacturer] to sell in" the forum State. *Id.* at 889. He accordingly determined that the plaintiff had failed to meet the test proposed by either of the separate opinions in *Asahi*, as the facts showed "no 'regular * * * flow' or 'regular course' of sales in [the forum State]; and there [was] no 'something more,'" such as "design, advertising, advice, marketing, or anything else" directed toward the forum State. *Ibid.* Justice Breyer declined to opine further on the proper test for determining purposeful availment, stating that the case was "an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules." *Id.* at 890.

Justice Ginsburg, joined by Justices Sotomayor and Kagan, dissented. See 564 U.S. at 893-910. She took the position that, by "enlisting" an American-based distributor to promote and sell its products, the foreign manufacturer was properly subject to specific jurisdiction in any State where its products were eventually sold. See *id.* at 906.

d. The Court most recently addressed specific personal jurisdiction in *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, 592 U.S. 351 (2021). There, the Court addressed the distinct requirement that "the suit arise out of or relate to the defendant's contacts with the forum," and it proceeded to reject a "causation-only approach." *Id.* at 362 (internal quotation marks, citation,

and emphasis omitted). In so holding, the Court noted that, in *World-Wide Volkswagen*, the Court had not limited jurisdiction to "where the car was designed, manufactured, or first sold." *Id.* at 364. But the Court had no occasion to address the stream-of-commerce theory, because the defendant had conceded it had purposefully availed itself of the privilege of doing business within the relevant forum States in light of its extensive business activities there. See *id.* at 361, 364-365.

2. Lower Courts Have Reached Conflicting Conclusions About The Propriety And Scope Of The Stream-Of-Commerce Theory

Faced with this Court's fractured precedents, lower courts have starkly divided over when a foreign manufacturer is subject to specific jurisdiction based on the sale of the product in the forum State through an independent American distributor. That conflict is longstanding and well-recognized. See, *e.g.*, *J.S.T.*, 965 F.3d at 575; *AFTG-TG, LLC* v. *Nuvoton Technology Corp.*, 689 F.3d 1358, 1363 (Fed. Cir. 2012) (per curiam); *Vermeulen* v. *Renault USA, Inc.*, 985 F.2d 1534, 1548 (11th Cir.), cert. denied, 508 U.S. 907 (1993). This Court's intervention is badly needed to resolve the conflict on an aspect of the law of specific jurisdiction that arises in courts across the country on a daily basis.

a. On one side of the divide, a number of federal courts of appeals and state courts of last resort have embraced an expansive stream-of-commerce test, holding that a forum State may exercise specific jurisdiction over a foreign defendant based solely on the defendant's placement of its products into the stream of commerce with knowledge that they may eventually be marketed or sold in the forum State by an American distributor.

i. The Seventh Circuit has expressly followed Justice Brennan's pure stream-of-commerce approach in *Asahi*, holding that the exercise of personal jurisdiction over a foreign manufacturer is appropriate as long as the manufacturer is "aware that the final product is being marketed in the forum State." *B.D. ex rel. Myers* v. *Samsung Sdi Co.*, 143 F.4th 757, 767 (2025) (citation omitted). Applying that approach, the Seventh Circuit has held that a foreign manufacturer's mere knowledge that its products would be sold through a distributor and "distribute[d]" in the forum State is sufficient to establish purposeful availment. See *id.* at 768.

ii. The Fifth Circuit has also adopted the pure stream-of-commerce approach. It has held that a foreign manufacturer was properly subject to personal jurisdiction in a forum when the manufacturer knew that its American distributor marketed or sold the products in all 50 States but made no attempt to limit the territory in which the distributor operated. See *Ainsworth* v. *Moffett Engineering, Ltd.*, 716 F.3d 174, 177-179, cert. denied, 571 U.S. 1024 (2013); see also *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Product Liability Litigation*, 888 F.3d 753, 778 (5th Cir. 2018) (applying the same approach to the domestic parent company of a domestic product manufacturer).

iii. The Eighth Circuit has similarly held that this Court's precedent requires application of the stream-of-commerce test, because the Court "established the stream of commerce theory" and a "majority of the [C]ourt has not yet rejected it." *Barone* v. *Rich Brothers Interstate Display Fireworks Co.*, 25 F.3d 610, 614 (citation omitted), cert. denied, 513 U.S. 948 (1994). The Eighth Circuit accordingly held that specific jurisdiction exists over a foreign company that "reap[s] the benefits of its network of distributors" in order to realize the

"greater economic benefit of multiple sales in distant forums." *Id.* at 613, 615 (citation omitted); see *Viasystems, Inc.* v. *EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 597 (8th Cir. 2011); *Clune* v. *Alimak AB*, 233 F.3d 538, 542 (8th Cir. 2000), cert. denied, 533 U.S. 929 (2001).

iv. Several state courts have likewise held that foreign manufacturers are broadly subject to specific jurisdiction under the stream-of-commerce test. For example, the Oregon Supreme Court has held that a foreign manufacturer can be subject to personal jurisdiction in Oregon solely because it has an American distributor with a "regular course of sales" in Oregon. See *Willemsen* v. *Invacare Corp.*, 282 P.3d 867, 873-877 (2012) (en banc), cert. denied, 568 U.S. 1143 (2013). Other state courts have taken a similar approach. See, *e.g.*, *Griffin* v. *Ste. Michelle Wine Estates Ltd.*, 491 P.3d 619, 634-636 (Idaho 2021); *Align Corp.* v. *Boustred*, 421 P.3d 163, 171 (Colo. 2017), cert. denied, 584 U.S. 1032 (2018); *Book* v. *Doublestar Dongfeng Tyre Co.*, 860 N.W.2d 576, 592 (Iowa 2015); see also *Kopke* v. *A. Hartrodt S.R.L.*, 629 N.W.2d 662, 673-675 (Wis. 2001) (applying same approach to a foreign company whose workers loaded a shipping container bound for Wisconsin), cert. denied, 534 U.S. 1079 (2002); *State ex rel. Ford Motor Co.* v. *McGraw*, 788 S.E.2d 319, 340-342 (W. Va. 2016) (applying the stream-of-commerce test in the domestic context).

b. By contrast, other federal and state courts have rejected the expansive stream-of-commerce test and adopted a narrower stream-of-commerce-plus test. Those courts have held that merely demonstrating that a foreign manufacturer has sold its products to an American distributor that then sells them to consumers in the forum State is insufficient to establish that the foreign

manufacturer purposefully availed itself of the benefits and burdens of the forum State's laws.

i. The Ninth Circuit has held that "something more" than the "mere placement of a product into a stream of commerce" is required to support the exercise of specific jurisdiction. *LNS Enterprises LLC* v. *Continental Motors, Inc.*, 22 F.4th 852, 860 (2022) (quoting *Holland America Line Inc.* v. *Wärtsilä North America, Inc.*, 485 F.3d 450, 459 (2007)). The Ninth Circuit has accordingly concluded that sales of a product by an American distributor or importer pursuant to an agreement with a foreign manufacturer are not enough for specific jurisdiction where the manufacturer did not "actively direct[] the advertising and sales efforts of its in-state agent." *Williams* v. *Yamaha Motor Co.*, 851 F.3d 1015, 1023 n.3 (9th Cir. 2017); see *Kramer Motors, Inc.* v. *British Leyland, Ltd.*, 628 F.2d 1175, 1177-1178 (9th Cir.) (per curiam), cert. denied, 449 U.S. 1062 (1980).

ii. The Third Circuit has also rejected the stream-of-commerce theory, reasoning that "what is necessary is a deliberate targeting of the forum, so efforts to exploit a national market that necessarily included [the forum] are insufficient." *Shuker* v. *Smith & Nephew, PLC*, 885 F.3d 760, 780 (2018) (internal quotation marks and citation omitted). Accordingly, the court has held that a foreign manufacturer did not purposefully avail itself of the privilege of doing business in Pennsylvania when it sold its products in the State through an American distributor "as part of its efforts to sell products in the United States generally—not in Pennsylvania specifically." *Ibid.*

iii. The Texas Supreme Court has likewise held that a defendant manufacturer must "target[]" the forum State in order to justify the exercise of specific jurisdiction, such that it is not enough for a defendant to have "passive awareness of a likelihood—even a substantial

likelihood verging on certainty—that products may eventually arrive in [the] State." *BRP-Rotax GmbH & Co. KG* v. *Shaik*, 716 S.W.3d 98, 105 (2025). The Texas Supreme Court thus requires "additional conduct" evincing "an intent or purpose to serve the market in the forum State." *Id.* (citation and emphasis omitted); see *Luciano* v. *SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 10 (Tex. 2021). Under that approach, the mere fact that a foreign manufacturer "created, employed, and controlled a network of authorized distributors" to "sell and service" its product in the forum State does not suffice, at least where the distributorship contract does not "command" the distributor to transact business in Texas. *BRP-Rotax*, 716 S.W.3d at 106, 108 (brackets omitted); see *Hyundum Industrial Co.* v. *Swacina*, 716 S.W.3d 167, 173 (Tex. 2025) (per curiam).

iv. Consistent with those decisions, numerous other federal and state courts have held that a manufacturer may not be subject to specific jurisdiction merely because its products are sold in the forum State after entering the stream of commerce; instead, some additional conduct by the defendant directed toward the forum State is required. See, *e.g.*, *Bridgeport Music, Inc.* v. *Still N the Water Publishing*, 327 F.3d 472, 480 (6th Cir.) (per curiam), cert. denied, 540 U.S. 948 (2003); *Lesnick* v. *Hollingsworth & Vose Co.*, 35 F.3d 939, 945-946 (4th Cir. 1994); *State ex rel. LG Chem, Ltd.* v. *McLaughlin*, 599 S.W.3d 899, 903-904 (Mo. 2020) (en banc).

c. The decision below exemplifies the disagreement and confusion in the lower courts. Both the majority and the dissent suggested that this case could be resolved without taking a particular side on the stream-of-commerce theory left unresolved by this Court's decisions. See App., *infra*, 24a-25a; *id.* at 33a (Renner, J., dissenting). But they nevertheless reached opposing conclusions

as to whether petitioner had purposefully availed itself of the privilege of doing business in California.

In addition, although the majority held that specific jurisdiction existed under the stream-of-commerce-plus approach, it did so only by holding that petitioner's use of an American distributor sufficed under that approach—contrary to other courts that have considered the question. See App., *infra*, 24a; see also pp. 18-20, *supra*. In other words, even though the majority purported to find jurisdiction under either test, it in practice applied only an expansive stream-of-commerce test. The lower court's decision in this case thus illustrates just how confused courts are on the correct approach to specific jurisdiction over foreign manufacturers. Only this Court can restore clarity in this vitally important area of the law.

B. The Decision Below Is Incorrect

The lower court's expansive approach cannot be reconciled with first principles of personal jurisdiction.

1. This Court has emphasized that, when deciding whether to exercise specific jurisdiction, a court must focus on the defendant's own conduct with respect to the forum State. The requisite relationship "must arise out of contacts that the defendant *himself* creates with the forum State," *Walden* v. *Fiore*, 571 U.S. 277, 284-285 (2014) (internal quotation marks and citation omitted), not the "unilateral activity of those who claim some relationship with [the] defendant," *Hanson*, 357 U.S. at 253. In addition, "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis," meaning that a court must consider the defendant's contacts with the forum State in particular, not merely with the United States as a general matter. *J. McIntyre*, 564 U.S. at 884 (plurality opinion); see *Fuld*, 606 U.S. at 15-16. Those principles ensure that defendants have fair warning of where they can

be subject to suit in a federal system composed of multiple sovereigns.

This Court has also long recognized that companies are permitted to "structure [their] primary conduct to lessen or avoid exposure to a given State's courts." *Ford Motor*, 592 U.S. at 360 (citation omitted); see *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985); *World-Wide Volkswagen*, 444 U.S. at 297. Indeed, "respect for corporate distinctions" is a "bedrock principle" of law "deeply ingrained in our economic and legal systems." *United States* v. *Bestfoods*, 524 U.S. 51, 61-62 (1998) (internal quotation marks and citation omitted). And it is "long settled as a matter of American corporate law that separately incorporated organizations are separate legal units with distinct legal rights and obligations." *Dewberry Group, Inc.* v. *Dewberry Engineers Inc.*, 604 U.S. 321, 327 (2025) (citation omitted). Absent fraud or bad faith, "a corporation will not be held liable for the acts of its subsidiaries or other affiliated corporations." 1 William M. Fletcher, *Cyclopedia of the Law of Corporations* § 43, at 361-362 (2023); see *Dewberry Group*, 604 U.S. at 327-329.

Collectively, those principles reflect the broader notion that specific jurisdiction is founded on "reciprocity between a defendant and a State." *Ford Motor*, 592 U.S. at 360. "When (but only when) a company exercises the privilege of conducting activities within a State—thus enjoy[ing] the benefits and protection of [its] laws—the State may hold the company to account for related misconduct." *Ibid.* (citation omitted). When a foreign company does not purposefully avail itself of the privilege of doing business in the forum State, however, it may not be haled before the State's courts. See *ibid.* That straightforward rule strikes a balance between the interests of plaintiffs and defendants while respecting the boundaries of our federal system.

2. The decision below violates the foregoing bedrock principles. The lower court acknowledged that petitioner "has no offices or facilities in California"; that it "is not qualified, licensed, authorized, or registered to do business in California"; and that it "does not have a registered agent or other person authorized to accept service of process in California." App., *infra*, 5a. The court also recognized that petitioner and Volkswagen America are "separate, distinct, and independent corporate business entit[ies]"; that they have "separate offices, facilities, boards of directors, officers, and employees"; and that petitioner does not "exercise day-to-day control" over Volkswagen America. *Id.* at 4a.

The lower court nonetheless imputed the conduct of Volkswagen America to petitioner, reasoning that the existence of a distributorship arrangement meant that the German company "indirectly" served the California market. App., *infra*, 27a. The court did so even though it recognized that Volkswagen America had "complete and exclusive decision-making authority, control, discretion, and oversight concerning which Audi-manufactured vehicles will be delivered, marketed, and sold in California." *Id.* at 4a. Instead, the court concluded that "the involvement of [petitioner] itself within the forum [S]tate is not necessarily required" and that petitioner's distribution arrangement sufficed because Volkswagen America sold cars in California. *Id.* at 24a-25a. The court thus failed to base its jurisdictional analysis on whether petitioner *itself* had sufficient contacts with California to support the exercise of specific jurisdiction.

3. The lower court's reasoning does not withstand scrutiny. As an initial matter, the court erred by concluding that Justice Breyer's separate concurrence in *J. McIntyre* established a controlling "and/or" test, under which a plaintiff can establish personal jurisdiction over a

foreign manufacturer by showing *either* a regular flow of sales in the forum State *or* some additional efforts directed toward the forum State (such as special state-related design, advertising, advice, or marketing). See App., *infra*, 21a, 25a. Justice Breyer's opinion went no further than to reject the notion that a "single isolated sale * * * is sufficient," and Justice Breyer expressly stated his view that the case was not an appropriate vehicle to make "broad pronouncements that refashion basic jurisdictional rules." *J. McIntyre*, 564 U.S. at 889-890. Lower courts have accordingly recognized that "Justice Breyer's concurrence was explicitly based * * * on [the case's] specific facts" and that it "did not change the Supreme Court's jurisdictional framework." *Ainsworth*, 716 F.3d at 179 (citation omitted). That is especially true in light of the *Marks* rule: the lower court's reading of Justice Breyer's opinion would not reflect the narrowest ground for the judgment supported by a majority of Justices. See *Marks* v. *United States*, 430 U.S. 188, 193 (1977).

The court below also reasoned that, in *Ford Motor*, this Court stated that a "'paradigm example'" of an appropriate application of specific jurisdiction is where "a resident plaintiff sues a global car company, extensively serving the state market in a vehicle, for an in-state accident." App., *infra*, 26a-27a (quoting 592 U.S. 366). But the Court had no occasion to resolve the particular question here; the defendant in *Ford Motor* was subject to personal jurisdiction because the defendant *itself* "regularly conduct[ed]" business in the forum States. 592 U.S. at 364. The Court instead appeared to assume that a global car manufacturer will necessarily have extensive in-forum contacts. See *id.* at 366. But as already explained, see pp. 7-8, 23, that is not true of petitioner with respect to the State of California.

The court below asserted in passing that petitioner's conduct would satisfy even the stricter stream-of-commerce-plus test described by Justice O'Connor in *Asahi*. See App., *infra*, 24a. In particular, the court noted in a parenthetical that, in *Asahi*, Justice O'Connor listed the marketing of a product "through a distributor who has agreed to serve as the sales agent in the forum State" as the type of "[a]dditional conduct" that "may indicate an intent or purpose to serve the market in the forum State." 480 U.S. at 112.

Here, however, petitioner and Volkswagen America are separate corporate entities, and there is no evidence that Volkswagen America is petitioner's agent. As other federal and state courts have held, the relationship between a foreign manufacturer and its American distributor is not itself sufficient to create an agency relationship or render the distributor the manufacturer's alter ego for purposes of specific jurisdiction. See, *e.g.*, *Jazini* v. *Nissan Motor Co.*, 148 F.3d 181, 184-185 (2d Cir. 1998); *Miller* v. *Honda Motor Co.*, 779 F.2d 769, 772-773 (1st Cir. 1985); *Delagi* v. *Volkswagenwerk A.G.*, 278 N.E.2d 895, 897 (N.Y. 1972). The lower court did not otherwise explain how petitioner's conduct in this case could satisfy the stricter stream-of-commerce-plus test, and it plainly could not.

C. The Question Presented Is Exceptionally Important And Warrants Review In This Case

The proper standard for determining when a foreign manufacturer selling products to an independent American distributor is subject to specific jurisdiction in a State is a question of exceptional legal and practical importance. This case is also an excellent vehicle to consider the question and resolve the confusion that has now bedeviled lower courts for decades.

1. In recent years, the Court has frequently granted review in cases raising questions concerning the exercise of personal jurisdiction. See, *e.g.*, *Mallory* v. *Norfolk Southern Railway Co.*, 600 U.S. 122 (2023); *Ford Motor*, *supra*; *Bristol-Myers Squibb Co.* v. *Superior Court*, 582 U.S. 255 (2017); *Walden*, *supra*. And many of the Court's personal-jurisdiction cases have arisen out of California, reflecting the State's outsized economic and legal significance. See *Bristol-Myers Squibb*, *supra*; *Daimler AG* v. *Bauman*, 571 U.S. 117 (2014); *Burnham* v. *Superior Court*, 495 U.S. 604 (1990); *Asahi*, *supra*; *Calder* v. *Jones*, 465 U.S. 783 (1984); *Kulko* v. *Superior Court*, 436 U.S. 84 (1978). Not only is California the Nation's largest economy (by itself, it would be the fourth largest economy in the world); it is also the Nation's leading State for jury verdicts that exceed $10 million. Christal Hayes & Peter Hoskins, *California Passes Japan as Fourth Largest Economy*, BBC News (Apr. 24, 2025) <tinyurl.com/californiaeconomy>; Institute for Legal Reform, Chamber of Commerce, *California's Increasingly High Lawsuit Costs Are a Financial Burden on Households*, (Jan. 3, 2025) <tinyurl.com/californialawsuitcosts>. Absent this Court's intervention, the lower court's erroneous decision will be precedent for all trial courts in California for the foreseeable future. See *Auto Equity Sales, Inc.* v. *Superior Court*, 369 P.2d 937, 940 (Cal. 1962) (en banc); see also *Hernandez* v. *Volkswagen Aktiengesellschaft*, No. A168-869, 2025 WL 879717, at *1 (Cal. Ct. App. Mar. 21, 2025) (applying the reasoning of the decision below to one of petitioner's affiliates), petition for review denied, No. S290421 (Cal. July 9, 2025).

The Court's frequent grants of certiorari in personal-jurisdiction cases also reflect the importance it has placed on having clear and consistent jurisdictional rules that allow companies appropriately to structure their business

and investment decisions. See *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). Such clarity and consistency have become especially important as the world's channels of commerce have become more connected and accessible.

This case highlights the concerns. The court below never identified any steps that a foreign company could take to protect itself from being subject to specific jurisdiction in California if it sells its products to an American distributor and knows that the distributor will sell those products in California. Under the test applied by the court below, the only practical option for a foreign company seeking to avoid California's courts would be to direct its distributor to withhold the company's products from California altogether. Such an expansive view clearly contradicts the interests of American consumers.

2. The disarray in the lower courts has led different courts to reach opposite outcomes on materially identical facts. For example, when an Irish manufacturer of forklifts sold its products to a legally distinct American-based company that distributed the products throughout the United States, courts in different circuits, applying their respective circuits' precedent, diverged as to whether they could exercise specific jurisdiction over the Irish manufacturer. Compare *Lindsey* v. *Cargotec USA, Inc.*, Civ. No. 09-71, 2011 WL 4587583, at *7-*10 (W.D. Ky. Sept. 30, 2011) (holding that specific jurisdiction was absent under Sixth Circuit precedent applying the stream-of-commerce-plus test), with *Ainsworth* v. *Cargotec USA, Inc.*, Civ. No. 10-236, 2011 WL 4443626, at *7 (S.D. Miss. Sept. 23, 2011) (holding that specific jurisdiction was present under Fifth Circuit precedent applying the stream-of-commerce test), aff'd, 716 F.3d 174 (5th Cir. 2013).

In addition, the division in authority is resulting in the problem of different tests being applied by federal and state courts in the same jurisdiction. As already noted,

the Fifth Circuit has held that a foreign manufacturer is subject to specific jurisdiction as long as its products enter the stream of commerce and there is a sufficient volume of sales in the forum. See *Ainsworth*, 716 F.3d at 178. The Texas Supreme Court, however, has squarely rejected that approach. See *BRP-Rotax*, 716 S.W.3d at 105.

The confusion resulting from those different approaches is intolerable, as it makes it impossible for foreign manufacturers to make business decisions about whether to allow their products to be sold in the United States. There is no reason that petitioner should be subject to personal jurisdiction in some forums but not others based on the happenstance of local precedent. Having different jurisdictions—and even federal and state courts within the same jurisdiction—apply divergent rules based on competing interpretations of this Court's precedent increases uncertainty and creates enormous incentives for forum shopping.

3. This Court's intervention is further necessary because the lower court disregarded the "risks to international comity" posed by its "expansive view" of personal jurisdiction. *Daimler*, 571 U.S. at 141. Other countries do not follow the "uninhibited approach to personal jurisdiction" embraced by the court below. *Ibid.* And few American companies would consider it fair or appropriate to be haled before tribunals in other countries merely because the products they manufacture here are sold abroad by foreign distributors. Several nations have adopted "retaliatory" jurisdictional provisions that empower their courts to exercise jurisdiction over foreign persons in circumstances where the courts of the foreign persons' home countries would assert jurisdiction and entertain comparable actions against the nation's own citizens. See Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1, 15 (1987) (Born).

The lower court's expansive approach thus risks not only subjecting foreign companies to jurisdiction in California but also subjecting American companies to personal jurisdiction before foreign tribunals.

More broadly, allowing California courts to exercise personal jurisdiction over foreign companies implicates the sovereign interests of other countries and has significant consequences for the conduct of foreign affairs. As commenters have long recognized, "exorbitant assertions of judicial jurisdiction by United States courts" can "offend foreign sovereigns, * * * provoke diplomatic protests, trigger commercial or judicial retaliation, and threaten friendly relations in unrelated fields." Born 29 (footnotes omitted). They can also "interfere with United States efforts to conclude international agreements providing for mutual recognition and enforcement of judgments or restricting exorbitant jurisdictional claims by foreign states." *Ibid.* As the government previously told this Court, expansive views of personal jurisdiction by some domestic courts "have in the past impeded negotiations of international agreements." U.S. Br. at 2, *Daimler*, *supra* (No. 11-965).

4. Finally, this case presents an excellent vehicle for the Court to resolve the question presented. The lower court's decision did not turn on any disputed facts, and its resolution of the question presented was outcome-determinative. This case thus presents the Court with a clean opportunity to resolve the disarray in the lower courts on a recurring question of enormous practical importance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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