

No. 25-6684

**IN THE
SUPREME COURT OF THE UNITED STATES**

YEHONATAN KAPACH,
Petitioner,
v.
STATE OF NEW HAMPSHIRE,
Respondent.

PETITION FOR REHEARING
Pursuant to Supreme Court Rule 44.2

YEHONATAN KAPACH
Petitioner, Pro Se
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Charlotte, North Carolina 28277
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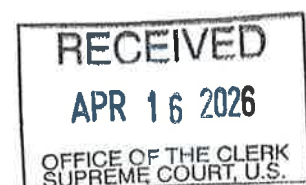


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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits a state court to deny an out-of-state defendant's request to appear by videoconference in a traffic proceeding, where the court possesses the technological capability to conduct such a hearing, and then convict the defendant *in absentia* for "failure to appear," when the defendant's absence was the direct and foreseeable consequence of the court's own denial of remote access.

This question is not unique to Petitioner. It affects nonresident defendants nationwide who receive traffic citations while traveling outside their home states and whose practical ability to be heard depends entirely on whether a distant court will permit remote participation.

*** GROUNDS FOR REHEARING**

Petitioner respectfully seeks rehearing pursuant to Supreme Court Rule 44.2. Rehearing is warranted because this petition rests on both grounds expressly recognized by Rule 44.2: first, intervening circumstances of substantial and controlling effect; and second, substantial grounds not previously presented with sufficient clarity in the original petition.

Petitioner does not seek rehearing merely to reargue the certiorari petition. Rather, rehearing is warranted because subsequent enforcement action has transformed the challenged due process violation into ongoing concrete injury, and because the broader recurring consequences of the question presented merit more explicit consideration under Rule 44.2.

I. THIS CASE PRESENTS A RECURRING CONSTITUTIONAL QUESTION OF NATIONAL IMPORTANCE THAT WARRANTS REHEARING UNDER RULE 44.2

This case is not materially about a speeding ticket. It concerns whether a state may condition the opportunity to be heard on physical attendance at a courthouse located hundreds of miles from a defendant's residence, even when remote appearance technology exists and is available for judicial use.

Petitioner is a resident of Charlotte, North Carolina. He was cited for an alleged traffic offense in Merrimack, New Hampshire, approximately 850 miles from his residence. The assessed fine was \$248. The cost of traveling to New Hampshire to contest the charge, including airfare, lodging, local transportation, and lost work time, would have substantially exceeded the amount in controversy.

Petitioner requested permission to appear by videoconference. That request was denied. Petitioner requested remote appearance again. That request also was denied. Petitioner explained that interstate travel to attend an in-person traffic proceeding was financially infeasible. The court nevertheless denied relief. Petitioner then sought a continuance. That request was also denied. The court proceeded in Petitioner's absence and entered a disposition for "failure to appear."

The practical effect of that sequence is straightforward: the court denied Petitioner the only feasible means of attending, and then imposed adverse consequences based on his inability to attend in person. That framework effectively denies meaningful access to adjudication for nonresident defendants whose geographic distance from the forum makes physical attendance economically unrealistic.

This issue is recurring, not exceptional. Nonresident drivers are cited in states where they do not reside every day. Where remote appearance is categorically denied,

many such defendants face the same coercive choice: incur travel costs that exceed the stakes of the proceeding, or abandon the opportunity to contest the charge. In practical effect, the right to be heard becomes contingent on a defendant's proximity to the courthouse and ability to absorb travel costs unrelated to the merits.

The widespread judicial use of remote technology after the COVID-19 pandemic eliminated any serious claim that meaningful remote participation is categorically unavailable as a matter of feasibility. Courts throughout the country have conducted hearings, conferences, and other proceedings by video or similar technology. The issue presented here is therefore not whether remote appearance is possible in principle, but whether a court may refuse such access and then penalize the defendant for the very absence that refusal predictably produces.

The original petition presented that due process issue. This rehearing petition does not advance a new claim. Rather, it clarifies the broader and recurring consequences of the same constitutional question already presented: whether a state may preserve the form of a hearing while withholding any realistic opportunity for a distant defendant to attend it.

**II.
INTERVENING CIRCUMSTANCES OF SUBSTANTIAL AND CONTROLLING
EFFECT:
THE STATE HAS NOW IMPOSED CONCRETE ENFORCEMENT
CONSEQUENCES**

Since the denial of certiorari, the consequences Petitioner warned of have fully materialized—and the matter cannot be considered moot.

On February 20, 2026, the New Hampshire Division of Motor Vehicles issued a formal “Notice of Action by the Director,” suspending Petitioner’s operating privilege effective March 23, 2026. The stated basis for the suspension was “Default – Failure to Pay at Merrimack District Court.” That default, however, arose from the same underlying process challenged in the certiorari petition, including the denial of remote access and the resulting inability to participate meaningfully in the proceeding.

Facing imminent suspension of his driving privilege and the attendant inability to work and travel, Petitioner was compelled to submit payment solely to prevent irreparable harm. That payment was made expressly under protest, under coercive circumstances, and with full reservation of all legal rights. Petitioner simultaneously served written notices on both the Court Clerk and the New Hampshire Division of Motor Vehicles, stating in explicit terms that the payment “shall not be construed as an admission of liability, guilt, default, waiver, consent, settlement, acquiescence, or abandonment of any legal or equitable position,” and

that Petitioner “expressly and fully reserve[d] all rights, claims, objections, defenses, remedies, and appellate rights.” Those notices are reproduced in full at Appendix A and Appendix B.

This case is accordingly not moot. Payment extracted under compulsion, with contemporaneous written reservation of all rights, does not extinguish the underlying controversy. See, e.g., *Ward v. Board of County Comm’rs*, 253 U.S. 17, 23 (1920) (payment under protest preserves right to challenge legality of exaction). Petitioner retains a live claim to vacatur of the judgment, clearance of the adverse driving record, restoration of any interstate consequences, and refund of amounts paid under compulsion.

The forced payment is itself an intervening circumstance of substantial and controlling effect. It demonstrates that the challenged due process violation is not a matter of speculative or theoretical harm. The State collected money from a defendant who was never afforded a constitutionally adequate opportunity to contest the charge against him—and did so while this Court’s review was pending.

The suspension also carried interstate significance. Under interstate reporting and reciprocity frameworks, including the Driver License Compact and the Non-Resident Violator Compact, enforcement action taken in New Hampshire may be transmitted to Petitioner’s home state of North Carolina, potentially resulting in

additional consequences affecting Petitioner's driving privileges beyond New Hampshire itself.

In addition, the DMV demanded a \$100 restoration fee as a condition of reinstating Petitioner's operating privilege. The practical effect is an escalating set of penalties flowing from a proceeding in which Petitioner contends he was denied a meaningful opportunity to appear and be heard.

These are intervening circumstances of substantial and controlling effect within the meaning of Rule 44.2. The denial of review no longer leaves in place only an alleged procedural defect. It leaves in place a completed forced payment, concrete interstate consequences, and an adverse record—all tied directly to the denial of remote access. The controversy remains live and the injury is real, ongoing, and capable of redress.

III.
NO COURT HAS MEANINGFULLY ADDRESSED THE CORE
CONSTITUTIONAL QUESTION ON THE MERITS

Rehearing is also warranted because the underlying constitutional question has never been meaningfully addressed on the merits by any court.

The trial court denied Petitioner's request for remote appearance without substantive constitutional analysis. It denied Petitioner's recusal motion without explanation. It proceeded in Petitioner's absence. According to Petitioner's account, the proceeding also occurred without the citing officer appearing, without a court reporter, and without a transcript being produced. Petitioner further states that the resulting judgment was signed by a clerk rather than a judge. Whether each of those features independently violated due process is not the immediate point here. The point is that no court has meaningfully examined whether the process, taken as a whole, satisfied constitutional requirements.

The New Hampshire Supreme Court dismissed Petitioner's appeal on September 15, 2025, on procedural grounds, for failure to comply with a clerk's order requiring action by September 5, 2025. It did not resolve the merits of the constitutional question presented. The subsequent motion for reconsideration was denied in summary fashion. Thus, the state appellate process ended without meaningful merits consideration of whether Petitioner had been denied a constitutionally adequate opportunity to be heard.

This Court then denied certiorari without explanation.

As a result, the challenged conviction and its enforcement consequences remain in place even though no court has meaningfully determined whether the underlying process comported with due process. Petitioner is not asking this Court to decide whether he committed the underlying traffic offense. He seeks review of a distinct constitutional question: whether a state may deny a nonresident defendant any realistic means of attending a traffic proceeding and then impose adverse consequences based on nonappearance.

Petitioner further notes that he is a native Hebrew speaker with limited English proficiency and that he requested, but was denied, a certified interpreter at various stages of the proceedings. That issue reinforces, rather than alters, the due process concerns already presented. Limited English proficiency further aggravated the procedural barriers at issue, particularly where compliance with English-language procedural directives became the basis for dismissal. Petitioner does not present that point here as a separate new claim, but as an additional circumstance underscoring why the constitutional adequacy of the process warranted meaningful judicial review.

IV.
**THE NATIONWIDE AND SYSTEMIC CONSEQUENCES OF THE QUESTION
PRESENTED WARRANT THIS COURT'S REVIEW**

This petition also rests on a substantial ground not previously presented with sufficient clarity: the systemic and recurring significance of the question presented.

The issue extends beyond one litigant and one ticket. It concerns whether the opportunity to be heard in traffic proceedings is meaningful for nonresident defendants as a class. Where states or local courts deny remote participation, geographic distance itself becomes a barrier to adjudication. The practical burden falls most heavily on those who live far from the forum, cannot absorb the costs of long-distance travel, and nonetheless seek to contest the charge.

This Court has long recognized that “[t]he fundamental requisite of due process of law is the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). That opportunity must be provided “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). When the only method of attendance requires travel so costly and burdensome that it is functionally unavailable to the defendant, the resulting hearing right may exist in theory while failing in practice.

The question presented therefore implicates more than routine docket management. It concerns whether procedural formalism can satisfy due process when

a court denies the only realistic avenue of participation available to a defendant who lives hundreds of miles away. If remote technology is available, and if physical attendance is economically unrealistic, then categorical refusal of remote appearance may operate as a structural barrier to being heard.

Petitioner acknowledges that the original certiorari petition raised the constitutional issue in his individual case. This rehearing petition does not seek to replace that issue with a different one. It seeks to emphasize more clearly that the same issue has recurring nationwide consequences for similarly situated nonresident defendants. That broader dimension was not previously presented with sufficient clarity and provides an additional substantial ground warranting rehearing under Rule 44.2.

CONCLUSION

This petition satisfies Rule 44.2.

Subsequent to the denial of certiorari, the State compelled payment of the challenged fine and an additional restoration fee under threat of license suspension—while Petitioner expressly reserved all rights in contemporaneous written notices to both the Court Clerk and the Division of Motor Vehicles. That forced payment, combined with adverse interstate driving record consequences, constitutes an intervening circumstance of substantial and controlling effect. The case is not moot.

At the same time, the original petition did not sufficiently emphasize the recurring nationwide consequences of the question presented for nonresident defendants whose practical ability to be heard depends on whether a distant court allows remote participation.

For those reasons, Petitioner respectfully asks this Court to grant rehearing, vacate the order denying certiorari, and restore the petition for a writ of certiorari for further consideration.

Respectfully submitted,



YEHONATAN KAPACH

Petitioner, Pro Se

13929 Daltrey Lane

Charlotte, North Carolina 28277

Telephone: (980) 422-2322

Email: info@edna.news

Date: April 11th, 2026

APPENDIX A

Notice of Payment Under Protest

Submitted to Clerk of Court
9th Circuit – District Division – Merrimack
March 19, 2026

To:
Clerk of Court
State of New Hampshire
9th Circuit – District Division – Merrimack
4 Baboosic Lake Road
Merrimack, NH 03054

Re:
Case No.: 457-2024-CR-01788
Reference No.: CAC897869, 000045051246
Notice of Action dated February 20, 2026
Effective Date: March 23, 2026 at 12:01 A.M. EST

To Whom It May Concern,

I, Yehonatan Kapach, hereby submit payment under protest, under coercive circumstances, and solely to prevent immediate and irreparable harm, including but not limited to the suspension of my driving privileges scheduled to take effect on March 23, 2026, at 12:01 A.M. EST.

This payment is made involuntarily and under compulsion. It shall not be construed as an admission of liability, guilt, default, waiver, consent, settlement, acquiescence, or abandonment of any legal or equitable position.

I expressly and fully reserve all rights, claims, objections, defenses, remedies, and appellate rights, including but not limited to:

1. The right to challenge the underlying judgment, default, and enforcement actions;
2. The right to assert violations of due process and other constitutional protections;
3. The right to seek vacatur, reconsideration, reopening, or other post-judgment relief;
4. The right to pursue appeal or further review in any available forum;
5. The right to seek reimbursement, restitution, refund, costs, fees, and any other appropriate relief.

This payment is tendered solely for the purpose of mitigating damages and avoiding immediate punitive and administrative consequences while my legal objections and challenges remain preserved.

Please ensure that this letter is entered into the official record associated with this matter and treated accordingly.

Sincerely,



Yehonatan Kapach
13929 Daltrey Ln
Charlotte, NC 28277
980-422-2322
info@edna.news

APPENDIX B

Notice of Payment Under Protest
Submitted to New Hampshire Division of Motor Vehicles
March 19, 2026

To:
New Hampshire Department of Safety
Division of Motor Vehicles
Stephen E. Merrill Building
23 Hazen Drive
Concord, NH 03305

Re:
Case No.: 457-2024-CR-01788
Reference No.: CAC897869, 000045051246
Notice of Action dated February 20, 2026
Effective Date: March 23, 2026 at 12:01 A.M. EST

To Whom It May Concern,

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4. The right to pursue appeal or further review in any available forum;
5. The right to seek reimbursement, restitution, refund, costs, fees, and any other appropriate relief.

This payment is tendered solely for the purpose of mitigating damages and avoiding immediate punitive and administrative consequences while my legal objections and challenges remain preserved.

Please ensure that this letter is entered into the official record associated with this matter and treated accordingly.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Yehonatan Kapach', is written over a horizontal line.

Yehonatan Kapach
13929 Daltrey Ln
Charlotte, NC 28277
980-422-2322
info@edna.news

APPENDIX C

NH Division of Motor Vehicles Notice of Action by the Director

Dated: February 20, 2026

Effective: March 23, 2026 at 12:01 A.M. EST

[Original DMV Notice of Action attached hereto as a true and correct copy]

This notice, issued by Director John C. Marasco and Commissioner Robert L. Quinn, suspended Petitioner's New Hampshire operating privilege on the stated basis of "Default – Failure to Pay at Merrimack District Court" pursuant to RSA 263:56-A. Reference No.: CAC897869, 000045051246. A \$100 restoration fee was required for reinstatement, in addition to clearance from the court.



Robert L. Quinn-
Commissioner of Safety

State of New Hampshire

DEPARTMENT OF SAFETY DIVISION OF MOTOR VEHICLES

STEPHEN E. MERRILL BUILDING
23 HAZEN DRIVE, CONCORD, NH 03305
Telephone: (603)227-4010 TDD Access Relay NH 7-1-1



John C. Marasco
Director of Motor Vehicles

YEHOANATAN KAPACH
13929 DALTREY LN
CHARLOTTE, NC 28277

Date of Notice: 02/20/2026
Reference #: CAC897869, 000045051246

NOTICE OF ACTION BY THE DIRECTOR

THIS ORDER IS EFFECTIVE 03/23/2026 AT 12:01 A.M. EST

As a result of: **DEFAULT - FAILURE TO PAY** at **MERRIMACK DISTRICT - CIRCUIT 1-855-212-1234**

Warning: This notice does not replace any prior notice already in effect.

For the reasons shown above you are hereby notified of the following action in accordance with the statutory provisions of the motor vehicle laws.

Your OPERATING PRIVILEGE is suspended indefinitely pursuant to RSA 263:56-A and you may be considered for restoration if you complete the following requirement(s):

- You must submit a notice of cleared default from the above listed court.
- If your OPERATING PRIVILEGE is suspended, you will owe \$100.00 restoration fee.

You can contact the court at the telephone number listed above. No further information is available at this agency.

NH RESIDENT WITH AN OUT-OF-STATE COURT DEFAULT:

You have failed to pay a fine or defaulted a court summons to the out-of-state court listed above:

- a. You must clear the problem with the out-of-state court and obtain notice of clearance from the out-of-state court. If you have been suspended by the out-of-state Department of Motor Vehicles, you will also have to provide a letter of restoration.
- b. If the suspension goes into effect you must cease driving, and not drive again until you have written confirmation that your license has been reinstated by the New Hampshire Division of Motor Vehicles.
- c. 15 days after the suspension has gone into effect, a reinstatement fee will also be assessed. This reinstatement fee is in ADDITION to any other fees and/or fines assessed by the court. These fees and the notice of clearance from the out-of-state court have to be on file at the Division of Motor Vehicles before your OPERATING PRIVILEGE can be restored. MAKE CHECKS PAYABLE TO "STATE OF NH - MV" FOR PAYMENT OF ALL REINSTATEMENT FEES.

Once this order becomes effective, you MUST IMMEDIATELY SURRENDER YOUR NEW HAMPSHIRE LICENSE to the DIRECTOR. You are NOT TO DRIVE until you have WRITTEN CONFIRMATION that your license and/or operating privileges have been reinstated. Restoration cannot be accomplished if you are under SUSPENSION OR REVOCATION for other reasons. Any correspondence or remittance should include your FULL NAME and DATE OF BIRTH.

No refund unless authorized by the Dept. of Safety.

John C. Marasco
Director of Motor Vehicles