

No. _____

In the
Supreme Court of the United States

I.M.,

Petitioner,

v.

MONTGOMERY COUNTY DEPARTMENT OF HEALTH AND
HUMAN SERVICES, J.T., A MINOR CHILD, AND J.N.T.,

Respondents.

**On Petition for Writ of Certiorari to the
Court of Special Appeals of Maryland**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involves a jurisdictional statute that Maryland and 48 other states adopted from the Uniform Child Custody and Jurisdiction Enforcement Act (“UCCJEA”). For the purpose of discouraging forum shopping by parents in custody disputes, the UCCJEA authorizes the child’s “home state” to make custody determinations without the necessity of a parent’s physical presence in or minimum contacts with the forum. A custody determination under the UCCJEA includes termination of parental rights.

Here, the court terminated Petitioner’s parental rights without testing its assertion of jurisdiction against the Due Process Clause “minimum contacts” standard. Petitioner I.M. (“Father”) is a resident of Cameroon with no Maryland contacts. The mother J.N.T. (“Mother”), is a legal permanent resident who gave birth to their minor child (“J.T.”) in Maryland in 2016. The Montgomery County Department of Health and Human Services (“Department”) removed J.T. shortly after she was born and subsequently petitioned to terminate parental rights. The court below did not find Father unfit. Therefore, this case presents the following question:

Whether the UCCJEA comports with the Due Process Clause, where it subjects an international parent to termination of parental rights, where the parent is not deemed unfit, and where the parent has no contact, ties, or relations with the forum state?

PARTIES TO THE PROCEEDING AND RELATED CASES

The parties to the proceeding in this Court appear on the petition's cover. There is a related *pro se* petition pending before the Court filed by the minor child's mother, a resident of Maryland, that involves the same state judgment terminating the parental rights of the child's ("J.T.") mother and father:

- *J.T. v. Montgomery County Department of Health and Human Services*, No. 21-6699 (filed Nov. 24, 2021).

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PETITION FOR WRIT OF CERTIORARI

I.M. (“Father”) respectfully petitions for a writ of certiorari to review the judgment of the Court of Special Appeals of Maryland.

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland is not reported. *In re J.T.*, 1023s20 & 1137s20 (Md. App. June 28, 2021). App. 2. The order of the Court of Appeals of Maryland to deny review is not reported. *In re J.T.*, No. 187 (Md. Oct. 22, 2021). App. 1.

JURISDICTIONAL STATEMENT

The Court of Appeals of Maryland entered its judgment denying review in this case on October 22, 2021. Pet. App. 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment prohibits states from depriving “any person of life, liberty, or property without due process of law.” U.S. Const., Amend. XIV.

MD. CODE ANN., FAMILY LAW (“FL”), § 9.5-201 (“UCCJEA”) dictates that “[p]hysical presence of, or personal jurisdiction over, a party or child is not necessary or sufficient to make a child custody determination.” FL § 9.5-201(c). A “child custody determination” “means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child.” FL § 9.5-

101(d). A “child custody proceeding” includes termination of parental rights. FL § 9.5-101(e)(2).

STATEMENT OF THE CASE

In this case, J.N.T. (“Mother”) lawfully immigrated from Cameroon to the United States and gave birth in Maryland to J.T. in 2016. Petitioner I.M. (“Father”) remained in their home country of Cameroon, where he is professionally employed. Father is unable to enter the United States because of our restrictive immigration policies.

J.T. entered the Maryland child welfare system several days after her birth because of Mother’s deteriorating mental health. Father was aware that the Montgomery County Department of Health and Human Services (“Department”) removed J.T. from Mother’s care and supported the Department’s plan to reunify J.T. with her.

The Department was supposed to make reasonable efforts to avoid J.T.’s placement with non-relatives by, among other things, involving Father in the court proceedings affecting his daughter, offering services to him, sending him copies of related reports, and inviting him to participate in family meetings. However, as is too often the case with families separated by immigration policies that favor developed countries, the protections for the parental rights of the parent who cannot enter the United States are too easily forgotten and, as it turns out in the case at hand, mainly were unenforced by the state court.

Here, for example, despite having Father’s phone number at the hearing when the trial court first found

J.T. a child in need of assistance (“CINA”), the Department waited for nearly two weeks to call him. Then, without considering the enormous cultural and linguistic differences separating the United States and Cameroon, the Department merely told Father to contact the Public Defender’s Office for assistance. Then, for nearly 18 months, the Department effectively forgot about Father. (App. 44). The Department did not tell Father about any court hearings, share any reports, or involve him in the process. (App. 44-45).

However, Father did not forget about his daughter. He maintained regular video visits with her through Mother. He expressed his thanks to the Department for helping Mother and its efforts to reunify J.T. with her. Nevertheless, the Department unilaterally decided early on that Father was not a parental resource because he lived in Cameroon and had deferred to the Department’s plan to return J.T. to Mother’s custody.

In 2017, the Department decided the plan for J.T. should change to terminating Mother’s and Father’s parental rights and placing J.T. with a non-relative for adoption. (App. 43). Once the Department notified Father that his parental rights were in peril, he objected. (*Id.*). However, the Department refused to send J.T. to Cameroon or evaluate Father’s parental fitness unless he came to Maryland. Although Father could not enter the United States, he presented the Department and trial court with evidence of his parental fitness.

Father sponsored a home study in Cameroon by a reputable international social services agency to provide the Department an alternative means to assess

his parental fitness. Also, Father fully cooperated with the Department by responding to its requests for information about his health, employment, family, home environment, DNA, and social history. Still, the Department refused to send J.T. to Cameroon or evaluate Father's parental fitness unless he came to Maryland.

At the start of the termination of parental rights case, Father moved to dismiss the action because the Maryland court lacked personal jurisdiction over him. (App. 40). The trial court agreed that it lacked personal jurisdiction over Father. (*Id.*). Still, it denied the motion because the UCCJEA authorized the court to decide J.T.'s custody status without having jurisdiction over a parent. (*Id.*); *see*, MD. CODE ANN., FAMILY LAW (“FL”), § 9.5-201.¹ Ultimately, the trial court terminated Father's parental rights after it concluded that it was unable to evaluate his fitness as a parent and found the circumstances of his absence from J.T.'s life exceptional. (App. 12).

The intermediate appellate court affirmed. (App. 2). The Court of Special Appeals rejected Father's due process challenge as without merit considering the trial court's statutory authority to determine the child's custody status without having personal jurisdiction

¹ The UCCJEA dictates that “[p]hysical presence of, or personal jurisdiction over, a party or child is not necessary or sufficient to make a child custody determination.” FL § 9.5-201(c). A “child custody determination” “means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child.” FL § 9.5-101(d).

over a parent. (App. 30). The intermediate appellate court did not test the exercise of jurisdiction against constitutional standards. The Court of Appeals of Maryland declined discretionary review. (App. 1).

This petition follows.

REASONS FOR GRANTING THE WRIT

I. The State Court Assertion Of Jurisdiction Over A Presumptively Fit Parent Without Minimum Contacts In The Forum Conflicts With This Court's Due Process Clause Decisions

There are two requirements ostensibly under the UCCJEA for making or modifying a custody determination: (1) the court must have subject-matter jurisdiction, and (2) the parties must be given notice and an opportunity to be heard. FL § 9.5-201(c). Personal jurisdiction over a parent—based on physical presence in, or minimum contacts with, the state—is not required. *Id.* To be sure, these provisions of the UCCJEA are intended to discourage parents from forum shopping between states by assigning exclusive and continuing jurisdiction to the state with initial jurisdiction. FL § 9.5-201(a); *see generally*, Girdner, L.K., and Hoff, P.M., eds. 1993, *Obstacles to the Recovery and Return of Parentally Abducted Children* (ABA Center on Children and the Law). However important its purpose, the reach of the UCCJEA is not limitless under the Due Process Clause.

Even though the UCCJEA may authorize a state court with jurisdiction over a child to make a custody determination without having jurisdiction over a

parent, a court must still test the statute's reach against constitutional standards. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 289-90 (1980) (proper approach to testing limits of state's "long-arm" statute was to test jurisdiction against both statutory and constitutional standards). It is not an answer for a court to adopt a legal fiction that the assertion of jurisdiction over the status of a child is not an assertion of jurisdiction against a foreign parent. *May v. Anderson*, 345 U.S. 528 (1953) (Ohio court need not give full faith and credit to child custody determination by Wisconsin court which had no personal jurisdiction over mother); *cf., Shaffer v. Heitner*, 433 U.S. 186, 207, 212 (1977) ("The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification. Its continued acceptance would serve only to allow state-court jurisdiction that is fundamentally unfair to the defendant.").

The UCCJEA's laudatory purpose cannot substitute for a parent's "minimum contacts" with the forum particularly where, as here, the court's assertion of jurisdiction does not further that purpose. The Court's opinions in *International Shoe Co. v. Washington* and subsequent cases have established a two-part test for determining when a state's exercise of personal jurisdiction over a nonresident defendant comports with due process: (1) the defendant must establish minimum contacts with the forum state that demonstrate an intent to avail themselves of the benefits and protections of state law; and (2) it must be reasonable to require the defendant to defend the

lawsuit in the forum. 326 U.S. 310 (1945); *see also, Hanson v. Denckla*, 357 U.S. 235 (1958) (personal jurisdiction must be supported by minimal contacts, which means that the defendant must have “purposefully availed” themselves of the privilege of conducting activities in the forum state).

Indeed, the proposition that Father lacks minimum contacts with Maryland is undisputed and indisputable. The Court has squarely rejected the notion that a parent’s acquiescence to his child’s presence in a foreign state demonstrated that the parent had “purposefully availed himself” of the forum state’s laws. *Kulko v. Superior Court of California*, 436 U.S. 84, 94 (1978). In a related vein, the Court found a state’s assertion of jurisdiction over a nonresident defendant based solely on the presence of a property right without the further establishment of minimum contacts is a violation of the Due Process Clause. *Shaffer*, 433 U.S. at 216.

In *Kulko*, the Court found that a father’s acquiescence to his daughter’s wish to move from New York to California to live with her mother did not constitute a sufficient “purposeful act” necessary to warrant California’s exercise of personal jurisdiction over the father. 436 U.S. at 94. *Kulko* also rejected a “substantial interests” or “center of gravity” analysis for jurisdictional purposes. *Id.* at 98 (“while the presence of the children and one parent in California arguably might favor application of California law in a lawsuit in New York, the fact that California may be the ‘center of gravity’ for choice-of-law purposes does

not mean that California has personal jurisdiction over the [father”].

Although the trial court conceded that it did not have personal jurisdiction over Father, it still claimed jurisdiction because Maryland had the “greatest connection” to J.T. (App. 44) and termination is a “status determination[.]” (App. 51). However, that “center of interests” determination conflicts with the Court’s decisions in *Shaffer* and *Kulko*, which hold that jurisdiction could not be exercised over property absent sufficient minimum contacts, and that allowing a child’s presence in a foreign state is not purposeful availment justifying personal jurisdiction in that state. To be sure, many states have decided a child’s relationship to her parents is a status determination and rejected a “minimum contacts” analysis. *See, e.g., Matter of F.S.T.Y.*, 843 S.E.2d 160, 165 (N.C. 2020) (collecting cases that conclude this Court would be receptive to applying the “status exception” in termination of parental rights cases); *but see, In re John Doe*, 926 P.2d 1290 (HI 1996) (family court did not have personal jurisdiction to terminate mother’s parental rights who did not have minimum contacts with the forum).

Given that Father had no contacts, ties, or relations with Maryland and that this Court has previously found that allowing a child to live in a state does not constitute purposeful availment of that state’s benefits and protections, the trial court erroneously exercised jurisdiction over Father’s parental rights. By terminating Father’s rights without appropriate jurisdiction based on the fiction of a status

determination, the juvenile court offended the basic notion of fairness required under *International Shoe* and the Due Process Clause. *May*, 345 U.S. at 533 (“Rights far more precious to [mother] than property rights will be cut off is she is to be bound by the Wisconsin award of custody.”); *see also, Ford Motor Company v. Montana Eighth Judicial District Court*, -- U.S. --, 141 S.Ct. 1017 (2021) (a defendant’s “minimum contacts” with the forum is required before a state court can exercise personal jurisdiction over the defendant).

In a case like the matter at hand, these due process protections are essential to ensuring fundamental fairness. Here, the exercise of state court jurisdiction over Father severely disadvantaged him because of his inability to enter the United States. In other words, the location of the termination of parental rights proceeding effectively determined the outcome of the litigation for Father because the Department would not evaluate his fitness unless he was physically present in the forum. The lower court’s assertion of jurisdiction over Father conflicts with the Court’s decision in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985), which held that the exercise of jurisdiction is unreasonable when it results in a procedure that severely disadvantages a foreign defendant and effectively determines the outcome of the litigation.

In summary, the lower court’s exercise of jurisdiction over Father and its denial of his motion to dismiss for lack of jurisdiction amounts to a violation of the Due Process Clause as it offends “traditional notions of fair play and substantial justice.” *Int’l Shoe*

Co, 326 U.S. at 316. The lower court did not consider how Father's lack of minimum contacts severely disadvantaged him because he could not physically appear in Maryland to demonstrate his parental fitness. In short, the court below never tested the reach of its statutory jurisdiction against constitutional standards. In this way, the lower court acted contrary to the Court's long-settled Due Process Clause decisions. The Maryland court's exercise of jurisdiction over Father and its denial of his motion to dismiss for lack of jurisdiction is a clear violation of the Due Process Clause.

II. Terminating Parental Rights Of A Parent Who Is Unable To Enter The United States Is A Recurring Problem That Is Likely To Grow

Termination of parental rights is perhaps the greatest interference that the state can impose on the fundamental right of parents to raise their children. As the Court has noted, "When the State initiates a parental rights termination proceeding, it seeks not merely to infringe [on a] fundamental liberty interest, but to end it." *Santosky v. Kramer*, 455 U.S. 745, 759 (1982). Consequently, the termination of parental rights "must be accomplished by procedures meeting the requisites of the Due Process Clause." *Id.* at 753 (internal citation omitted). Given our restrictive immigration policies, the problem of termination due to a parent's inability to enter the United States is serious and far-reaching. To avoid undue deprivations of parental rights, fidelity to the due process "minimum contacts" standard is crucial.

The disruption of mixed-status families through the child welfare system is a matter of great public importance. In the United States today, roughly six million citizen children born here share a home with at least one undocumented family member, often a parent. Silva Mathema, *Keeping Families Together: Why All Americans Should Care About What Happens to Unauthorized Immigrants*, University of Southern California's Center for the Study of Immigrant Integration (CSII) and Center for American Progress (March 16, 2017) (<https://tinyurl.com/4ba524tj>). From 2013 to 2018, Immigration, Customs, and Enforcement ("ICE") deported more than 231,000 people who reported having at least one U.S.-citizen child. In 2019, ICE deported 27,980 people with U.S.-born children. *See*, American Immigration Council, *U.S. Citizen Children Impacted by Immigration Action*, (Fact Sheet) (June 24, 2021) (<https://tinyurl.com/2hb5da3t>).

Although there are statutory safeguards designed to protect a parent's parental rights, these protections too easily fail in the context of mixed-status immigrant families involved in the child welfare system. Where, as here, those protections fail, a state court with jurisdiction over a child perpetuates that failure by subjecting a foreign parent without minimum contacts in the forum to a binding *in personam* judgment terminating their parental rights. It is fundamentally unfair for a state with no contact, ties, or relations with a foreign parent to bring them into court for termination of parental rights when the parent cannot appear in the forum to demonstrate their fitness and the child welfare agency refuses to send the child to the parent. That fundamental unfairness is not, as found

by the court below, remedied by notice and an opportunity to be heard. (App. 32).

The Court should grant the instant petition and review the decision of Maryland's intermediate appellate court.

CONCLUSION

This case presents the Court an opportunity to resolve the conflict between Maryland's intermediate appellate court and the Court's decisions establishing the Due Process Clause standard that a state court can exercise personal jurisdiction over a defendant only if the defendant has "minimum contacts" with the forum. In the public interest, the petition for issuance of a writ of certiorari to the Court of Special Appeals of Maryland should, respectfully, be granted.

Respectfully Submitted,

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