No. 25-436

In the Supreme Court of the United States

VOLKSWAGEN AKTIENGESELLSCHAFT,
PETITIONER

v.

BLANCA HERNANDEZ, ET AL.

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

REPLY BRIEF FOR THE PETITIONER

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It is undisputed that this case presents the same exceptionally important question as *Audi AG* v. *L.W. ex rel. Furze*, No. 25-349: namely, 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. The court below incorrectly held that the answer was no.

Respondents offer no persuasive reason why this petition should not be held pending the disposition of the petition in *Audi AG*. Respondents primarily contend that there are factual differences between the two cases. But

the court below did not rely on those purported differences when it adopted and applied the same legal rule as in *Audi AG*. Respondents likewise misstate the nature of the conflict among the lower courts. Even when presented with the same material facts as in this case, other courts have reached contrary conclusions as to whether foreign manufacturers should be subject to specific jurisdiction. At a minimum, respondents have not shown that the Court should depart from its usual practice of holding a petition pending the disposition of a closely related case.

Because *Audi AG* already presents an ideal vehicle for resolving the question presented, this petition should be held pending the disposition of the petition in that case and then disposed of accordingly.

1. Respondents principally argue (Br. in Opp. 39) that the petition should not be held because the factual record in this case differs from the record in *Audi AG*. But the court below described the two cases as "very similar," and it did not rely on any purported factual differences when it followed the expansive reasoning of *Audi AG*. See Pet. App. 15a-16a, 20a. Indeed, the court below seemingly viewed the legal rule from *Audi AG* as dispositive, because it reversed the trial court's determination without revisiting the trial court's factual findings. See *id.* at 6a, 16a-22a. In other words, the court below understood the rule from *Audi AG* to require the same result in both cases, notwithstanding the factual differences emphasized by respondents.

Respondents also overstate the differences. For example, respondents emphasize (Br. in Opp. 9-11, 19-20) the language of petitioner's importer agreements with Volkswagen America. But as explained below, courts have held that agreements like those at issue here do not establish purposeful availment of the privilege of doing business in a particular State. See p. 3. Respondents also

note (Br. in Opp. 14, 16, 28-29, 39) petitioner's alleged efforts to comply with requirements from the California Air Resources Board. Yet the court below did not mention those allegations in its analysis of purposeful availment, see Pet. App. 16a-23a, nor did it disturb the trial court's finding that they were "not sufficiently related" to respondents' underlying claims to factor into the personal-jurisdiction analysis, *id.* at 33a.

2. Respondents also seek to dismiss the conflict on the question presented. See Br. in Opp. 17-28, 39. But as in *Audi AG*, respondents offer little beyond the bare assertion that other courts have reached "different results" based on "different factual scenarios." *Id.* at 22; see *id.* 23-27; 25-349 Cert. Reply Br. at 3-5.

Respondents suggest (Br. in Opp. 39) that the conflict is not implicated here because the court below found that petitioner "contractually *required*" Volkswagen America to "promote [petitioner's] vehicles in California." According to the court, petitioner's importer agreements required Volkswagen America to promote and sell petitioner's products "in California," because the agreements specified that Volkswagen America's "territory" was "'the States of Alaska and Hawaii' and 'the continental United States.'" Pet. App. 16a. As other courts have recognized, however, that reasoning improperly conflates a requirement that Volkswagen America conduct business in the United States *generally* with purposeful availment of the privilege of doing business in California *specifically*. See *Shuker* v. *Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018); *BRP-Rotax GmbH & Co. KG* v. *Shaik*, 716 S.W.3d 98, 107-108 (Tex. 2025). Respondents make no effort to reconcile that reasoning with the decision below.

Respondents further attempt to sidestep the conflict by asserting that "California law has long required the

'stream-of-commerce plus' test." Br. in Opp. 4. But neither of the California decisions cited by respondents (*id.* at 19-20, 27-28) purports to take a side in that doctrinal debate. See *Bombardier Recreational Products, Inc.* v. *Dow Chemical Canada ULC*, 216 Cal. App. 4th 591, 602-606 (2013); *Dow Chemical Canada ULC* v. *Superior Court*, 202 Cal. App. 4th 170, 179 (2011). And it would have been strange for the decision below to have purportedly "declined to choose among competing formulations of the stream-of-commerce theory" (Br. in Opp. 18) if California law had long ago adopted one test over the other.

3. Finally, respondents argue (Br. in Opp. 39-40) that it would "waste judicial resources" to hold this petition. That argument makes little sense. A hold wastes no judicial resources at all; it requires the Court simply to delay consideration of one petition pending consideration of another.

Indeed, this Court frequently holds petitions, and ultimately vacates the decision below, where there is merely a "reasonable probability" that an opinion from this Court could change the outcome of the litigation. Cf. *Lawrence* v. *Chater*, 516 U.S. 163, 166-167 (1996). If the Court were to determine that the lower court erred in *Audi AG*, then there is surely at least a reasonable probability (if not a high likelihood) that the court below would reach the same conclusion in this "very similar" case. Pet. App. 15a. Holding the petition here for resolution of *Audi AG* will save the time and resources of all involved by allowing the Court to correct two demonstrably erroneous decisions in one fell swoop.

* * * * *

The petition for a writ of certiorari should be held pending this Court's disposition of the petition in *Audi AG* v. *L.W. ex rel. Furze*, No. 25-349, and then disposed of accordingly.

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