No. 25-349

In the Supreme Court of the United States

AUDI AG,

Petitioner,

v.

L.W., a minor, by and through his guardian ad litem, JARED FURZE, et al.,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeal of California, Third Appellate District

RESPONDENTS' BRIEF IN OPPOSITION

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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.

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INTRODUCTION

The petition frames this case as a vehicle for resolving a divergence on the stream-of-commerce test that has persisted for decades under this Court's personal-jurisdiction cases. But the decision below expressly declined to decide among competing stream-of-commerce approaches because doing so would make no difference here. Pet. App. 24a. What the petition really seeks, then, is manifestly uncertworthy: the factbound correction of purported errors in an intermediate state appellate court's application of the law to a hotly contested record.

Every first-year law student learns, of course, that this Court has not settled on a single test for whether a defendant's placement of a product in the stream of commerce demonstrates purposeful availment. *See Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102 (1987); *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011). In the petition's telling, two camps have developed, tracking the separate writings in *Asahi*: Some courts hold that putting a product into the stream of commerce with the knowledge that it will reach the forum is sufficient ("pure stream of commerce"). Pet. 16–18. Others require some additional conduct directed toward the forum ("stream of commerce plus"). Pet. 18–20. That divergence forms the core of the petition. Pet. 11–21.

But the petition studiously downplays one inconvenient fact: The decision below explicitly stated that it was not choosing among these camps because Audi purposefully availed itself of California even "under the stricter stream-of-commerce plus approach." Pet. App. 24a. It would make no sense for this Court to grant

certiorari to choose among competing legal tests in a case in which that choice does not matter.

The vehicle problems in this case are compounded by the fiercely contested record. The majority and the dissent were miles apart on what factual findings that record permits. The majority concluded that "Audi intentionally and purposefully engaged a national distributor (VWGoA) to target and exploit the automobile market in California for Audi's economic benefit," "that there is a 'regular flow' of vehicles from Audi to VWGoA to Audi-authorized dealerships across the United States, including California," and thus that Audi "deliberately and systemically (albeit indirectly) served the market for automobiles in California for the very vehicle that plaintiffs alleged was defective and caused injuries in California." Pet. App. 27a. The dissent, meanwhile, thought it inappropriate to make any inferences from the evidence and concluded that the only Audi activity in California that it could recognize was the sale of a single Audi at a single dealership. Pet. App. 36a–37a. Worse still, embedded in this factual disagreement is a disagreement about the application of the standard of review—a disagreement on state law that this Court cannot resolve.

In addition to being contested, the anomalous record in this case presents an artificial picture of how large foreign manufacturers like Audi contract with distributors to serve foreign state markets. To see how, this Court need look no further than the tag-along petition in *Volkswagen Akteingesellschaft v. Hernandez* (25-436). The record in *Hernandez* includes substantial evidence on the structure of the relationship between Audi's parent company, Volkswagen, and its distributor (also VWGoA). That includes a number of contract provisions

demonstrating Volkswagen's direction, control, and influence over the sale, marketing, repair, and service of its vehicles, including in California. *Hernandez v. Volkswagen Akteingesellschaft*, 2025 WL 879717, at *1–2, *7–8 (Cal. Ct. App. 2025). Because the substance of the agreements between Audi and VWGoA are not part of the record in this case, this is a particularly poor vehicle to address how those distribution agreements will inform the personal-jurisdiction analysis in the mine run of cases.

This Court has repeatedly recognized that cases like this, involving carmakers like Audi itself, are the "paradigm case of specific jurisdiction." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 364 (2021). A manufacturer that markets and sells its cars in California "'has clear notice' of its exposure in that State to suits arising from local accidents involving its cars." *Id.* at 363 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Although Audi was a defendant in *World-Wide Volkswagen*, nobody questioned there that it was subject to jurisdiction in Oklahoma for a car originally sold in New York. The Court found personal jurisdiction lacking over the out-of-state car dealer but "contrasted the dealer's position to that of two other defendants—Audi, the car's manufacturer, and Volkswagen, the car's nationwide importer (neither of which contested jurisdiction)." *Id.* When a company like Audi "serves a market for a product in the forum State and the product malfunctions there," specific jurisdiction attaches "even though the vehicle had been designed and made overseas and sold in" another state. *Id.*

If the Court is inclined to revisit the stream-of-commerce theory, it will have plenty of opportunities to do so in the future. But, after four

decades, it would be passing strange to decide to do so on these facts. There is no need for the Court to rush to resolve the issue in a case presenting so many obvious obstacles.

STATEMENT

I. Factual background

This suit arises out of an accident that occurred in a garage in Roseville, California, and that left a minor severely injured. Pet. App. 2a. After L.W.'s mother put her car in park and got out of the vehicle, the car "surged forward" and "crushed" L.W. "against the garage wall." *Id.* at n.1. The vehicle was an Audi Q7.

Audi is a German company that designs, manufactures, and sells vehicles in Germany. *Id.* at 3a. Through its distributor, Audi does substantial business in the United States. *Id.* at 4a. In 2019, for example, over 224,000 Audi-manufactured cars were delivered to the United States—cars that were "designed and manufactured to comply with American federal and state regulatory requirements." *Id.* at 5a. Audi also "owns and has registered several trademarks with the United States Patent and Trademark Office." *Id.* at 3a. This reflects a business reality for Audi: the United States "is one of the primary or 'core' markets for the retail sale" of Audi vehicles. *Id.*

But despite the significance of the United States market to Audi's business, Audi does not directly sell its vehicles here. Pet. App. 4a–5a. Rather, it does so through its importer and distributor, Volkswagen Group of America. VWGoA was incorporated in New Jersey and has its principal place of business in Virginia. *Id.* at 4a. Audi has an exclusive importation and distribution

agreement with VWGoA. *Id.* Under that agreement, VWGoA "purchases vehicles from Audi in Germany," "independently sells them to authorized Audi dealerships across the United States," which "then sell the vehicles directly to consumers." *Id.*

Audi and VWGoA are separate and distinct business entities. Still, by virtue of their importation and distribution arrangement, their activities are closely tied. VWGoA "does business as Audi of America, Inc." Pet. App. 4a. It also has a "wholly owned subsidiary named Audi of America, LLC." *Id.* The VWGoA subsidiary's "primary purpose" is to enable "Audi AG in Germany to recognize the financial results of the Audi business in the United States." *Id.* Pursuant to a "control agreement," Audi has the "right to designate the directors of Audi of America, LLC." *Id.* And that subsidiary, Audi of America, LLC, "acts as the employer of record for most Audi brand employees under VWGoA." *Id.* VWGoA is also "the registrant of the Internet domain name 'audiusa.com.'" *Id.* And Audi has "participated in various federal lawsuits" alongside VWGoA to enforce its U.S.-registered trademarks. *Id.* at 7a–8a.

This relationship explains how the Audi Q7 came to be in California, and ultimately in L.W.'s family's garage on the day of the accident. It was manufactured by Audi in Germany, sold to VWGoA, then sold in the United States "by an Audi dealership in Santa Monica." Pet. App. 3a–4a. In addition to "Santa Monica Audi," there are "numerous Audi dealerships in California that use Audi's registered trademarks." *Id.* at 7a.

II. Procedural history

1. L.W., his mother, and his two minor siblings sued Audi in California state court. They allege that the

Audi Q7 that severely injured L.W. was "defective" because it did not have "rollaway mitigation features" or "visual and auditory warnings alerting a driver when the vehicle is not in park." Pet. App. 3a. They also allege that these defects were a "substantial factor in causing the injuries" to L.W. *Id.* Relevant here, the complaint asserted negligence and product liability claims against the car's manufacturer, Audi, and against its distributor, VWGoA. *Id.* at 3a.

2. In California superior court, Audi filed a motion to quash service of summons for lack of personal jurisdiction. Pet. App. 41a. In addition to opposing that motion, plaintiffs filed a request for additional jurisdictional discovery. *Id.* at 42a. The trial court granted Audi's motion to quash and denied the plaintiffs' request for additional discovery as too "general." *Id.* at 42a–45a.

The trial court concluded that there was insufficient evidence to support personal jurisdiction over Audi. Pet. App. 44a. Because the plaintiffs asserted that the court had specific personal jurisdiction over Audi, they had to satisfy the three prongs of the minimum-contacts test: that the "(1) defendant purposefully availed itself of the privilege of conducting activities in the state so as to invoke protection under the laws of California[;] (2) the underlying dispute is substantially connected to or arises out of the defendant's contacts with California; and (3) the exercise of jurisdiction would be reasonable and fair, consistent with notions of fair play and substantial justice." *Id.* at 43a–44a.

The trial court first deemed the evidence of purposeful availment lacking. Pet. App. 43a–44a. The court accepted that "an automobile manufacturer can" satisfy that prong "through the indirect effort to service the California

vehicle market." *Id.* at 44a. But, in its view, "the only admissible evidence submitted regarding the sale of Audi vehicles in California pertains to the sale of the subject Audi Q7 in Santa Monica." *Id.* Purposeful availment could not be shown on the basis of a "singular sale of an Audi vehicle." *Id.*

Similarly, the trial court found the record inadequate on the other two prongs. On relatedness, it said the "evidence" that Audi "cultivated or systemically served the California consumer market," even through its relationship with VWGoA, was "simply insufficient." Pet. App. 44a–45a. And it concluded that the exercise of personal jurisdiction over Audi based on "the sale of a single vehicle" would not be reasonable. *Id.* at 45a.

3. The California appellate court reversed. *See* Pet. App. 1a–40a. The court recognized that, since the origin of the "stream-of-commerce theory of personal jurisdiction" in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), this Court has "provided competing versions of the scope of that theory in plurality decisions." Pet. App. 16a. The opinion discussed each of the separate writings in both *Asahi Metal Industries Co. v. Superior Court of California*, 480 U.S. 102 (1987), and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011). Pet. App. 16a–21a. The court concluded that, while these cases and California precedent establish that "mere foreseeability that a product may enter a foreign state is insufficient to establish minimum contacts," this Court has not yet "agreed on exactly what more besides foreseeability must be shown." *Id.* at 21a (citing *Bombardier Recreational Prods., Inc. v. Dow Chem. Can. ULC*, 157 Cal. Rptr. 3d 66, 75 (Ct. App. 2013)).

That legal uncertainty was no obstacle to the resolution of this case, however. The appellate court concluded that, "under *any of the analyses* articulated by the various lead opinions" of this Court, "there is enough in this particular case for Audi to be properly summoned." Pet. App. 24a (emphasis added). The court expressly held that the record satisfied even "the stricter stream-of-commerce plus approach articulated by Justice O'Connor in *Asahi*." *Id.*

The appellate court concluded that there was sufficient "evidence demonstrating that Audi has continuously and deliberately exploited California's automobile market for its economic benefit through VWGoA." Pet. App. 28a. The opinion also emphasized that "Audi's expert implicitly acknowledged regular sales to California," stating that the "Audi AG-manufactured vehicles *that VWGoA markets and sells in California* are designed … to be sold throughout the United States." Pet. App. 25a–26a. And the court found it salient that, "[i]n its briefing on appeal, Audi acknowledge[d] that VWGoA has extensive dealings with California, including delivery of hundreds of thousands of Audi vehicles to the United States and national advertising that includes California, and that there are a large number of Audi dealerships (and at least some customers requiring product support) in California." *Id.* at 26a. Given this record, the appellate court was unconvinced by Audi's attempt to "disavow[] an intent to sell in California," describing it as "uninformed if not disingenuous." *Id.* at 27a.

Ultimately, the appellate court determined that the record supports the following conclusions: "that Audi intentionally and purposefully engaged a national distributor (VWGoA) to target and exploit the automobile

market in California for Audi's economic benefit," and that "Audi deliberately and systemically (albeit indirectly) served the market for automobiles in California for the very vehicle that plaintiffs alleged was defective and caused injuries in California," and "that there is a 'regular flow' of vehicles from Audi to VWGoA to Audi-authorized dealerships across the United States, including California." Pet. App. 27a. Thus, despite an acknowledged "lack of evidence in the trial court record as to the exact amount of authorized Audi dealerships in California," the court found that the plaintiffs had satisfied even the more stringent stream-of-commerce plus test. *Id.* at 28a.

4. The dissent disagreed—not about the proper test for purposeful availment, but about what factual findings were supported by the record. Judge Renner concluded that there was inadequate "competent evidence" to "satisfy[] even the most lenient standard." Pet. App. 33a. The majority made inferences, the dissent argued, that were inconsistent with California law regarding the plaintiff's burden to prove jurisdictional facts, *id.* at 36a (citing *In re Auto. Antitrust Cases I & II*, 37 Cal. Rptr. 3d 258, 269 (Ct. App. 2005); *Buchanan v. Soto*, 194 Cal. Rptr. 3d 663, 670 (Ct. App. 2015)), and regarding permissible inferences for an appellate court to draw from the record, Pet. App. 37a (citing *CenterPoint Energy v. Super. Ct.*, 69 Cal. Rptr. 3d 202, 217 (Ct. App. 2007); *Auto. Antitrust Cases*, 37 Cal. Rptr. 3d at 271). Because "[a] factfinder could infer" from the record various things about the flow of Audi-manufactured cars into California, Judge Renner "would [have] defer[red] to the [trial] court" and its "unwilling[ness] to infer from the evidence that Audi AG conducts substantial business in California." *Id.* at 37a.

In conclusion, the dissent thought the case should have been resolved by "accept[ing] the trial court's finding that, the only evidence presented by the plaintiffs to demonstrate Audi AG's economic activity in California is the sale of the Audi Q7 in Santa Monica.'" Pet. App. 39a. "Doing so," the dissent reasoned, "would not only respect the inferences drawn by the trial court, it would spare [the appellate court] the task of deciding difficult constitutional questions on an incomplete record." *Id.* Judge Renner would [have] save[d] those questions for another day and a more complete record." *Id.*

III. *Hernandez*

Also before the Court is a tag-along petition in *Volkswagen Akteingesellschaft v. Hernandez*, (25-436); *see also Hernandez v. Volkswagen Akteingesellschaft*, 2025 WL 879717 (Cal. Ct. App. 2025) (decision below). The petition raises the same question presented, and the case involves Audi's parent company (Volkswagen) and the same American distributor (VWGoA).

The appellate court in *Hernandez* carefully examined the facts in that case and determined that the plaintiffs had shown the "something more" required by the stream-of-commerce-plus test. 2025 WL 879717, at *8–9. The record in that case—which included, among other things, four importer agreements between Volkswagen and VWGoA—led the court to determine that Volkswagen had "*required*" VWGoA "to promote and sell Volkswagen products, and to arrange for customer service, in California" during the relevant period. *Id.* at *7. Thus, "through its intentional acts," Volkswagen "sought to serve the California market through [VWGoA]" and purposefully availed itself of the laws of the state. *Id.* at *8.

Volkswagen asks this Court to hold *Hernandez* pending its disposition of *Audi* and then dispose of it accordingly. Pet. at 8, *Volkswagen Akteingesellschaft v. Hernandez*, No. 25-436 (U.S. October 7, 2025).

ARGUMENT

I. The petition does not present any question worthy of certiorari.

The petition pitches this case as a vehicle for resolving the well-known disagreement among the Justices of this Court and the lower courts about the test for when "a nonresident defendant's placement of a product in the stream of commerce will give rise to jurisdiction." Pet. 3. But this case does not present that question.

And the petition hardly attempts to show that the question that is actually presented—whether a state may exercise personal jurisdiction over a foreign manufacturer in a products-liability case based on its relationship with an American distributor, *see* Pet. I—warrants this Court's review, especially on this anomalous, thin record. Audi alleges in various places in the petition that the lower courts disagree over that question. But it does not attribute that disagreement to a categorical rule of law that this Court may consider. That's because the disagreement Audi has identified reflects different courts reaching different outcomes based on different records. The actual question presented is thus case-specific, factbound, and splitless. No wonder, then, that Audi tries mightily to hitch this uncertworthy horse onto the wagon of the longstanding stream-of-commerce debate.

A. This case does not present the well-known, longstanding divergence about the stream-of-commerce theory that is the subject of the petition.

1. The petition focuses on decades-old uncertainty about the proper stream-of-commerce test for purposeful availment. Pet. 11–21. The petition canvasses the well-known developments in this Court's personal-jurisdiction cases—tracing the stream-of-commerce theory from *World-Wide Volkswagen* to the pluralities and concurrences in *Asahi* and *J. McIntyre*. *Id.* at 11–16. It describes each of the varying approaches of the different opinions in those cases. *Id.* at 13–14. Then it argues that the lower courts are split between two different stream-of-commerce tests. *Id.* at 16–20.

It is that alleged division in authority, Audi argues, that warrants this Court's intervention. "On one side of the divide," it explains, there are courts holding that personal jurisdiction is proper "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." Pet. 16. The petition describes these courts as having adopted the "pure stream-of-commerce approach," or simply the "stream of commerce approach." *Id.* at 16–18. On the other side of the divide, the petition explains, are courts that have "adopted a narrower stream-of-commerce plus test." *Id.* at 18. These courts require "something more" than mere knowledge, some "additional conduct by the defendant directed toward the forum state." *Id.* at 19–20. That alleged conflict is the only legal disagreement that the petition identifies.

No doubt, the lower courts have long disagreed about whether stream-of-commerce or stream-of-commerce-plus is the law of the land. But this case does not present that question. To the contrary, the opinion below expressly declined to answer it.

The decision below stated explicitly that it would not resolve the confusion in this Court's fractured opinions because doing so would not affect the outcome in this case. The California Court of Appeal held that purposeful availment had been demonstrated even "under the stricter stream-of-commerce-plus approach articulated by Justice O'Connor in *Asahi*." Pet. App. 24a. And it elaborated that there was no need to resolve the legal uncertainty because, "under any of the analyses articulated by the various lead opinions, there is enough in this particular case for Audi to be properly summoned." *Id.*

The dissent also declined to answer the legal question. It concluded that there was inadequate "competent evidence" to "satisfy[] even the most lenient standard" from this Court's stream-of-commerce cases. Pet. App. 33a. Given that, it made no attempt to "decid[e] difficult constitutional questions" about the proper test. *Id.* at 39a.

The resolution of this case, therefore, did not turn on the split that petitioner describes. It would be strange for this Court to attempt to resolve a longstanding legal uncertainty by taking a case in which the decision below did not even profess to resolve that same legal uncertainty. Stranger still, a case with a dissent, but in which both the majority and the dissent thought the question of federal law was not the dispositive issue.

2. To be sure, Audi briefly acknowledges this problem, and it makes a few attempts to explain it away.

Audi argued that although the decisions below did not "tak[e] a particular side on the stream-of-commerce theory left unresolved by this Court's decisions," the majority and dissent "reach[ing] opposing conclusions" on purposeful availment without resolving the split "exemplifies the disagreement and confusion in the lower courts." Pet. 20–21. But the majority and the dissent did not disagree about the test for purposeful availment—they disagreed about the facts. The majority thought that there was sufficient "evidence demonstrating that Audi has continuously and deliberately exploited California's automobile market for its economic benefit through VWGoA." Pet. App. 28a. The dissent, meanwhile, thought it proper to defer to the trial court's conclusion that the "only evidence presented by the plaintiffs to demonstrate Audi AG's economic activity in California is the sale of the Audi Q7 in Santa Monica." *Id.* at 39a. That disagreement—over how to read the record in this case—does not warrant this Court's review.

Audi also contends that, although the majority "purported" to apply the stricter stream-of-commerce-plus test, it was incorrect to hold that the record in this case "sufficed under that approach." Pet. 21. But a dispute over how to apply a legal standard to the facts of a particular case is also not certworthy. S. Ct. R. 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c)(3) (11th ed. 2019) (noting that "error correction … is outside the mainstream of the Court's functions and … not among

the 'compelling reasons' … that govern the grant of certiorari").

Thus, this case does not present the legal issue that Audi spends most of its petition discussing. Audi essentially recognizes as much. What Audi ultimately admits that it seeks, then, regarding the split over the stream-of-commerce test, is for the Court to correct the decision below's application of the test adopted by one side of the split to the record in this case. That does not warrant this Court's review.

B. The question that the petition actually presents is not certworthy.

Despite the impression the petition leaves the reader with, the question presented is not the test for the stream-of-commerce theory. It is whether personal jurisdiction is proper "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." Pet. I. In a few places, the petition pays homage to the actual question. For example, saying that lower courts have reached "contrary" conclusions about whether a "petitioner's use of an American distributor suffice[s]" for personal jurisdiction, *id.* at 21, or describing how certain cases in the alleged stream-of-commerce split involve foreign manufacturers and American distributors.

But Audi has not identified any legal issue over which the manufacturer-distributor cases disagree. Indeed, the different outcomes in these cases do not reflect a disagreement about the law—beyond the split already discussed. Rather, they reflect courts reaching different outcomes based on differences in the facts of those cases.

Compare Vermeulen v. Renault USA, Inc., 985 F.2d 1534, 1537–41, 1549–50 (11th Cir. 1993) (concluding that personal jurisdiction was proper in the United States under the stream-of-commerce-plus approach after carefully examining the terms of a "series of commercial agreements" between a manufacturer and its American distributor, assessing the manufacturers' involvement in the mechanics of the "actual process of sale and resale" of vehicles in the United States using documentary and testimonial evidence, and considering the manufacturer's other conduct under the agreement), *with State ex rel. LG Chem. Ltd. v. McLaughlin*, 599 S.W.3d 899, 904 (Mo. 2020) (finding no purposeful availment where there were no allegations that the manufacturer "has any influence over the third party's distribution" of the product, or that the manufacturer "took any action seeking to serve [the state's] market for [the product] in any way").

Ultimately, whether a manufacturer can be haled into court in a particular state based on its relationship with its distributor is a case-specific, record-intensive question about how to apply the law of personal jurisdiction to a category of diverse factual scenarios. Take the tag-along case, for example. In *Hernandez*, the court keyed in on specific contract terms that contributed to its conclusion that Volkswagen required VWGoA to sell, market, and service Volkswagen vehicles in California, and additional evidence that Volkswagen exerted ongoing influence over those activities in California. *Hernandez*, 2025 WL 879717 at *7–8. *See also Bridgeport Music, Inc. v. Still N the Water Publ'g*, 327 F.3d 472, 483–84 & n.11 (6th Cir. 2023) (finding a prima facie case for purposeful availment based on the "language" of a "distribution agreement" and testimony about that relationship, and finding no prima facia case based on another defendant's distribution

agreement because of the absence of any "contract language" or other facts showing "the nature of the relationship" between the manufacturer and the distributor). How to engage in a fact-bound analysis is not the kind of question over which this Court usually grants review.

Thus, this case does not present the well-known legal question that is the focus of the petition. *See* Pet. 6–11; 11–21. And Audi has not shown that the factbound question that *is* presented by this case warrants this Court's review.

II. This case is not a suitable vehicle for clarifying the law on the stream-of-commerce theory.

Even if the Court believes that Audi has raised a certworthy question, this case presents several additional vehicle problems that counsel strongly against this Court's review. The facts are contested, the record paints an artificial picture of these kinds of contractual relationships, and the case is an intermediate state-court appellate opinion that does not purport to stand for the predominant practice in the state.

1. One vehicle problem should already be clear: the facts in this case are fiercely contested. The majority and the dissent below could not have been further apart regarding how to read the record. And their disagreement turns on the application of state law. The Court should not attempt to wade into this morass, and the Court cannot resolve the state-law dispute that's buried at the bottom.

The decision below reflects a profound disagreement about what factual findings are supported by the record. The dissent concluded that all it could glean from the evidence about Audi's activities in California was the sale

of one Audi Q7 at an Audi dealership in Santa Monica. Pet. App. 39a. It refused to infer the existence of any additional Audi dealerships or the sale of any additional Audi vehicles in the state of California. *Id.* The dissent said there was "no evidence" about "how many Audi-manufactured cars enter the California market through VWGoA over any particular time frame, or whether Audi AG derives substantial or regular revenue from such sales." *Id.* at 38a. The majority, meanwhile, thought the "record makes clear that there is a 'regular flow' of vehicles from Audi to VWGoA to Audi-authorized dealerships across the United States, including California." *Id.* at 27a. It found support for this view in an "implicit[] acknowledg[ment]" from Audi's expert that Audi-manufactured vehicles are marketed and sold in California, and in Audi's briefing on appeal, which "acknowledge[d] that there are a large number of Audi dealerships (and at least some customers requiring product support) in California." *Id.* at 25a–26a.

Lest it find itself with another *J. McIntyre*, the Court may need to make some headway in resolving this factual dispute. And, in order to resolve the case, the Court would likely need to parse through the record itself.

Worse still, the answer to the factual questions may be found in state law. The dissent argues that its narrower interpretation of the record follows from state-court precedent governing the standard of review and the burden of proof. The majority explained that "[i]n reviewing a trial court's order granting a motion to quash for lack of personal jurisdiction," a California appellate court "independently review[s] the trial court's legal conclusions when no conflict in the evidence exists." Pet. App. 14a (citing *Snowney v. Harrah's Ent., Inc.*, 112 P.3d

28, 32–33 (Cal. 2005); *Pavlovich v. Super. Ct.*, 58 P.3d 2, 9–10 (Cal. 2002)). But "[w]hen there is conflicting evidence," the appellate court "will not disturb the trial court's express or implied factual findings if they are supported by substantial evidence." *Id.* (citing *Pavlovich*, 58 P.3d at 10). The majority did not identify any conflict in the evidence, and engaged in an independent review of the trial court's legal conclusions. For the dissent, however, these standards were dispositive. To acknowledge anything beyond a single sale of an Audi at a single dealership, in the dissent's view, required the court to make one of several permissible inferences from the evidence. *Id.* at 37a, 39a. The dissent would have deferred to the trial court's decision about what to infer. *Id.* at. 37a (citing *CenterPoint*, 69 Cal. Rptr. 3d at 217; *Auto. Antitrust Cases*, 37 Cal. Rptr. 3d at 271). And the dissent critiqued the majority for turning the "burden of proof" for jurisdictional facts "on its head" with its reading of the record. *Id.* at 36a (citing *Auto. Antitrust Cases*, 37 Cal. Rptr. 3d at 269; *Buchanan*, 194 Cal. Rptr. 3d at 670).

It is not this Court's job to referee a case-specific debate about how to apply state-law standards of review to record evidence. Nor is it this Court's job to correct state court rulings about what facts may be found based on that evidence. The Court should deny certiorari rather than intervene in a case where it may have to do both.

2. This is also a poor vehicle because of the utterly artificial story that the record tells about how large foreign manufacturers contract with American distributors to serve American state markets. The record contains much less evidence than is often available in cases of this kind—most significant, as the tag-along case

shows, is the lack of the agreements themselves between the manufacturer and the distributor. Even more extreme, in the dissenting judge's view, the record only shows the sale of a single Audi. If the Court were to grant certiorari in this case, it would be resolving an important legal question based on obviously artificial facts, using a record that is anomalous among cases involving a manufacturer and distributor, and thus leaving it unable to provide meaningful guidance to lower courts confronting more realistic scenarios.

To understand just how unrealistic the story about Audi's relationship with VWGoA is, the Court need look no further than the tag-along case. *Hernandez* was about Audi's parent company, Volkswagen, and its relationship with the same distributor, VWGoA. Terms in the importer agreements between the entities helped paint a complex and multifaceted collaboration between Volkswagen and VWGoA. *Hernandez*, 2025 WL 879717 at *7–8 (noting, for example, that the contract required VWGoA "to arrange for excellent customer service for all Volkswagen car owners" in the territory governed by the agreement). Those terms were supplemented by evidence about how both parties performed under the contracts. *Id.* at *8 (explaining that VWGoA was required to pass down certain instructions from Volkswagen to its dealers, and that Volkswagen did "pass[] down repair guidelines to dealers" under that term). There were also other documents about Volkswagen's relevant ties to California. *Id.* at *2 (including California Air Resource Board exhaust-emission certificates for Volkswagen cars).

Common sense compels the conclusion that a similarly detailed contract exists here, between Audi and VWGoA. Likely even a contract with similar terms. But the Court

would not have that agreement available to it on review. Because the trial court denied the plaintiffs' motion for jurisdictional discovery as "too general," Pet. App. 42a, the Court would be evaluating this question with blinders on.

The cases cited by the petition underscore the problem. Many of the opinions that Audi describes as applying the stream-of-commerce-plus test involved discussion of specific contract terms. *See, e.g.*, *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 946 (4th Cir. 1994) (describing, among other things, joint patent ownership, royalty sharing agreement, indemnification provision, and inspection rights); *Bridgeport Music*, 327 F.3d at 484 & n.11 (6th Cir. 2003) (finding that the "language in the [distribution] agreement" supported purposeful availment because it was "nearly identical" to the language of the agreement in a prior case, and finding that a different distribution agreement could not support personal jurisdiction in part because "no contract language [was] presented to the Court"); *BRP-Rotax GmbH & Co. KG v. Shaik*, 716 S.W.3d 98, 106–09 (Tex. 2025); *Lindsey v. Cargotec USA, Inc.*, 2011 WL 4587583, at *8–10 (W.D. Ky. 2011); *see also generally Vermeulen v. Renault USA, Inc.*, 985 F.2d 1534 (11th Cir. 1993) (declining to resolve the divergence in *Asahi*, and finding personal jurisdiction proper under Justice O'Connor's approach after carefully examining the terms of several commercial agreements).

Yet, it is this case, with an anomalous and artificial record, that Audi asks this Court to take to attempt to resolve a longstanding divergence over the stream-of-commerce theory. The Court should not take Audi up on that offer. It makes no sense for the Court to

resolve this issue based on facts that it knows only tell a small portion of the real story, and based on a record that is thinner than those available in the mine run of difficult cases.

3. There is yet another reason to decline certiorari: the decision below is an intermediate state-court appellate opinion that does not reflect a definitive rule of law in that state. As discussed, the decision did not pronounce a legal rule at all; it merely recognized a range of available legal rules and concluded that the record before it was adequate under the strictest one. But even as to the manufacturer-distributor fact pattern, there is no one answer in California.

Audi does not even attempt to show that the decision below is an exemplar of the practice of the California courts. Indeed, it could not. In numerous other cases involving manufacturer-distributor fact patterns, the California Courts of Appeal have held that personal jurisdiction is lacking over the foreign manufacturer. *See, e.g.*, *Bombardier Recreational Prods.*, 157 Cal. Rptr. 3d at 66, 76; *Cooper v. Technogym, S.p.A.*, 2022 WL 17333341, at *4 (Cal. Ct. App. 2022); *Cantek Am., Inc. v. Leadermac Machinery. Co.*, 2024 WL 1792729, at *4 (Cal. Ct. App. 2024); *Look-Yan v. Mazda Motor Corp.*, 2023 WL 5920904, at *9–13 (Cal. Ct. App. 2023).

Audi does note that, "[a]bsent this Court's intervention, the lower court's erroneous decision will be precedent in California." Pet. 26. True, trial courts in California are bound by this ruling absent a conflicting appellate decision. *Auto Equity Sales, Inc. v. Super. Ct.*, 369 P.2d 937, 939–40 (Cal. 1962) (in bank). But the precedential takeaway is just that, under certain circumstances, a foreign manufacturer directing its

American distributor to engage in certain activities in the forum state can satisfy the stricter stream-of-commerce test.

And there is no reason to fear that the decision below heralds an era of opinions easily finding personal jurisdiction. In *Hernandez*, which Audi describes as "applying the reasoning of the decision below," Pet. 26, the court still engaged in a careful analysis of the record before it, and the court found personal jurisdiction proper only after concluding that the defendant manufacturer had intended to serve the California market, required its distributor to do so, and engaged in "intentional acts" to effectuate that result. 2025 WL 879717, at *7–8.

This Court should decline Audi's invitation to intervene to correct an intermediate California appellate court's application of the stream-of-commerce-plus test to a particular set of facts.

* * *

Because this "aspect of the law of specific jurisdiction arises in courts across the country on daily basis," Pet. 16, the Court can be confident that other cases, presenting fewer vehicle problems, will arise and allow it to address this aspect of the personal jurisdiction inquiry. It need not do so by granting review in a case with a disputed record and an artificial factual narrative that was decided by a state intermediate appellate court and that may not represent the prevailing practice in that state.

III. The petition's policy concerns are exaggerated.

Audi also argues that several policy concerns warrant immediate clarification of the application of the stream-of-commerce test in this context—but these concerns are exaggerated and unlikely.

The petition asserts that the Court must grant certiorari for the sake of "international comity," Pet. 28, and to avoid "significant consequences for the conduct of foreign affairs," *id.* at 29. Recall, however, the question that the petition presents: whether a foreign manufacturer may be haled into court in a particular *state* based on a contract with an *American* distributor. Unless Audi's contention is that no court in the United States may exercise personal jurisdiction over it, the international-comity stakes are limited to the question of which American states the German company may be sued in. That seems unlikely to cause an imminent foreign-relations debacle.

The petition also says that the "test applied by the court below" leaves "a foreign company seeking to avoid California's courts" with "only" one "practical option"—"to direct its distributor to withhold the company's products from California altogether." Pet. 27. That seems awfully unlikely. As Audi recognizes, California "would be the fourth largest economy in the world," if it were a country. *Id.* at 26. It is hard to see Audi—or any other foreign manufacturer—foregoing the revenue it generates in California because of an intermediate state-court appellate decision. Especially because, as we know from *Hernandez*, in the months after this decision, the California Courts of Appeal continue to apply stream-of-commerce-plus with a bite. 2025 WL 879717, at *7–8.

Finally, Audi's policy concerns are belied by reality. Audi counts three federal circuits and six states that apply the pure stream-of-commerce test and that hold that "foreign manufacturers are broadly subject to specific jurisdiction" under it. Pet. 17–18. And it has been over forty-five years since this Court suggested the

stream-of-commerce basis of personal jurisdiction in *World-Wide Volkswagen*. If disagreement in this area implicated foreign affairs and the availability of consumer goods, we would expect to see that those consequences have already materialized. These policy concerns do not make it necessary for this Court to clarify its stream-of-commerce caselaw immediately by using this immensely flawed vehicle.

IV. The decision below is correct.

No one disagrees that there are various views about how to demonstrate personal jurisdiction under the stream-of-commerce theory. The court below got that right. Likewise, there is no dispute that the strictest of those views flows from Justice O'Connor's opinion in *Asahi* and is what the petition describes as "stream-of-commerce plus," nor that, if that strictest test is satisfied, then personal jurisdiction is proper. So the court below was right again.

The decision below was also correct about how to apply the law to the facts of this case. It explained that the record contained "evidence demonstrating that Audi has continuously and deliberately exploited the California automobile market for its benefit through VWGoA," which has "extensive dealings with California, including delivery of hundreds of thousands of Audi vehicles to the United States," as part of a "regular flow of vehicles from Audi to VWGoA to Audi-authorized dealerships across the United States, including in California." Pet. App. 26a–28a. This is enough to satisfy even the more stringent stream-of-commerce-plus approach.

And the decision below was likewise correct about how to apply California law to this record. The majority was not required to defer to the trial court's finding that only

a single Audi had been sold in California, and that only a single Audi dealership operated in the state. It properly "independently review[ed] the trial court's legal conclusions," Pet. App. 14a (citing *Snowney*, 35 Cal.4th at 1062; *Pavlovich*, 29 Cal.4th at 273), and properly reversed them based on the record evidence of Audi's contacts with California.

Regardless of which stream-of-commerce test applies, the decision below was thus right to hold Audi subject to suit here. But this Court's cases make clear that the decision in fact applied the correct test. This Court held in *World-Wide Volkswagen* 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" for injuries it caused there. 444 U.S. at 297. Although that conclusion was "technically dicta," it "has appeared and reappeared in many cases since" as a touchstone of this Court's personal-jurisdiction test. *Ford Motor Co.*, 592 U.S. at 364 (reviewing cases). And the Court has repeatedly singled out international carmakers (including, specifically, Audi itself) in cases that fit this fact pattern—where the foreign carmaker regularly sells cars into the forum, a resident of the forum purchases a car in the forum, and is injured by that car in the forum—as the "paradigm case of specific jurisdiction" under that test. *Id.* But even if this Court were inclined to revisit that well-established holding, it would make no sense to do so here, where the lower court's decision turns on disputed facts and is correct under any of the competing tests.

CONCLUSION

This court should deny the petition.

Respectfully submitted,

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