No. 25-349

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

REPLY BRIEF FOR THE PETITIONER

ASHLEY C. PARRISH
KING & SPALDING LLP
1700 Pennsylvania Avenue, N.W., Suite 900
Washington, DC 20006

SUSAN V. VARGAS
PAUL R. JOHNSON
STEPHANIE A. LE
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071

VAL LEPPERT
KING & SPALDING LLP
Southeast Financial Center
200 South Biscayne Boulevard
Miami, FL 33131

KANNON K. SHANMUGAM
Counsel of Record
WILLIAM T. MARKS
JAMES DURLING
AUSTIN W. PIATT
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

MICHAEL P. BELLIS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

In the Supreme Court of the United States

No. 25-349

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

REPLY BRIEF FOR THE PETITIONER

It is undisputed that the lower courts have long been divided on the circumstances under which a nonresident defendant's sale of a product that reaches a forum State through the stream of commerce will subject the defendant to specific jurisdiction. That disagreement stems from dictum from this Court nearly a half-century ago, and the Court's fractured decisions since have only exacerbated the confusion.

In the absence of clear guidance, a more specific conflict has arisen on the question 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. The lower court incorrectly held that the answer was no, subjecting petitioner—a foreign corporation—to specific jurisdiction in California despite having no direct contacts with the State. The Court's review is warranted in this case to bring clarity on an issue of vital importance to foreign businesses participating in the global economy.

Respondents candidly acknowledge the conflict concerning the stream-of-commerce test, but essentially ignore the more specific conflict presented here. Indeed, respondents do not even mention—let alone distinguish—many of the decisions petitioner has cited in which courts have held that a foreign manufacturer may not be subject to specific jurisdiction under facts materially similar to those here. And although respondents seek shelter behind the lower court's assertion that personal jurisdiction would be proper under any of the relevant stream-of-commerce tests, a lower court cannot insulate its decision from review merely by making such a pronouncement—particularly when other courts would reach a different outcome on materially identical facts.

Respondents offer little more on the merits. They principally rely on certain dicta from this Court's cases and parrot the reasoning of the decision below. But respondents never explain how petitioner's conduct could amount to purposeful availment under the well-settled principles set forth in this Court's precedents.

Finally, respondents fail to show that the question presented is unimportant or that this case is an unsuitable vehicle for resolving it. Respondents attempt to dismiss, but cannot credibly dispute, the serious risks the lower court's expansive approach poses to international comity, foreign manufacturers, and American consumers. Respondents also claim that the opinions below disagreed

about what the record showed, but nothing in the petition turns on any purported dispute of fact. And contrary to respondents' suggestion, the streamlined record in this case will facilitate, not hamper, this Court's review. Because this case presents an ideal vehicle for resolving a conflict on an important question of federal law, the petition for certiorari should be granted.

A. The Decision Below Implicates A Conflict Among The Lower Courts On The Question Presented

1. Respondents acknowledge that lower courts, and members of this Court, have long been divided on the circumstances under which a nonresident defendant who sells a product that is placed in the stream of commerce can be subject to specific jurisdiction for an injury allegedly caused by the product. See Br. in Opp. 12-13. But they argue that the "only legal disagreement" concerns whether to apply a pure stream-of-commerce test or a stream-of-commerce-plus test—a conflict they claim is not implicated here. *Ibid.* In so arguing, however, respondents essentially ignore the specific conflict that has arisen from courts choosing between those tests in the context of a foreign manufacturer whose products are sold in the United States through an American distributor. See Pet. 16-21.

On one side, numerous federal and state appellate courts have applied the narrower stream-of-commerce-plus test and held that a foreign manufacturer's mere sale of products to an American distributor that then sells the products in the forum State is insufficient to establish specific jurisdiction over the manufacturer. See Pet. 18-20. For example, the Third Circuit has explained 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 citations omitted). Applying that standard, the Third Circuit held that a foreign manufacturer did not purposefully avail itself of the privilege of doing business in Pennsylvania when its American distributor sold products in the State as part of the distributor's efforts to sell products "in the United States generally—not in Pennsylvania specifically." *Ibid.*

The Texas Supreme Court has likewise held that a foreign manufacturer did not purposefully avail itself of the privilege of doing business in Texas when it entered into a distribution agreement that required its distributor to market a product in a "vast territory" (which "of course include[d] Texas"), because nothing in the agreement "specifically target[ed] or direct[ed] marketing efforts to Texas" in particular. *BRP-Rotax GmbH & Co. KG* v. *Shaik*, 716 S.W.3d 98, 107-108 (2025) (internal quotation marks and citation omitted). The court refused to impute the distributor's conduct to the foreign manufacturer absent a showing of an agency or alter ego relationship. See *id.* at 106-107.

On the other side of the conflict, some federal and state appellate courts have exercised specific jurisdiction over a foreign manufacturer merely because the manufacturer sold its products to an American distributor that then sold the products in the forum State. See Pet. 16-18. But in each of those cases, the court did so based on a pure stream-of-commerce theory. The court below stands as an outlier by holding that a distribution arrangement alone can satisfy even the stream-of-commerce-plus approach. See Pet. App. 24a-26a.

2. Respondents contend that the cases involving foreign manufacturers reflect courts reaching "different outcomes based on differences in the facts of those cases." Br. in Opp. 15. That is incorrect. Courts have reached

contrary outcomes on materially identical facts based on governing precedent. See Pet. 27. For most of these cases, respondents do not deign to explain what "facts" could justify their irreconcilable outcomes.

In similar fashion, respondents argue that the question whether a foreign manufacturer is subject to specific jurisdiction is a "case-specific, record-intensive question" about "how to apply the law of personal jurisdiction to a category of diverse factual scenarios." Br. in Opp. 16. But that proves far too much. In every case about personal jurisdiction, there will be questions about how the legal standard applies to the particular facts. But as the cases cited by petitioner demonstrate (Pet. 16-21), there is a conflict on the application of the purposeful-availment standard to a commonly recurring set of facts: namely, where a foreign manufacturer has no direct contacts with a State but provides its products to an American distributor for sale in the United States.

3. Respondents also argue (Br. in Opp. 13) that, even if there is a conflict concerning the proper stream-of-commerce test, this case does not present that question because the court below declined to answer it. But a lower court cannot avoid creating a conflict—or insulate its decisions from this Court's review—simply by asserting that a set of facts would satisfy any legal standard that might apply. What matters is whether other courts would reach a different result on the same set of material facts. The answer here is plainly yes: as just discussed, the court below reached the opposite outcome to other courts that have addressed the question presented in the context of similar facts.

Respondents' focus (Br. in Opp. 14) on the factual disagreement between the majority and dissenting opinions below is also misplaced. The petition did not rely on the dissent's account of the facts; to the contrary, it showed

that, even accepting *the majority's* account, this case presents a question worthy of the Court's review. See Pet. 10-29. There is thus no need for the Court to wade into any factual disputes in order to resolve the question presented.

B. The Decision Below Is Incorrect

The decision below conflicts with well-settled principles of personal jurisdiction set forth in this Court's precedents. Respondents say little in defense of the lower court's decision on the merits. See Br. in Opp. 25-26. What they do say lacks merit.

1. Contrary to respondents' assertion (Br. in Opp. 26), the court below did not apply the "correct test" for determining whether petitioner had sufficient minimum contacts with California to support the exercise of specific jurisdiction. As an initial matter, respondents do not defend the lower court's assertion that Justice Breyer's concurrence in *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U.S. 873 (2011), established a controlling "and/or" test for specific jurisdiction. See Pet. App. 20a, 24a-25a. That is not surprising, because the lower court's reasoning was self-evidently incorrect. See Pet. 23-24.

Respondents' sole defense of the legal test applied by the decision below (Br. in Opp. 26) is that it is supported by dictum from *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), which has been repeated in later cases. But that dictum is of course not controlling, as demonstrated by the existence of a broad conflict in the lower courts on the proper test for assessing specific jurisdiction in cases such as this one. See Pet. 16-21. That longstanding conflict makes clear that this Court has not resolved the question presented. See Pet. 24.

Respondents make no effort to explain how the decision below can be reconciled with fundamental principles

of personal jurisdiction. See Pet. 21-23. The decision violates the rule that specific personal jurisdiction must be based on "contacts that the defendant *himself* creates with the forum State." *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014) (internal quotation marks and citation omitted). And it evinces disrespect for the corporate form, including the notion that companies must be able to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted). Those principles help to ensure that specific jurisdiction remains grounded in "reciprocity between a defendant and a State." *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, 592 U.S. 351, 360 (2021). Like the court below, respondents essentially ignore those principles.

2. Beyond getting the law wrong, the court below misapplied the law to the facts of this case. Respondents echo the lower court's reasoning that petitioner has "continuously and deliberately exploited the California automobile market for its benefit through [Volkswagen America]." Br. in Opp. 25 (quoting Pet. App. 28a). But like the court below, respondents never explain how petitioner *itself* purposefully availed itself of the privilege of doing business in California. Petitioner simply entered into a distribution arrangement with Volkswagen America outside California, and respondents do not explain how such an arrangement could satisfy the stream-of-commerce-plus approach. As other courts have recognized, a distribution arrangement alone does not establish the manufacturer's purposeful availment of the privilege of doing business in a forum. See pp. 3-4, *supra*; Pet. 25.

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

The question presented is recurring and important, and this case is a good vehicle for resolving it. Respondents identify no valid obstacle to the Court's review.

1. Respondents do not dispute most of the reasons that the question presented is exceptionally important. Those reasons include the importance of cases arising from California; the need for clear rules in personal-jurisdiction cases; and the conflict among federal and state lower courts, including within the same jurisdiction and on materially identical facts. See Pet. 26-28.

Respondents seek to downplay the risks to international comity created by the decision below, arguing that the question in this case concerns only "which American states [petitioner] may be sued in." Br. in Opp. 24. To be clear, respondents have not shown that petitioner would be subject to specific jurisdiction *anywhere* in the United States as relevant to this litigation. But regardless, respondents ignore that the Constitution purposefully recognizes distinct governments with their own "mutual rights and obligations"; it does not treat them as interchangeable. *J. McIntyre*, 564 U.S. at 884. And it is unsurprising that a foreign manufacturer might wish to avail itself of the privilege of doing business in some States but not others, given the different risks imposed by different legal systems. See *id.* at 884-885; VDA Br. 14-17. Respondents offer no compelling response to the "risks to international comity" posed by haling a foreign corporation into an improper forum based on an improper theory of personal jurisdiction. *Daimler AG* v. *Bauman*, 571 U.S. 117, 141 (2014); see Pet. 28-29.

Respondents also contend that it is "unlikely" that any foreign manufacturer would forgo "the revenue it generates in California" in order to avoid the expansive exercise

of personal jurisdiction adopted by the decision below. Br. in Opp. 24. That may be true, but it is also the point. The decision below is intolerable precisely because it is unrealistic to expect foreign manufacturers like petitioner to abandon access to revenue generated by California consumers in order to avoid the expansive exercise of jurisdiction by California courts. See Pet. 26-27. Following the lower court's ruling, foreign manufacturers now face a dilemma: abandon all California-based revenue, or be subject to personal jurisdiction in California's courts in a way that contradicts "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (citation omitted); see AAI Br. 13-17; VDA Br. 10-14.

Respondents further argue that, because several federal courts of appeals and state courts of last resort have applied a pure stream-of-commerce test, any "consequences" to foreign affairs should have "already materialized." Br. in Opp. 25. But the fact that the worst consequences from the stream-of-commerce theory have not yet materialized does not mean that they will not in the future, especially now that an expansive theory of personal jurisdiction applies in the Nation's most populous and economically important State. Given the long-festering conflict, this Court should not wait to intervene.

2. Respondents separately argue that this case is an unsuitable vehicle for resolving the question presented and bringing much-needed clarity to the law of personal jurisdiction. But none of the issues that respondents raise presents a genuine obstacle to review.

a. Respondents first contend that "[t]he decision below reflects a profound disagreement about what factual findings are supported by the record." Br. in Opp. 17. But as already explained, any disagreement over the factual record is irrelevant because, even assuming the majority's

view of the facts, the decision below puts California at odds with numerous other jurisdictions. See pp. 5-6.

Respondents likewise note (Br. in Opp. 18-19) that the factual disagreement between the majority and dissenting opinions below arises at least in part from disagreement about the state-law standard of review and the burden of proof on a motion to quash service of a summons for lack of personal jurisdiction. But again, the petition does not dispute any of that, and nothing in the question presented would require the Court to resolve any issues of state law.

b. Respondents next contend that the record in this case "contains much less evidence than is often available in cases of this kind." Br. in Opp. 19. But that makes this case a good vehicle, not a bad one, because it will allow the Court to resolve the question presented without having to wade into a complex factual record. Respondents further claim that the available record is "anomalous and artificial." *Id.* at 21. But that claim is hard to reconcile with their contentions elsewhere that this is the "paradigm case" of specific jurisdiction. *Id.* at 3, 26. In any event, the fact that the lower court issued an expansive ruling based on a sparse record lays bare the obvious legal errors in the decision below and the corresponding need for this Court's review. See pp. 6-7, *supra*; Pet. 21, 25.[*]

---

[*] Respondents repeatedly invoke the facts from the closely related proceedings in *Hernandez* v. *Volkswagen Aktiengesselschaft*, No. A168-869, 2025 WL 879717 (Cal. Ct. App. Mar. 21, 2025), petition for review denied, No. S290421 (Cal. July 9, 2025), petition for cert. pending, No. 25-436 (filed Oct. 7, 2025). But the foreign manufacturer there also did not purposefully avail itself of the privilege of doing business in California, because it is not sufficient that a distribution agreement requires a distributor to sell the manufacturer's products in a broader territory that includes the forum State. See *id.* at *7; see also *Shuker*, 885 F.3d at 780; *BRP-Rotax*, 716 S.W.3d at 107-108.

c. Respondents finally contend that, because the decision below is from an intermediate state appellate court, it "does not reflect a definitive rule of law" in California. Br. in Opp. 22. But as respondents admit, "trial courts in California are bound by this ruling absent a conflicting appellate decision." *Ibid.* And respondents do not identify any other published appellate decisions showing that California courts are resolving the question presented based on the particular "circumstances" of each case. *Ibid.*; see Pet. App. 21a. To the contrary, another California appellate court has already credited the decision below as setting forth the standard for assessing specific jurisdiction in cases involving distribution arrangements. See *Hernandez*, 2025 WL 879717, at *6, *8. There is thus no reason to think that California courts will change course absent this Court's intervention.

In short, the Court should grant certiorari to resolve the conflict on this important question of federal law and to provide clarity about the circumstances under which a foreign manufacturer's placement of a product in the stream of commerce will subject the manufacturer to specific jurisdiction. That question is ripe for the Court's review.

* * * * *

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ASHLEY C. PARRISH
KING & SPALDING LLP
1700 Pennsylvania Avenue, N.W., Suite 900
Washington, DC 20006

SUSAN V. VARGAS
PAUL R. JOHNSON
STEPHANIE A. LE
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071

VAL LEPPERT
KING & SPALDING LLP
Southeast Financial Center
200 South Biscayne Boulevard
Miami, FL 33131

KANNON K. SHANMUGAM
WILLIAM T. MARKS
JAMES DURLING
AUSTIN W. PIATT
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

MICHAEL P. BELLIS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

DECEMBER 2025