

No. 26-164

IN THE
Supreme Court of the United States

A.A. AND F.A.,
Petitioners,

v.

JOSHUA MAST AND STEPHANIE MAST,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Virginia

BRIEF IN OPPOSITION

Thomas C. Watson
Colin F. Brady
MCGUIREWOODS LLP
800 E. Canal St.
Richmond, VA 23219
(646) 262-0500

John S. Moran
Counsel of Record
Grace Greene Simmons
MCGUIREWOODS LLP
888 16th Street N.W.,
Suite 500
Washington, DC 20006
(202) 828-2817
jmoran@mcguirewoods.com

Counsel for Respondents

September 16, 2026

QUESTIONS PRESENTED

Petitioners frame the Question Presented as:

Whether, or under what circumstances, a child's nonparent caretakers have a cognizable liberty interest under the Due Process Clause entitling them to procedural due process before a court enters an adoption order permanently removing the child from their care.

If the Court were to grant review, it would also need to decide, among other things, whether it has jurisdiction in light of the holding by the Supreme Court of Virginia that petitioners waived their due-process claim “[g]iven the paucity of the A.s’ argument on this point,” App.48a n.27 (citing *Coward v. Wellmont Health Sys.*, 295 Va. 351, 367 (2018)), since a procedural default bars consideration of a federal claim where “the last state court rendering a judgment in the case clearly and expressly states that its judgment rests on a state procedural bar,” *Harris v. Reed*, 489 U.S. 255, 263 (1989) (quotations omitted).

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF THE CASE	5
A. The Masts Act to Save a Child Rescued by U.S. Special Forces from a Battlefield in Afghanistan	5
B. The Masts Help A.A. and F.A. Escape Afghanistan as It Falls to the Taliban	8
C. Upon Arrival to the United States, the Parties' Relationship Changes; the A.s Filed an Out-of-Time Challenge to the Final Order of Adoption	10
D. The Proceedings Below	11
REASONS FOR DENYING THE PETITION	16
I. Petitioners Waived the Due-Process Argument They Now Press in This Court	16
II. The Judgment Below Does Not Implicate Any Disagreement in the Lower Courts	21
III. The Case Is a Poor Vehicle	25
IV. There Was No Error in the Judgment Below	29
V. Further Review Would Be Inequitable	33
CONCLUSION	35

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.</i> , 591 U.S. 430 (2020)	32
<i>Amgen Inc. v. Sanofi</i> , 598 U.S. 594 (2023)	21
<i>Andrews v. Commonwealth</i> , 280 Va. 231 (2010)	31
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	18
<i>Berhow v. Crow</i> , 423 So. 2d 371 (Fla. Dist. Ct. App. 1982)	19, 23
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008)	32
<i>Box v. Planned Parenthood of Indiana & Kentucky</i> , <i>Inc.</i> , 587 U.S. 490 (2019)	21
<i>Button v. Day</i> , 208 Va. 494 (1968)	18
<i>Caldwell v. Mississippi</i> , 472 U.S. 320 (1985)	20
<i>Cameron v. EMW Women’s Surgical Ctr., P.S.C.</i> , 595 U.S. 267 (2022)	21
<i>Cone v. Bell</i> , 556 U.S. 449 (2009)	32
<i>Coward v. Wellmont Health Sys.</i> , 295 Va. 351 (2018)	ii, 2, 16, 20, 31

<i>Cruz v. Arizona</i> , 598 U.S. 17 (2023)	30
<i>Elwell v. Byers</i> , 699 F.3d 1208 (CA10 2012)	22–23
<i>F.E. v. G.F.M.</i> , 35 Va. App. 648 (2001)	11–12, 18
<i>Granfinanciera, S.A. v. Nordberg</i> , 492 U.S. 33 (1989)	21
<i>Greene v. Lindsey</i> , 456 U.S. 444 (1982)	17
<i>Harris v. Reed</i> , 489 U.S. 255 (1989)	ii, 3, 20
<i>Jennings v. Stephens</i> , 574 U.S. 271 (2015)	21
<i>Johnson v. Eisentrager</i> , 339 U.S. 763 (1950)	32
<i>Kingdomware Techs., Inc. v. United States</i> , 579 U.S. 162 (2016)	21
<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 570 U.S. 595 (2013)	32
<i>Lehr v. Robertson</i> , 463 U.S. 248 (1983)	30
<i>M.S. v. People</i> , 303 P.3d 102 (Colo. 2013)	22
<i>McCallum v. Salazar</i> , 49 Va. App. 51 (2006)	11–12
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	20

<i>Mullaney v. Wilbur</i> , 421 U.S. 684 (1975)	30
<i>Murdock v. Memphis</i> , 87 U.S. (20 Wall.) 590 (1875)	30
<i>Rivera v. Marcus</i> , 696 F.2d 1016 (CA2 1982)	22
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982)	30
<i>Smith v. Org. of Foster Fams. for Equal. & Reform</i> , 431 U.S. 816 (1977)	31
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	15–16, 29–30, 33
<i>Trump v. Cook</i> , 146 S. Ct. 2234 (2026)	22
<i>Trump v. United States</i> , 603 U.S. 593 (2024)	20
<i>United States v. Tillman</i> , 404 F. App'x 949 (6th Cir. 2010)	32
<i>United States v. Verdugo-Urquidez</i> , 494 U.S. 259 (1990)	32
<i>Wilson v. Fam. Servs. Div., Region Two</i> , 554 P.2d 227 (Utah 1976)	20, 22
<i>Yee v. City of Escondido, Cal.</i> , 503 U.S. 519 (1992)	25
<i>Zivotofsky v. Clinton</i> , 566 U.S. 189 (2012)	20
Statutes	
Alaska Stat. § 25.23.140	24

Ark. Code Ann. § 9-9-216	24
Fla. Stat. § 63.182.....	34
Ga. Code Ann. § 19-8-18.....	34
Idaho Code § 16-1512	24
Miss. Code Ann. § 93-17-15.....	34
N.D. Cent. Code § 14-15-15.....	24
N.H. Rev. Stat. Ann. § 170-B:21	24, 34
Ohio Rev. Code § 3107.16.....	24
Okla. Stat. tit. 10, § 7505-7.2	35
Tenn. Code Ann. § 36-1-122	35
Tex. Fam. Code § 162.012	35
Va. Code § 63.2-1202	34
Va. Code § 63.2-1216	2, 4, 10–15, 18, 24, 30, 33
W. Va. Code § 48-22-704	35

Rules

This Court's Rule 10.....	3, 21, 25
---------------------------	-----------

INTRODUCTION

This is a state adoption case. The Child was left stateless after her non-Afghan parents were killed in a firefight with U.S. and Afghan forces. The Masts “stepped up and stepped in early on when literally no one else did or would, to help a child in severe need who had no one, to save her life and procure her safety * * *.” App.264a. The Masts adopted the Child, and as Afghanistan fell to the Taliban, helped her and petitioners escape to the United States.

Once here, the petitioners decided to challenge the adoption. But they missed Virginia’s six-month statute of repose, which bars challenges to final adoptions. Petitioners sought to avoid that procedural bar primarily on state-law grounds. As a backup, they claimed that the statute of repose violates federal due process because they, as foreign nationals living in Afghanistan at the time, did not receive adequate notice of the Virginia adoption. The Supreme Court of Virginia rejected these arguments, ending petitioners’ untimely challenge. That ruling—in a procedurally, factually, and emotionally complicated case that implicates no division among the lower courts—is correct and does not warrant this Court’s review.

For years, petitioners have pressed a slanted and self-serving narrative, citing news stories they planted, *see* Petn.35, to impugn the Masts and attack their adoption. But the circuit court below, after eleven days of testimony, “reject[ed] that interpretation and narrative.” App.265a. The Supreme Court of Virginia

rightly focused on the record and circuit court’s findings rather than on petitioners’ allegations and rhetoric. *See* App.7–8a. This Court should do the same.

On the merits, the Supreme Court of Virginia vindicated the best interests of the Child by enforcing Virginia’s six-month statute of repose. *See* Va. Code § 63.2-1216. Petitioners now seek a bespoke federal constitutional exemption from that statute of repose based on an alleged liberty interest as “nonparent caretakers.” Petn.4. But petitioners had not even met the Child when the adoption proceedings began. They have no legal relationship with her. They are not biologically related. And they initiated this proceeding more than six months after they had actual notice of the adoption.

For many reasons, the Court should decline review.

First, petitioners waived below the argument they now press before this Court. Petitioners now claim that they had a protected liberty interest as “nonparent caretakers” under a totality-of-the-circumstances test. But below, petitioners argued that they held substantive and procedural due process rights as “de facto” parents. The Supreme Court of Virginia rejected the latter on the merits, and held that petitioners waived any claim based on the former “[g]iven the paucity of the A.s’ argument on this point.” App.48a n.27 (citing *Coward v. Wellmont Health Sys.*, 295 Va. 351, 367 (2018)). Petitioners also never cited below any of the procedural due process cases on which they now rely; they simply asserted a right to notice as “de facto” parents. Before reaching the Question Presented, the Court would therefore need to determine

whether petitioners' waiver is an adequate and independent state law ground that deprives it of jurisdiction. *See, e.g., Harris v. Reed*, 489 U.S. 255, 263 (1989). Even setting jurisdiction aside, however, the waiver weighs strongly against discretionary review.

Second, this case implicates no disagreement among lower courts that might warrant this Court's intervention. *Cf.* Rule 10(b). Petitioners cite a smattering of stale cases and argue they fall into two camps: one that imposes a bright-line rule requiring a legal relationship to trigger due process, and one that applies a looser totality-of-the-circumstances test. Petn.30. But the differences in these cases are largely semantic, and the outcomes are largely fact-driven. None involves a foreign challenger or other closely analogous facts. Petitioners simply have not identified any decision or rule under which a lower court would have relied on procedural due process to overcome a statute of repose under similar circumstances.

Third, this case presents a poor vehicle, even if the Court were inclined to address the federal constitutional dimensions of state adoption procedures. Petitioners did not fully air their procedural due process argument below, so the Court lacks a well-developed record on which to base review. The Question Presented is not outcome-determinative because, as the Supreme Court of Virginia recognized, petitioners would need to make several additional showings to prevail, and there are strong reasons to doubt that they could. The facts of this case are also *sui generis*, diminishing the utility of any ruling for guiding lower courts in future cases. And the labyrinthine procedural history and live factual disputes would make it

difficult for a majority of the Court to coalesce around a consensus resolution to the Question Presented. If the legal rules governing procedural due process claims in state adoption proceedings are as important and recurring as petitioners claim, then surely further percolation will bring the Court a better vehicle.

Fourth, the Supreme Court of Virginia got it right. At bottom, petitioners seek error correction for what they claim is “an egregious miscarriage of justice.” Petn.2. But there is no error to correct. The Supreme Court of Virginia correctly held, as a matter of state law, that Code § 63.2-1216 bars petitioners’ challenge; as a matter of constitutional law, that petitioners could not overcome the statute of repose by asserting they were “de facto” parents; and as a matter of state procedure, that they had waived any further due process claim based on “nonparent caretaker” status. Petitioners do not challenge those holdings, and they are adequate to support the judgment below. Petitioners instead argue that the Supreme Court of Virginia should have applied a legal standard they never cited to a procedural due process claim they barely briefed. The court below did not err in its judgment.

Fifth and finally, it would be inequitable to grant certiorari, both for this family and for adoptive families across the United States. The Child turned seven this summer, is making new friends at school this Fall, and has lived happily at home for over five years with her parents and four siblings, who have given her the love and care that she needs and deserves. The Virginia General Assembly enacted Code § 63.2-1216 based on a legislative judgment that, at some point, an

adopted child’s interest in finality and stability outweighs competing interests in allowing challenges to an adoption order. To grant review would be unsettling not only for this family but for many who would face the prospect of federal constitutional challenges to settled adoptions from a wide range of alleged “non-parent caretakers.” Even if those challenges fail on the merits, litigating them presents a substantial burden and weighs strongly against opening the door at all.

STATEMENT OF THE CASE

A. The Masts Act to Save a Child Rescued by U.S. Special Forces from a Battlefield in Afghanistan

Joshua Mast met his now adoptive daughter (“the Child”) in Afghanistan while serving as a Judge Advocate General in the Marine Corps. R.9310–16.¹ She was recovering at a U.S. military hospital after U.S. Special Forces rescued her from the battlefield at approximately 6-8 weeks old. R.13965–72.

The Child was found with serious injuries during an intense, prolonged battle involving sustained close combat in a part of Afghanistan known for terrorist activity. R.584–85, 6165–6373. Two platoons of U.S. Army Rangers were deployed to capture or kill three non-Afghan terrorist leaders who operated a foreign fighter training camp. R.6167–68, 14239–40. The

¹ Citations beginning with “R.” refer to the record in the Supreme Court of Virginia below.

Child's biological parents fought with Army Rangers to the death. R.6165–75.

Major (then-Captain) Mast learned about the Child's plight and developed a "grave concern that without proper medical care she may die or be severely disabled, and [had] serious doubt that such needed medical care * * * could be provided in Afghanistan." R.2517. It was apparent she had no living relatives: her parents had died at the training camp, and they were found dead with other individuals identified as foreign fighter terrorists not native to Afghanistan. R.2517, 3786, 10361–62, 10389, 13905. Joshua Mast received permission to pursue, in his personal capacity, bringing her to the U.S. R.3239, 4015, 5398–99, 5523–24. Joshua and his wife, Stephanie, initiated custody proceedings in the Fluvanna County Juvenile and Domestic Relations ("J&DR") Court to establish a legal identity that would allow the Child to obtain a visa and receive medical care in the United States. R.5381, 5393, 5504. They subsequently pursued an adoption, which they realized would be necessary to get her out of Afghanistan. R. 5355, 5264–65, 5373–74.

The Masts believed (and still do) that the Child was a stateless minor, not Afghan. They had strong reasons to believe she was the daughter of foreign terrorists and understood that children born to foreigners do not receive birthright citizenship in Afghanistan. *See, e.g.*, R.2541–42, 3861–62, 10358–10567, 14390, 14439, 14482, 14529, 14848.² Joshua Mast raised these concerns with appropriate authorities, many of whom

² After a year of litigation, the circuit court agreed that the Masts' belief was well-founded. R.2517 ("The Court finds that not only
(*cont'd*)

supported his efforts to bring the Child to safety. R.3260–61, 3561–62, 9366–67, 9394–95, 12999–13000. The Masts believed the Child would be medically evacuated to the United States near the end of 2019 and were prepared to welcome her home. R.5999.

But in a turn of events, a State Department official decided that the Child should be handed over to the then extant Government of Afghanistan. R.3807–08, 3870, 5383, 5393–94, 5525, 14882–86. Joshua Mast remained concerned about the Child’s dangerous situation and her ability to receive adequate medical care, as well as the prospect that the Child was being turned over to a non-relative who wanted to remain anonymous and may be terrorist-affiliated. R.2516–17, 2543–44, 3861–62, 3864–67. The Masts thus sought a temporary restraining order in federal court to attempt to prevent the Child’s transfer out of U.S. protection. *See* R.2520, 3414. They were especially concerned with the lack of vetting. The court denied the TRO, and the transfer out of U.S. protection went forward. R.3413–15; *see also* R.2525–26, 3795–96, 9320. The Masts initially had no idea where the Child was placed but later learned she had been handed to a purported uncle, A.A.’s father. R.5359, 5362, 5642, 5938.³

After receiving reports that the Child was experiencing medical complications and learning that no one

is this circumstantial evidence that the child was and is not Afghan, but more important, it contributes to the reasonable basis for [the Masts’] belief.”).

³ A.A. claims to be the Child’s cousin, but to this day, neither A.A., F.A., nor any of their relatives has submitted to a DNA test notwithstanding a circuit court order.

had ever taken her back to a hospital, the Masts remained concerned she could not receive the care she needed in Afghanistan. They were told that an unmarried teenage girl was caring for her at an elderly man's direction. R.5309, 5409, 5752–53, 5935–36. They proceeded to finalize their adoption to secure the Child a path to the U.S. R.2521, 3415–16. The Circuit Court entered a final Adoption Order on December 3, 2020. R.6.

B. The Masts Help A.A. and F.A. Escape Afghanistan as It Falls to the Taliban

As the Taliban campaign swept over Afghanistan in late Summer 2021, Joshua Mast established contact with A.A. for the first time and asked him to bring the Child to Kabul so she could fly to the U.S. before Afghanistan collapsed. R.3417, 5639–43, 9690–91. As explained by Joshua's interpreter and found by the Circuit Court, Joshua made clear to A.A. from the beginning that he intended to bring the Child to the U.S. to live with him and his wife. R.10974, 10831, 11314–16.

In their communications, A.A. used the American name that the Masts had given the child. R.2525–26. A.A. told Joshua that his father (not A.A.) was responsible for the child to the Taliban, and had to ask the Taliban's permission for the Child to leave, R.5011-12, 5060, 5944, but later conveyed that the Taliban had said "no," R.13537–44. Joshua proposed that A.A. and F.A. could also come to the United States by disobeying the Taliban, something A.A. had told Joshua he desired. R.5423–24, 5648, 5668, 5746–47.

When the Afghan Government collapsed on August 15, 2021, Joshua worked around the clock to evacuate

as many American allies as possible, resulting in at least 32 people escaping the Taliban. R.5652. Joshua again contacted A.A. about bringing the Child to U.S. forces, to which A.A.'s father reportedly agreed. R.9430–33, 9713–15. Amid the chaos, A.A. and F.A. were able to flee Afghanistan based on the Child's status as Joshua Mast's adopted dependent by presenting her to U.S. Forces, who recovered them from behind Taliban lines. R.9715–45.

The Masts flew to Ramstein Air Base in Germany to meet A.A. and F.A. and ensure they made it to the U.S., rather than get routed to some other part of the world, as was happening with other refugees. R.4312, 5662, 5973. The Masts reiterated that they were the Child's legal parents and would have custody over her in the United States. R.5971–75. Soon after they entered the United States, on September 3, 2021, the Masts took custody of the Child pursuant to the final order of adoption. R.3417–18. Once in the United States, the Child received extensive treatment, including physical, speech, and occupational therapy, as well as treatment for parasites and lice. R.5934.

C. Upon Arrival to the United States, the Parties' Relationship Changes; the A.s Filed an Out-of-Time Challenge to the Final Order of Adoption

After evacuating to the U.S. based on the Child's status as the Masts' adoptive child and a military dependent—with knowledge that the Masts had adopted the Child and intended to raise her as part of their family—A.A. and F.A. changed their tune and decided to attack the adoption. R.6–9.

A.A. and F.A. sought to reopen and set aside the final order of adoption but, at first, did not allege any parental or guardian relationship. R.3398. To the contrary, they initially alleged that A.A. was a “first cousin of the child” and that the Child’s unspecified “Afghan family” (not A.A. or F.A.) had initiated unspecified “proceedings” to gain custody of her. *Ibid.* The Masts objected to that petition as procedurally deficient, including that it was barred by Code § 63.2-1216, the six-month statute of repose. The petition was dismissed.

A.A. and F.A. initiated this subsequent proceeding on March 28, 2022. R.4729. That filing came more than six months after the Masts took custody of the Child pursuant to the final order of adoption, at which point the A.s indisputably had actual notice of it. It was also more than a year after the final order had been entered. Petitioners alleged for the first time that they were “in effect the child’s adoptive parents as legal and permanent guardians of the minor child under Afghan law.” R.3410. Virginia precedents recognize a due-process exception to the statute of repose for biological parents. *See McCallum v. Salazar*, 49 Va. App. 51 (2006); *F.E. v. G.F.M.*, 35 Va. App. 648 (2001). Before the Masts invoked Code § 63.2-1216, neither A.A. nor F.A. had ever referred to the Child as their “daughter” or “child” or any other similar term; nor did they have any court order or other document proving parenthood or legal custody. R.4729–30.

During their attempt to reopen the adoption proceeding, petitioners tried to gain custody of the Child; the state court rejected their efforts, and they did not appeal. R.1693. They also filed a \$20 million tort suit

against the Masts, their attorney, and two of their key witnesses. *See Doe v. Mast*, No. 3:22-cv-49 (W.D. Va.).⁴

D. The Proceedings Below

In response to the instant petition, the Masts filed demurrers arguing, among other things, that Code § 63.2-1216 barred A.A. and F.A.’s challenge. R.31–34. The circuit court denied the demurrers, and with the parties’ acquiescence, construed them as pleas in bar. *See* R.2523, 4063–65, 4081–84, 7855–57, 7860–61. The court took evidence over 11 days,⁵ and received written closing arguments on the preliminary issues. R.2278–2311, 2337–43.

Circuit Court’s Original Findings & Rulings.

On November 11, 2022, the circuit court announced findings and rulings, later memorialized in writing on November 30. *See* App.214a. The court found A.A. and F.A. presented no evidence of being biologically related to the Child or knowing who she was before she was rescued, treated by DoD, and given to A.A.’s father.⁶ The Supreme Court of Virginia later summarized the circuit court’s key findings, including that

⁴ Respondents have sought certiorari on unrelated First Amendment issues arising from a gag order imposed in that case. *See* Petition, *Mast v. Doe*, No. 26-226.

⁵ *See* R.7912–8203; 8274–8457; 8508–8800; 8866–9145; 9214–9447; 9535–9848; 9965–10181; 10261–10590; 10702–11053; 11168–11518; 11641–12083 (hearing transcripts).

⁶ The Supreme Court of Virginia specifically held that these factual findings were controlling for purposes of the appeal, rejecting Petitioners’ contrary arguments. *See* App.4a & n.3.

A.A. and F.A. “are not natural parents, adoptive parents, * * * or anyone with court-ordered custody or guardianship, and have not proved they are even biological relatives,” App.41a (citing circuit court findings); that there “was no ‘court-ordered custody to the [A.s],’ and “they * * * do not have legal custody,” *ibid.*; that the “circuit court was ‘not convinced or persuaded’ that the ‘[A.s] are who they say they are regarding their asserted familial relationship to the child,’” *ibid.*; and that they “have not proved to the Court’s satisfaction that they are in fact kin,” *ibid.*

The circuit court proceeded to address the “ultimate issue and disposition in this case,” which was “application of Code § 63.2-1216,” holding that Code § 63.2-1216’s plain language covers A.A. and F.A.’s claims. App.238–43a. The court nevertheless concluded that A.A. and F.A. could invoke an expanded version of a due-process exception to Code § 63.2-1216 that the Virginia Courts of Appeals had recognized in *F.E. v. G.F.M.*, 35 Va. App. 648 (2001), and *McCallum v. Salazar*, 49 Va. App. 51 (2006). App.243–50a. The court acknowledged that A.A. and F.A. did not satisfy this exception because they are not the Child’s biological or adoptive parents, or even legal guardians under Afghan or U.S. law, but the court held that it would not apply the statute of repose because A.A. and F.A. had acted as “*de facto* parents” and applying the bar would be “unconstitutional as applied in this case, despite there being no case that explicitly says that.” App.250a. The court candidly acknowledged it was

“making a decision that is contrary to my actual analysis of the case.” App.212a.⁷

The circuit court certified the order for interlocutory appeal, App.274a, and the Masts perfected that appeal, R.2676, which became Record No. 1855-22-2 in the Virginia Court of Appeals.

Circuit Court’s Summary Judgment Ruling.

The initial judge hearing the case at the Circuit Court retired, and the case was reassigned. After further proceedings but no additional testimony, the new judge essentially replicated the decision of the prior judge. On May 3, 2023, the circuit court granted partial summary judgment to A.A. and F.A. App.289a. The court (i) repeated the conclusion that Code § 63.2-1216 should not apply as a matter of due process, App.293a; (ii) held that the final order of adoption should be vacated, App.294a; but (iii) left the interim order of adoption and custody order in place, *ibid*. The court certified this order too for interlocutory appeal, R.3715; J.M. and S.M. perfected that appeal, R.3725, which became Record No. 0940-23-2 in the Virginia Court of Appeals.

⁷ The circuit court rejected additional arguments raised by the As, including that Code § 63.2-1216 does not apply to adoption orders that are void *ab initio*, App.250–54a, or to alleged defects in subject-matter jurisdiction, App.254–56a. The court also rejected arguments that the court was bound as a matter of U.S. foreign policy to treat A.A. and F.A. as the Child’s legal guardians. App.269–71a. The United States has since withdrawn its Statement of Interest, App.305a, and Petitioners do not press that theory.

Virginia Court of Appeals. The court of appeals heard argument on the consolidated appeals on November 15, 2023. On July 16, 2024, the court issued an opinion affirming in part, reversing in part, and remanding with directions to dismiss the adoption proceedings. *See* App.107a. The court held that the six-month bar of Code § 63.2-1216 did not apply as a matter of state law because the final adoption order was entered without the circuit court’s having the “power to render” and was therefore void *ab initio*. *See* App.121–35a. The court declined to reach the circuit court’s holding that A.A. and F.A. should be treated as *de facto* parents, acknowledging that it would extend beyond existing precedent. App.119a, 134–35a.

Supreme Court of Virginia. The Masts sought further review in the Supreme Court of Virginia, which granted permission to appeal, held argument, and issued its decision on February 12, 2026, reversing the Court of Appeals and “enter[ing] final judgment dismissing with prejudice the A.s’ petition to vacate the final adoption order.” App.59a.

On the merits of petitioners’ state-law arguments, which were the core of their challenge, the court held (a) that Code § 63.2-1216 applies to challenges claiming that an adoption order is void *ab initio*; (b) that there is no “power to render” exception; and (c) that petitioners’ fraud allegations did not take the case outside the statute of repose. The court then turned to petitioners’ fallback constitutional arguments.

As relevant here, the court rejected “the circuit court’s ‘de facto parents’ thesis,” which the A.s had raised “as an alternative basis for affirmance.”

App.40a. The court emphasized the circuit court’s “multiple factual findings concerning the A.s’ relationship with the child while in Afghanistan,” *ibid.*, which cut against their due-process claim. But the court ultimately “reject[ed] their de facto parent thesis as a matter of law,” noting that “[n]o Virginia state or federal court has endorsed this constitutional theory,” “[n]or has any American court applied it extraterritorially to foreign citizens living in a foreign country at the time of the alleged violation of their claimed rights under the U.S. Constitution.” App.43–44a. The court reviewed this Court’s plurality opinion in *Troxel v. Granville*, 530 U.S. 57 (2000), and numerous cases since, noting that, “[i]n every one of our opinions applying *Troxel*, we have applied its constitutional protections only to actual parents.” App.44a. The court agreed with the Virginia Court of Appeals that “[o]nly a venturesome expansion of *Troxel* could justify the judicial recognition of the de facto parent theory.” App.47a. Petitioners do not press that theory here.

In a footnote, the Supreme Court of Virginia then addressed the notion that petitioners might alternatively have due process rights based on “nonparent caretaker” status, as they now argue. App.48a n.27. The court concluded that petitioners have waived the argument by failing to brief it adequately:

Given the paucity of the A.s’ argument on this point, *see* Appellee Br. at 43–44 (a single paragraph); *Coward v. Wellmont Health Sys.*, 295 Va. 351,367, 812 S.E.2d 766 (2018) (“Lack of an adequate argument on brief in support of an assignment of error constitutes a waiver of that

issue.” (citation omitted)), the absence of persuasive precedent, and the circuit court’s findings of fact, we reject the A.s’ assertion that *Troxel* supports their constitutional claim in this case.

Ibid. Aside from this footnote, the Supreme Court of Virginia did not further discuss petitioners’ procedural due-process claim. Petitioners had devoted only a single paragraph to it in their appellate brief, and they neither cited any of the procedural due-process cases on which they now rely nor argued that the court should apply a different standard.

REASONS FOR DENYING THE PETITION

I. Petitioners Waived the Due-Process Argument They Now Press in This Court

Petitioners now argue that “[t]he Virginia Supreme Court should have addressed [their] procedural-due-process claim separately from [their] substantive-due-process claim,” Petn.26, and should have applied a laxer standard to assess whether they had a cognizable due process interest, Petn.32. But petitioners waived this theory before the Supreme Court of Virginia due to their “paucity of * * * argument” on this issue. App.48a n.27. That is ground enough to deny the Petition.

Petitioners put separate headings for substantive and procedural due process in their brief to the Supreme Court of Virginia, but they addressed both issues cursorily, each in a single paragraph. *See* VSC

Appellee Br. 43–45.⁸ Moreover, as relevant here, petitioners drew no distinction (as they do now) between the category of parents to whom substantive due process rights adhere and the category of parents, custodians, or caregivers to whom procedural due process is owed. *See* VSC Appellee Br. 44–45 & n.31. To the contrary, they relied on the same “de facto’ parent” theory as the premise for their procedural due process claim. *See* VSC Appellee Br. 45 n.31 (“As Baby Doe’s ‘de facto’ parents, the A.s were plainly entitled to due process of the Virginia adoption proceedings before entry of the final order.”).

Petitioners never argued before the Supreme Court of Virginia that procedural due process is owed in adoption proceedings to a broader set of relatives or to custodians. Indeed, their briefing below did not cite a single one of the totality-of-the-circumstances cases they now invoke. *Cf.* Petn.44–45. Here is the entirety of their argument on the issue before the Virginia Supreme Court:

“The fundamental requisite of due process” “is the opportunity to be heard.” *Greene v. Lindsey*, 456 U.S. 444, 449 (1982). Thus, due process “requires notice reasonably calculated * * * to apprise interested parties of the * * * action.” *F.E.*, 35 Va. App. at 665. It is undisputed that neither the U.S. government, the A.s, H.I., nor Baby Doe received legal notice of the adoption proceedings. That “failure to give * * * notice * * * violated the most

⁸ For clarity, respondents use the same citation conventions for the briefing below as petitioners.

rudimentary demands of due process of law.” *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965).³¹ And though Section 1216 purports to shield an order attacked for failures of notice, it cannot be constitutionally applied here because *no* relevant person received notice. *See, e.g., id.* (“due process requires notice when ‘the judicial proceeding was permanently to deprive a legitimate parent of * * * parenthood”). Holding otherwise would impermissibly permit Section 1216 to preempt federal law. *See Button v. Day*, 208 Va. 494, 503 (1968).

³¹ The M.s have claimed the A.s had no right to notice. That is incorrect and disingenuous. *See* R.13316 (J.M. April 2020 text: “[W]e obviously have to have the consent and cooperation of the family to get [Baby Doe] medical care * * *.”). As Baby Doe’s “de facto” parents, the A.s were plainly entitled to due process of the Virginia adoption proceedings before entry of the final order.

VSC Appellee Br. 44–45 & n.31. Petitioners raised a procedural due process claim that rested on the same “de facto” parent argument they had pressed in support of their substantive due process argument. They therefore waived the alternative “nonparent caretaker” theory they now attempt to raise here.

Petitioners also completely failed to address other key issues that would have been essential to making out their procedural due-process claims—such as whether they have standing to assert this claim when

the Child was in the custody of the United States at the time the adoption proceedings began (and they had not yet met her),⁹ or how their purported right to notice was violated when their challenge is untimely even counted from the date they indisputably received actual notice of the final order of adoption. They cannot now fault the Virginia Supreme Court for holding that they waived any procedural due process claim premised on an unarticulated theory that they were constitutionally entitled to notice as “nonparent caretakers.”

There is no reason why petitioners could not have pressed below the theories they press now: that they had procedural due process rights as mere custodians under a totality-of-the-circumstances test like the one articulated by the intermediate Florida appellate court in *Berhow v. Crow*, 423 So. 2d 371 (Fla. Dist. Ct. App. 1982), or that the court was required to resolve the factual dispute over their alleged familial relationship in order to assess their due process rights under a standard akin to what the Utah Supreme Court applied in *Wilson v. Family Services Division, Region Two*, 554 P.2d 227 (Utah 1976). *Cf.* Petn.31–34. But they did not. And they cannot now raise these waived theories for the first time.

Given petitioners’ waiver, this Court likely lacks jurisdiction to review the Question Presented, which

⁹ As the quoted passage illustrates, Petitioners attempted to elide this problem by arguing that notice was owed to “the U.S. government, the A.s, H.I., [or] Baby Doe.” VSC Appellee Br. 45 n.31. But A.A. and F.A. do not have standing to assert claims based on notice allegedly owed to third parties, and none of those other parties is before the Court.

raises a procedural due process claim barred by an adequate and independent state law ground. The Virginia Supreme Court held that petitioners waived any due process claim premised on “nonparent caretaker” status “[g]iven the paucity of [their] argument on this point.” App.48a n.27 (citing VSC Appellee Br. at 43–44; *Coward*, 295 Va. at 367). That waiver holding is an adequate and independent state law ground and therefore deprives this Court of jurisdiction. *Harris v. Reed*, 489 U.S. 255, 263 (1989) (explaining that a procedural default bars consideration of a federal claim where “the last state court rendering a judgment in the case “clearly and expressly” states that its judgment rests on a state procedural bar.”) (quoting *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985), in turn quoting *Michigan v. Long*, 463 U.S. 1032, 1041 (1983)).

Even if the Court did have jurisdiction, moreover, petitioners’ waiver and the paucity of argument below would still counsel strongly against discretionary review. This Court “is a court of final review and not first view.” *Trump v. United States*, 603 U.S. 593, 617 (2024) (quoting *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012)). Thus, even when the Court’s jurisdiction is not at issue, the Court consistently declines to consider arguments not raised below. *See, e.g., Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 275 (2022); *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 173 (2016); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 38 (1989) (“We decline to address this argument because respondent failed to raise it below and because the question it poses has not been adequately briefed and argued.”).

II. The Judgment Below Does Not Implicate Any Disagreement in the Lower Courts

Petitioners claim the lower courts have split on the standard for assessing whether nonparent caretakers enjoy procedural due process protection in adoption proceedings. That characterization is misleading. Petitioners themselves seem to accept that there is no square split. *See* Petn.30 (citing “entrenched disarray”). Even a generous reading of the cases they cite reveals only that lower courts have reached different outcomes on different facts, not that there is a clear division among the lower courts warranting this Court’s review. *Cf.* Rule 10(b).

This Court “review[s] judgments of the lower courts, not statements in their opinions.” *Amgen Inc. v. Sanofi*, 598 U.S. 594, 615 (2023); *see also* *Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 587 U.S. 490, 513 n.2 (2019); *Jennings v. Stephens*, 574 U.S. 271, 277 (2015). Absent extraordinary circumstances, the Court limits its review to whether the lower court got the judgment right, not whether the lower court explained its decision as this Court would have. *Cf. Trump v. Cook*, 146 S. Ct. 2234, 2251 n.3 (2026) (“[T]he question before us is whether we would likely reverse the judgment below, not whether we would likely disagree with some of the reasons given by the lower courts.”) (quotation omitted). Petitioners’ claimed split founders on this principle. They do not identify any case that reaches a judgment inconsistent with that of the Supreme Court of Virginia below.

1. Petitioners instead cite a smattering of stale cases, which they characterize as falling into two camps: one that imposes a bright-line rule requiring a legal relationship to trigger due process, and another that applies a more flexible “totality of the circumstances” test. Petn.30. But the differences are largely semantic and turn on the unique facts at hand, rather than on the application of competing legal frameworks. Some cases involved foster parents who had taken concrete steps toward adoption, *see, e.g., Elwell v. Byers*, 699 F.3d 1208, 1217 (CA10 2012); *M.S. v. People*, 303 P.3d 102, 106–07 (Colo. 2013), while others involved grandparents or biological relatives with demonstrated custodial relationships, *see, e.g., Rivera v. Marcus*, 696 F.2d 1016, 1024–25 (CA2 1982); *Wilson v. Fam. Servs. Div., Region Two*, 554 P.2d 227, 230 (Utah 1976). Each turns on its facts, and none bears any meaningful resemblance to this one. In particular, none involved (i) foreign citizens residing in a foreign country at the time of a domestic adoption proceeding, (ii) who had not met the child when adoption proceedings began, (iii) who lacked any demonstrable legal relationship to the child, (iv) who refused to substantiate their purported biological connection with DNA, and (v) whose challenge would have been untimely under the applicable statute of repose even if measured from the date they indisputably had actual notice of the adoption.

The best petitioners can do is to argue that some lower courts have looked at the “totality of the circumstances” and that they “would have easily prevailed under a totality-of-the-circumstances test.” Petn.31. Never mind, again, that they failed to argue this below. But the cases on which petitioners now rely

do not establish such a loosey-goosey standard, and the *ipse dixit* assertion that they would easily prevail fails to grapple with the factual particulars of those cases, which differ substantially.

Also fatal is petitioners' failure to define what a court must determine under the "totality of the circumstances." They suggest that the test may be whether the challengers "have 'raised' the child, developed a 'close family relationship,' and intended to provide 'more than mere temporary care,'" Petn.30 (quoting *Berhow v. Crow*, 423 So. 2d 371, 372–73 (Fla. Dist. Ct. App. 1982)), or whether they "fall closer to the status of adoptive parents than in the ordinary, temporary foster arrangement," Petn.31 (quoting *Elwell v. Byers*, 699 F.3d 1208, 1217 (CA10 2012)). But those are just fact-bound quotations from particular cases. They establish no clear totality-of-the-circumstances standard for "nonparent caretakers" that can apply in future cases. And they establish no limiting principle for the new class of constitutionally protected "nonparent caretakers" that petitioners ask this Court to recognize.

2. Petitioners fare no better in claiming division among the lower courts on the relevance of nonparental family relationships. *See* Petn.33–34. As they are forced to concede, the circuit court ruled against them and "declined to find that A.A. and [the Child] are 'biologically related.'" Petn.25 n.5 (quoting App.235a n.19). It is therefore wholly irrelevant how some lower courts would have addressed a case in which a biological relationship had been established.

3. Moreover, even if there were some disagreement over when “nonparent caretakers” enjoy procedural due process protection, none of these courts set aside a statute of repose based on procedural due process in like circumstances, which is what a genuine conflict would entail. Virginia, like most States, enacted its adoption statute of repose to protect the finality and stability of adoptive placements. Va. Code § 63.2-1216. Every State imposes time limits on challenges to final adoption orders, ranging from as short as 90 days to two years, and many, like Virginia, explicitly bar challenges based on fraud, failure to give notice, or other alleged procedural defects. *See, e.g.*, Alaska Stat. § 25.23.140(b) (one-year statute of repose covering “any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter”); Ark. Code Ann. § 9-9-216(b) (same); N.H. Rev. Stat. Ann. § 170-B:21 (same); N.D. Cent. Code § 14-15-15(2) (same); Ohio Rev. Code § 3107.16(B) (same); *see also* Idaho Code § 16-1512(2) (six-month statute of repose covering “any defect or irregularity * * * , jurisdiction or otherwise,” but excepting “fraud on the part of the party adopting a child”). None of the cases petitioners now invoke applied procedural due process to overcome one of these statutes of repose, or any other like it, much less with comparable facts.

* * *

There is simply no need for this Court to step in to resolve the sort of lower-court conflict that Rule 10 establishes as the primary criterion for this Court’s discretionary review.

III. The Case Is a Poor Vehicle

Even if the Court were inclined to address the federal constitutional dimensions of state adoptions, this case would be a remarkably poor vehicle.

1. Petitioners did not fully air their procedural due process theory below, *see* Part I *supra*, leaving no well-developed record to review. *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 538 (1992) (“Prudence * * * dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question.”). This case is fundamentally about state law: the validity of a state adoption order and application of Virginia’s statute of repose. Petitioners focused their federal arguments below on a preemption theory they have since abandoned; by the time the case got to the Supreme Court of Virginia, their procedural due process claim was an afterthought.

To the extent they pressed it, petitioners relied on a “de facto” parent theory at each stage. They never argued they had a liberty interest under the “totality of the circumstances” as “nonparent caretakers,” never cited the cases on which they now rely, and as noted, devoted only a single paragraph to procedural due process in their brief. The circuit court ruled for them but candidly stated that no case supported its decision and that the ruling was contrary to the court’s analysis of the case. App.212a, 250a. The court of appeals avoided the issue altogether. And at the Supreme Court of Virginia, only one Justice would have held that petitioners’ due-process rights were

violated, relying on decisions from the Virginia Courts of Appeals. *See* App.103–05a (Mann, J., dissenting). The Court therefore would not have adequate percolation, a robust record, or a well-reasoned opinion below on which to base review. If the Court were inclined to take up these issues, it should wait for a case where they have been fully argued and squarely adjudicated.

2. The Question Presented is also not outcome-determinative in overcoming the statute of repose, much less in voiding the adoption and obtaining custody of the Child. The Supreme Court of Virginia identified three showings petitioners would need to make to avoid this threshold procedural bar: (1) They would need to prove that their “relationship with the child justifies their claimed status” as nonparent caretakers. App.40a. (2) They would need to show “that de facto parents (however defined) have the same constitutional rights under American (not Afghan) law as biological or adoptive parents.” *Ibid.* And (3) they would need to show that they, as “Afghans living in Afghanistan at the time the final adoption order was entered[,] can assert a claim attacking that order in an American court.” *Ibid.*

Even if this Court were to lower the bar on the second showing, there are strong reasons to doubt petitioners could satisfy the first and third. The circuit court made, and the Supreme Court of Virginia relied on, numerous factual findings that undermine any alleged liberty interest, including that petitioners “are not natural parents, adoptive parents, * * * or anyone with court-ordered custody or guardianship, and have not proved they are even biological relatives.”

App.228a. Both courts emphasized that, despite their claimed biological relationship to the Child, petitioners refused DNA testing. App.233a n.16. The circuit court was “not convinced or persuaded” that petitioners “are who they say they are regarding their asserted familial relationship.” App.258a. And the court found “no confidence that Afghan law even gave” A.A.’s father “the authority to give the child to [A.A.]” App.232a n.15. Petitioners were also foreigners in a foreign country at the time of the adoption and had not even met the Child when the proceedings began. The Child was instead in the custody of the United States at a military hospital, and notice was owed—if at all—to the United States, not A.A. or F.A.¹⁰ Petitioners lack standing to assert a due process claim on behalf of the United States.

3. The circumstances here are also *sui generis*, diminishing the utility of any ruling to guide lower courts. *E.g.*, App.289a (“There has never been a case that the Court can find that is like this case.”). Petitioners had not even met the Child when adoption proceedings began. Their argument must be that, at some later point, their relationship sufficiently solidified to turn them into “nonparent caretakers” entitled to notice, but that is a novel issue. And they were foreign citizens living abroad at the time, which is hardly a typical fact pattern. If the Court were to

¹⁰ The Masts have consistently maintained that the United States had notice of the adoption proceedings, and the circuit court agreed. App.291a (“[T]he United States was aware of what was happening in Fluvanna County and chose to do nothing about it.”). Any dispute about the adequacy of notice was not germane to the judgment below.

adopt a new test for procedural due process claims in adoption challenges, it would be prudent to do so in a case with typical facts so that the Court could apply its standard and give lower courts practical guidance.

4. Petitioners' reliance on disputed (if not refuted) factual allegations also decreases the likelihood that a majority of the Court could coalesce around a consensus outcome that would provide the useful guidance petitioners claim the lower courts need. Petitioners from the beginning have "championed" a "narrative" * * * that 'the Masts, with bad motives from the beginning, decided to steal a child' away from her extended family * * * in a brazen act of 'child trafficking.'" App.7–8a (quoting App.265a). Of course, "[t]he circuit court rejected the 'interpretation and narrative' advanced by the A.s," *ibid.*, so this Court would have no reason to credit it. But petitioners continue to cast the Masts' conduct as "egregious," Petn.2, and "illicit," Petn.3. Both the circuit court and the Supreme Court of Virginia rejected any notion that petitioners had a parental relationship with the Child, *see* App.41a–42a, yet petitioners claim it is "undisputed that petitioners were * * * 'parent figures' when the Virginia adoption order issued," as opposed to temporary caretakers. Petn.5. They also seem poised to continue pressing rejected allegations A.A. is related to the Child.¹¹

¹¹ Compare App.41a ("To reiterate, the Court finds that [the A.s] have not proved to the Court's satisfaction that they are in fact kin to the child * * * .") (quoting App.271a); App.42a ("[The Masts] asked for DNA evidence from the very beginning, and [the
(cont'd)

Petitioners apparently cannot accept the factual findings made against them below. If the Court were to grant certiorari, therefore, the Court might find it difficult to coalesce around an operative set of facts for applying any standard the Court might adopt. *Troxel* itself garnered no majority opinion, 530 U.S. at 57, and this case would present far greater challenges in light of petitioners’ litigation strategy.

* * *

If petitioners are right that there is a deep, acknowledged, and recurring division among the lower courts, then surely further percolation will bring this Court a better vehicle.

IV. There Was No Error in the Judgment Below

Petitioners really seek fact-bound error correction, as they acknowledge from the opening lines of their petition. *See* Petn.2 (asking the Court to correct what they characterize as “an egregious miscarriage of justice”). But there is no error to correct.

1. The Supreme Court of Virginia correctly held, as a matter of state law, that Code § 63.2-1216 bars petitioners’ challenge to the adoption. *See* App.30–39a. This Court would not have jurisdiction to review that state-law ruling, even if petitioners asked, *see*

A.s] resisted this from the very beginning. The Court cannot ignore this.”) (quoting App.233a n.16), *with* Petn.25 n.5 (acknowledging the circuit court ruled against them but stating that “petitioners appealed that determination, and the Virginia Supreme Court never resolved it”).

Mullaney v. Wilbur, 421 U.S. 684, 691 (1975) (“[S]tate courts are the ultimate expositors of state law.”); *Cruz v. Arizona*, 598 U.S. 17, 32–33 (2023) (Barrett, J., dissenting) (“[T]his Court is powerless to revise a state court’s interpretation of its own law.”) (citing *Murdock v. Memphis*, 87 U.S. (20 Wall.) 590, 636 (1875)), which they wisely do not.

2. The Supreme Court of Virginia also correctly held, as a matter of federal constitutional law, that petitioners cannot overcome the statute of repose based on their claim to be “de facto” parents and that the statute of repose is not unconstitutional as applied to petitioners. *See* App.40–49a. This Court’s precedents have consistently recognized that the liberty interest in “the care, custody, and control” of children protected under the Due Process Clause belongs to parents. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). In every case in which this Court has recognized due process protection in the parent-child context, the claimant has been an actual parent—biological or adoptive. *See, e.g., Santosky v. Kramer*, 455 U.S. 745 (1982); *Lehr v. Robertson*, 463 U.S. 248 (1983). This Court has never held that informal caretakers, like petitioners, with no legal or biological relationship to a child have a protected liberty interest in state adoption proceedings. While the Court in *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816 (1977), reserved the question whether legally appointed *foster* parents might have such an interest, the Court emphasized that the “liberty interest in family privacy” has its source in “intrinsic human rights” that are “related to concepts of personal identity and autonomy” and may not extend beyond the biological or legal parent-child

relationship. *Id.* at 845. The court below rightly recognized that “[o]nly a venturesome expansion of *Troxel* could justify the judicial recognition of the de facto parent theory,” App.47a, and the court prudently declined to undertake such an expansion. Petitioners do not try to resurrect the “de facto” parent theory here.

3. The Supreme Court of Virginia was also correct in holding, as a matter of state procedural rules, that petitioners had waived any due process claim based on “nonparent caretaker” status. App.48a n.27 (citing *Coward v. Wellmont Health Sys.*, 295 Va. 351, 367 (2018)). Virginia law is clear that “[l]ack of an adequate argument on brief in support of an assignment of error constitutes a waiver of that issue.” *Coward*, 295 Va. at 367 (citing *Andrews v. Commonwealth*, 280 Va. 231, 252 (2010)). As the Supreme Court of Virginia has explained:

[T]he Rules of the Supreme Court are rules and not suggestions; we expect litigants before this Court to abide by them. If appellant believed that the trial court erred, Rule 5A:20(e) required her to present that error to us with legal authority to support appellant’s contention. * * * [W]here a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.

Ibid. (cleaned up). Federal courts impose similar requirements. *See, e.g., United States v. Tillman*, 404 F. App’x 949, 953 (6th Cir. 2010) (Sutton, J.) (“[Appellant] never sought such a disclosure in the district court, and at any rate he forfeited the

argument by raising it in a footnote in a perfunctory manner unaccompanied by some effort at developed argument.”) (quotation omitted). But in any event, this Court has made clear that “questions of [state] procedure * * * are not ours to decide,” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 609 (2013); accord *Cone v. Bell*, 556 U.S. 449, 483 n.5 (2009). Petitioners, for their part, do not acknowledge, much less dispute, this procedural holding.

4. Those three holdings are correct and unchallenged, and they adequately support the judgment below. But even if there were any lingering doubt, there are several additional grounds that further support the judgment below—and which respondents would press as alternative grounds for affirmance if certiorari were granted. Most notably, “it is long settled as a matter of American constitutional law that foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 591 U.S. 430, 433–34 (2020) (citing *Boumediene v. Bush*, 553 U.S. 723, 770–71 (2008); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265–75 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950)). The Supreme Court of Virginia noted this settled principle and concluded that it did not need to “address the question whether a *Troxel* claim can be asserted in an American court by foreign nationals living in a foreign country at the time that their alleged *Troxel* rights were purportedly violated.” App.49a n.28. But petitioners would need to prevail on that issue to obtain any relief. At the time the adoption order was entered in December 2020, and at the time the six-month statute of repose expired in June 2021, petitioners were

Afghan citizens living in Afghanistan with no constitutional rights under the Due Process Clause.¹²

V. Further Review Would Be Inequitable

Finally, it would be inequitable to grant certiorari, both for this adoptive family and for adoptive families across the United States.

The Child currently enjoys the sort of stable and loving home that the Virginia General Assembly sought to protect in enacting Code § 63.2-1216. She turned seven this Summer, is making new friends at school this Fall, and has lived happily at home for over five years with her parents and four adoptive siblings, who have given her the love and care that she needs and deserves. Despite her challenging start, she is now developmentally on track and thriving. The whole point of adopting a strict statute of repose for adoptions, as Virginia and many other States have done, is to provide finality and stability for adopted children, even at the expense of adults' ability to litigate their interests.¹³

¹² Petitioners' claim also fails because they lack standing to challenge the adoption; because their allegations are factually unsubstantiated; because, even after actual notice, they waited more than six months to file; and because they are equitably estopped after relying on Joshua Mast's status as the Child's adoptive father to flee with U.S. forces from Afghanistan.

¹³ Petitioners argue that "any caretaker in [their] position deserves notice of adoption proceedings * * * and an opportunity to be heard." Petn.4. But Virginia law entitles "[a] legal custodian of a child being placed for adoption * * * [t]o proper notice of any adoption proceeding and an opportunity to be heard." Va. Code (cont'd)

The adoption order has been final since December 2020, and the Masts have had custody of the Child since September 2021. The Virginia courts, recognizing this, have repeatedly refused petitioners' efforts to upset the adoption. While the statute of repose is crystal clear, the Masts have been denied the promised and needed repose. Granting certiorari would undermine that purpose and thrust the Child and her family back into years of additional litigation. Even if the Court were ultimately to affirm—or the Masts were to prevail on alternative grounds following a remand—the prospect of further review would still create instability and uncertainty in the meantime of precisely the sort that a statute of repose is meant to foreclose.

Petitioners' requested holding would also be immensely disruptive for adoptive families around the country. States across the Nation have enacted similar statutes of repose to protect the finality and stability of adoptive placements. *See, e.g.*, Fla. Stat. § 63.182(1) (one year); Ga. Code Ann. § 19-8-18(h) (six months); Miss. Code Ann. § 93-17-15 (six months); N.H. Rev. Stat. Ann. § 170-B:21 (one year); Okla. Stat. tit. 10, § 7505-7.2(A)(2) (three months); Tenn. Code Ann. § 36-1-122(b)(2) (nine months); Tex. Fam. Code § 162.012(a) (six months); W. Va. Code § 48-22-704(b) (six months). These limitations reflect a considered policy judgment that, at some point, an adopted child's interest in stability outweighs competing interests in allowing procedural challenges. If petitioners prevail,

§ 63.2-1202(l). That law just did not apply to petitioners for a whole host of reasons. It does, however, undermine their parade of horrors.

any prior caretaker, including a foreigner living in a foreign country, could claim not to have received adequate notice to reopen a finalized adoption at any time, perhaps years after the child has settled in with an adoptive family. Even if such challenges ultimately fail, litigating them imposes a substantial burden on adoptive families and children and undermines the repose that state legislatures have sought to provide.

Denying certiorari will allow the Masts and the Child to live without the threat of unwinding their family and uprooting her from the life she has built. It will allow all parties involved to turn the page and start the next chapter of their lives.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Thomas C. Watson
Colin F. Brady
McGUIREWOODS LLP
800 E. Canal St.
Richmond, VA 23219
(646) 262-0500

John S. Moran
Counsel of Record
Grace Greene Simmons
McGUIREWOODS LLP
888 16th St. N.W.
Suite 500
Washington, D.C. 20006
(202) 828-2817
jmoran@mcguirewoods.com

Counsel for Respondents

September 16, 2026