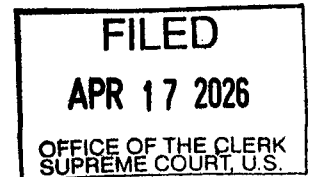


26-5005
SUPREME COURT OF THE UNITED STATES



DANA WATERS,

Petitioner,

v.

DAVID HUGHES,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of North Dakota

PETITION FOR A WRIT OF CERTIORARI

Dana Waters

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QUESTIONS PRESENTED

I. Whether a state court may exercise child custody jurisdiction consistent with the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, after determining that no state qualifies as the child's home state, where another state had previously asserted jurisdiction in a proceeding of which the opposing party had notice.

II. Whether the Fourteenth Amendment Due Process Clause permits a court to conclusively determine jurisdiction before valid service of process and to preclude a party from meaningfully challenging that determination after service is completed.

LIST OF PARTIES AND RELATED PROCEEDINGS

The parties to the proceeding are:

Petitioner

Dana Waters

Respondent

David Hughes

No parties are corporations. No stock ticker symbols are applicable.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Supreme Court

Rule 14.1(b)(iii):

Supreme Court of North Dakota

Supreme Court No. 20250364

Opinion issued February 5, 2026.

District Court of McKenzie County, North Dakota

Hughes VS Waters No. 27-2023-DM-00113

Final judgment entered August 18, 2025.

Superior Court of California, County of Kern

Waters VS Hughes No. BFL-23-003630

Related interstate custody proceedings involving the same minor children were pending during the North Dakota proceedings.

Petitioner is unaware of any other directly related proceedings pending in this Court or any other state or federal court.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Supreme Court of North Dakota, the highest state court to review the merits, appears at Appendix A to the petition and is unpublished.

The Findings of Fact, Conclusions of Law, and Order for Judgment of the District Court of McKenzie County, North Dakota, Northwest Judicial District, appear at Appendix D to the petition and are unpublished.

JURISDICTION

The date on which the Supreme Court of North Dakota decided my case was February 5, 2026. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on February 25, 2026, and a copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1738A

The Parental Kidnapping Prevention Act provides, in relevant part, that states shall enforce and shall not modify custody determinations made consistently with the provisions of the Act.

U.S. Const. amend. XIV

“No State shall ... deprive any person of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE

This case arises from competing interstate custody proceedings initiated after the children traveled to North Dakota for a temporary visit and were not returned.

Petitioner relocated with the minor children from Washington to California on April 1, 2023. At that time, Washington had been the children's home state.

Prior to the July 31, 2023 retention, the children resided with Petitioner in California. Callum was enrolled and thriving in school, Daithi attended daycare, and the children's educational and enrollment records remained maintained solely through Petitioner. The children participated in community activities, and a return flight to California had been purchased for July 31, 2023.

When the children were not returned, California educational institutions expected their attendance and recorded absences.

On June 19, 2023, the children traveled to North Dakota for visitation with Respondent pursuant to an agreement that contemplated their return to California on July 31, 2023. Respondent had purchased roundtrip airline tickets reflecting the planned return date. Bench Trial Tr. 205–206.

On July 31, 2023, the children were not returned to California as contemplated by the parties' agreement and return travel arrangements. Petitioner immediately contacted local law enforcement regarding the children's non-return.

On August 2, 2023, Petitioner personally attempted to retrieve the children and again sought law-enforcement assistance. During those efforts, Petitioner provided documentation concerning the children's parentage and custodial status.

On August 7, 2023, Petitioner submitted an ex parte application to a California court and provided notice to Respondent via text message. Respondent acknowledged receipt of the notice and stated he would appear at the scheduled hearing.

On August 8, 2023, the California court held a hearing and asserted emergency jurisdiction, issuing orders directing that the children be returned. Respondent did not appear.

On August 9, 2023, Petitioner initiated efforts to effect service on Respondent through law enforcement. Those efforts were unsuccessful after law enforcement declined to serve the out-of-state order. Petitioner also attempted service by certified mail, which Respondent did not accept.

On August 14, 2023, Respondent filed a custody action in North Dakota after acknowledging notice of the California proceeding.

Respondent later acknowledged at trial that he was aware of the California proceedings before October 2023:

“Q. So you're saying that you were not made aware of court proceedings in the state of California before October of 2023?

A. That's not what I said.

...

A. Yes . . . like I just said a minute ago. I said yes.”

Bench Trial Tr. 149.

Although Respondent had prior notice of the California proceedings, he did not appear at the August 8, 2023 California hearing. Following personal service in California on October 19, 2023, Respondent thereafter appeared in the California proceedings while continuing to pursue the competing North Dakota action.

The California proceedings were subsequently continued without final resolution following the emergence of the competing North Dakota proceedings and jurisdictional conflict.

On August 30, 2023, Respondent attempted substituted service on Petitioner at a former address in California where Petitioner no longer resided.

On September 26, 2023, a California hearing was scheduled, but neither party appeared.

On October 16, 2023, Petitioner filed a second ex parte request in California and again provided notice to Respondent.

On October 17, 2023, the California court issued additional emergency orders.

On October 19, 2023, Respondent was personally served in California by a child abduction detective.

On October 23, 2023, Respondent filed a motion for interim relief in North Dakota.

In November 2023, the North Dakota court conducted an interim hearing at which Petitioner did not appear due to lack of proper service.

On December 6, 2023, the North Dakota and California courts conducted a jurisdictional conference. Petitioner was not present and was not notified of the conference.

On December 18, 2023, during proceedings in California, Petitioner requested transfer of the matter to Washington. No transfer occurred before North Dakota assumed jurisdiction over the dispute.

On January 31, 2024, the North Dakota court entered an order assuming jurisdiction, concluding that no home state exists.

On February 16, 2024, during Petitioner's first appearance in North Dakota, the trial court acknowledged deficiencies in prior service and ordered that Petitioner be re-served, stating: "That'll be the order of the court then that you'll be re-served this matter and then we will reconvene this." Feb. 16, 2024 Audio Tr. 00:15:51.

In March 2024, Petitioner was served for the first time.

Service and notice disputes continued after the February 2024 re-service order. During a subsequent hearing, Petitioner informed the court that she had not received certain filings and raised continuing concerns regarding service and mailing irregularities.

In June 2024, at a custody hearing, Petitioner attempted to challenge jurisdiction but was informed that jurisdiction had already been decided.

In September 2024, Petitioner received correspondence from the California court concerning the ongoing California custody proceedings, further reflecting that California proceedings remained active while North Dakota simultaneously exercised jurisdiction over the same dispute.

Following a bench trial held on May 16, 2025, the district court entered final judgment on August 18, 2025.

The North Dakota courts thereafter affirmed that judgment on appeal. In doing so, the North Dakota Supreme Court held that “North Dakota obtained jurisdiction over both parties before California.” Opinion ¶ 13.

The court further concluded that “no other court had home state jurisdiction” and that North Dakota therefore “properly assumed jurisdiction.” Opinion ¶¶ 14, 16.

During the February 2024 proceedings, the trial court further stated that “at the very least that gets us to vacuum jurisdiction where there's no other state that's the home state of the child.” Feb. 16, 2024 Audio Tr. 00:10:02–00:10:10.

Despite the federal nature of the issue presented, the North Dakota Supreme Court declined to address Petitioner’s claim under the Parental Kidnapping Prevention Act, stating that Petitioner “developed no argument” under the statute. Opinion ¶ 17.

The court additionally concluded that “both parties had been given the opportunity to present facts and legal arguments before a decision on jurisdiction was made.” Opinion ¶ 15.

On February 5, 2026, the North Dakota Supreme Court issued its opinion. Rehearing was denied on February 25, 2026.

Respondent was awarded custodial rights despite unresolved parentage issues concerning the minor children. No father is listed on D.H.'s birth certificate, and Respondent acknowledged during trial that he is not the biological father of C.H. The record does not reflect a completed adoption proceeding concerning either child.

The proceedings below also involved significant procedural irregularities. Jurisdiction was determined before Petitioner was properly served. Although the court later acknowledged defects in service and ordered service to be completed, Petitioner was not permitted a meaningful opportunity to relitigate jurisdiction once service was corrected.

The trial proceedings themselves were repeatedly interrupted and delayed. Following substantial recesses, Petitioner was required to proceed under compressed time constraints over objection. Petitioner was also restricted in presenting witness testimony relevant to jurisdictional and factual disputes.

Following the conclusion of trial, Respondent submitted a written communication directly to the court containing new factual assertions, including a purported paternity test. The submission was not made through any recognized procedural mechanism, the record was not reopened, and Petitioner was not afforded notice or an opportunity to respond.

Petitioner further alleges that the submission was mailed to an outdated address despite Respondent's demonstrated knowledge of Petitioner's current address. Prior filings submitted by Petitioner reflected the updated address, and Respondent had previously mailed other case-related materials, including judgment documents, to that current address. The use of an outdated

address for the post-trial submission therefore raises additional concerns regarding notice and fairness.

The presence of extra-record factual material in the court file, without reopening the record or providing notice to Petitioner, raises additional due process concerns.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts With The Parental Kidnapping Prevention Act

This case presents an important and recurring federal question concerning the application of the Parental Kidnapping Prevention Act ("PKPA"), 28 U.S.C. § 1738A, in interstate custody disputes involving competing jurisdictional proceedings. Congress enacted the Parental Kidnapping Prevention Act to reduce interstate jurisdictional competition and the issuance of conflicting child-custody determinations by courts of different states. *Thompson v. Thompson*, 484 U.S. 174, 180–81 (1988).

The decision below effectively treated California's orders as insufficient to prevent North Dakota from assuming jurisdiction because they were issued while the children were physically present in North Dakota. But that reasoning isolates physical presence from the sequence of events that gave rise to the jurisdictional conflict.

Respondent had notice of the California proceeding and the agreed return of the children before initiating his competing action. The subsequent retention of the children and filing in North Dakota created the very interstate conflict that the Parental Kidnapping Prevention Act was enacted to prevent.

By allowing jurisdiction to arise from those circumstances, the decision below permits a party to obtain a jurisdictional advantage through retention after notice of a pending proceeding in another state, undermining the uniform application of 28 U.S.C. § 1738A.

The North Dakota Supreme Court expressly held that “North Dakota obtained jurisdiction over both parties before California.” Opinion ¶ 13.

The court further concluded that “no other court had home state jurisdiction” and that North Dakota therefore “properly assumed jurisdiction.” Opinion ¶¶ 14, 16.

The PKPA was enacted to prevent precisely this type of competing jurisdictional conflict and to ensure that custody determinations are made in a single appropriate forum. The decision below instead permits jurisdiction to arise after alleged wrongful retention and after notice of pending proceedings elsewhere.

This case therefore presents an opportunity for this Court to clarify the proper application of § 1738A where one state has asserted jurisdiction and the opposing party had notice of that proceeding before initiating a competing custody action in another state.

The federal issue presented is substantial. Yet despite the centrality of the PKPA to the jurisdictional dispute, the court declined to address the statute, stating only that Petitioner “developed no argument” under the Act. Opinion ¶ 17.

This Court’s review is warranted to ensure uniform application of the PKPA and to clarify whether a state court may exercise jurisdiction by relying upon the absence of a home state while disregarding prior proceedings and notice already provided in another forum.

II. The Decision Below Raises Important Due Process Concerns

This case also presents substantial due process concerns arising from the manner in which jurisdiction was determined and the proceedings were conducted.

Petitioner first became aware of the North Dakota proceedings through related proceedings in California. Petitioner was not notified of the December 6, 2023 jurisdictional conference between the North Dakota and California courts. Petitioner later learned of subsequent

proceedings, including the February 2024 hearing, only after independently contacting the North Dakota court.

During the February 2024 proceedings, Petitioner informed the court that she “ha[d] no access to paperwork or anything that [she’d] been given” and questioned “how you can claim jurisdiction when there should have been no case in the first place.”

Rather than permitting a jurisdictional challenge after service deficiencies were raised, the trial court stated: “I have already ruled this court has jurisdiction.” Feb. 16, 2024 Audio Tr. 00:07:53–00:08:04.

On February 16, 2024, during Petitioner’s first appearance in North Dakota, the trial court acknowledged deficiencies in prior service and ordered that Petitioner be re-served, stating: “That’ll be the order of the court then that you’ll be re-served this matter and then we will reconvene this.” Feb. 16, 2024 Audio Tr. 00:15:51. The trial court responded that “decision on jurisdiction’s already been made,” explaining that “some decision on jurisdiction had to be made between this court and California,” and further stating that “there’s no other state that’s the home state of the child.” Feb. 16, 2024 Audio Tr. 00:08:19–00:10:10.

When Petitioner asked, “Why was I not notified of any proceedings from your court until now?” the court proceeded without revisiting the prior jurisdictional determination.

Nonetheless, the North Dakota Supreme Court concluded that “both parties had been given the opportunity to present facts and legal arguments before a decision on jurisdiction was made.”

Opinion ¶ 15.

The Due Process Clause guarantees notice and a meaningful opportunity to be heard. Where jurisdiction is determined before valid service and thereafter insulated from challenge, constitutional concerns are presented.

The interests at stake are among the most fundamental recognized by this Court, involving the care, custody, and control of children. See *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000).

The proceedings below further raise concerns regarding the fairness and regularity of the trial process itself.

During trial, proceedings were repeatedly interrupted for accommodations unrelated to Petitioner's presentation of evidence. After Respondent's counsel interrupted proceedings because he "forgot to turn [his] phone off," the court recessed proceedings. Bench Trial Tr. 72. Upon returning from that recess, Respondent's counsel stated, "I need to wrap this hearing up," after which the court immediately recessed proceedings again before continuing testimony. Bench Trial Tr. 74.

Following these interruptions and delays, Petitioner objected to continuing proceedings under compressed time constraints while Respondent's counsel simultaneously attended to other matters. The proceedings nevertheless continued, limiting Petitioner's ability to fully present jurisdictional arguments and witness testimony relevant to disputed factual issues.

The district court also relied upon factual findings that were not fully reconciled with contrary testimony appearing in the record. In its findings, the court concluded that Petitioner did not immediately inform Respondent of the incident involving Petitioner's daughter and relied upon that conclusion in its best-interest analysis. However, during a June 2024 hearing, when asked what events caused him to seek custody, Respondent testified that "Dana got a hold of me and said that her boyfriend at the time was arrested..." before describing subsequent communications from Petitioner's daughter. Respondent's own testimony therefore reflected that Petitioner personally informed him of the incident. The finding does not acknowledge this testimony despite relying upon the issue as evidence weighing against Petitioner.

Petitioner was additionally prevented from presenting testimony directly relevant to factual findings ultimately adopted by the court. During trial, Respondent testified that Petitioner's daughter had contacted him, expressed concerns regarding Petitioner, and stated that she wanted Respondent to have custody of the children. The district court later adopted that assertion as a factual finding.

After Respondent introduced those alleged statements, Petitioner sought to call her daughter as a witness. Petitioner explained that the daughter wished to address the statements attributed to her and provide context regarding the circumstances under which they were made. Respondent objected. Following a recess, the district court excluded the witness solely because Petitioner had not submitted a witness list, stating: "because there wasn't a witness list that was submitted in this matter, I'm not going to allow your daughter to testify in this matter." Bench Trial Tr. 197. The testimony concerning Petitioner's daughter was not isolated. Respondent also testified that Petitioner's mother and an unidentified "friend" had contacted him expressing concerns about Petitioner and the children. Neither individual testified at trial. Petitioner's mother was deceased by the time of trial, and the purported "friend" was never identified or presented as a witness. As a result, multiple factual assertions were introduced through secondhand accounts rather than testimony from the individuals themselves.

During Petitioner's testimony, the district court sustained a hearsay objection and instructed Petitioner that she could testify regarding what she learned from others but could not repeat the contents of out-of-court statements. The court therefore recognized and enforced the distinction between personal knowledge and the substance of hearsay testimony. Despite this ruling, Respondent was permitted to testify regarding the substance of statements allegedly made by

Petitioner's daughter, mother, and an unidentified friend. Those individuals did not testify, and the statements were not subject to cross-examination.

The court therefore permitted Respondent to present testimony concerning statements allegedly made by Petitioner's daughter, mother, and an unidentified third party while preventing Petitioner's daughter from testifying regarding those same matters. The exclusion deprived Petitioner of any meaningful opportunity to challenge, explain, or contextualize evidence the court later relied upon in its factual findings. Immediately following the exclusion, Respondent argued that the court was "bound solely by the admissible evidence that you've received today." Bench Trial Tr. 198.

The due process concerns are additionally underscored by the presence of extra-record material submitted directly to the court following trial, including factual assertions and a document represented as a paternity test, without reopening the record or providing Petitioner an opportunity to respond.

The material was subsequently relied upon in Respondent's appellate briefing even though Petitioner had not been afforded notice or an opportunity to challenge the submission when it was introduced into the court file.

Petitioner further contends that the post-trial submission was intentionally sent to an outdated address despite Respondent's prior demonstrated use of Petitioner's correct address elsewhere in the proceedings. Whether intentional or not, the use of an outdated address for post-trial factual submissions deprived Petitioner of timely notice and any meaningful opportunity to object or respond before the material became part of the court file.

Taken together, these circumstances raise serious questions concerning whether Petitioner received the notice, opportunity to be heard, and fundamentally fair proceedings guaranteed by the Fourteenth Amendment.

This Court's intervention is warranted to ensure that state courts do not conclusively determine jurisdiction prior to proper service and then prevent meaningful review of that determination after service defects are acknowledged.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Waters', with a stylized, cursive script.

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Date: June 14, 2026