

26-5825

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

JEREMY J. HERRMANN,
Petitioner,

v.

KELLY N. HERRMANN,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

This case concerns whether interstate custody procedures may be used to deprive a parent of meaningful contact with his children without the basic process the Fourteenth Amendment requires. The question is not whether this Court should reweigh custody factors. The question is whether a State may accept and enforce custody jurisdiction after an unrecorded judge-to-judge handoff, while the affected parent is not given a meaningful pre-decision opportunity to present jurisdictional facts and legal argument, and then defend the result through a later domestic-violence relocation rationale that was not the jurisdictional basis when the forum was selected.

Whether the Fourteenth Amendment permits state courts to transfer, accept, and enforce interstate child-custody jurisdiction through an unrecorded judge-to-judge communication, without giving the affected parent a meaningful pre-decision opportunity to present jurisdictional facts and legal argument, where the receiving court proceeds with trial while jurisdiction remains contested, later relies on a post hoc domestic-violence relocation rationale not used as the original jurisdictional basis, and the resulting orders functionally destroy meaningful parent-child contact.

PARTIES TO THE PROCEEDING

Petitioner is Jeremy J. Herrmann, father of the minor children and defendant/appellant below. Respondent is Kelly N. Herrmann, mother of the minor children and plaintiff/appellee below.

RELATED PROCEEDINGS

The state proceedings include Berks County Court of Common Pleas custody case No. 24-02421; Superior Court of Pennsylvania No. 334 MDA 2025; Supreme Court of Pennsylvania No. 142 MAL 2026; and Nevada proceedings arising from the Second Judicial District Court, Washoe County, Nevada, case No. DV21-01770. A later Berks County contempt and special-relief order entered March 17, 2026, and appealed at Superior Court No. 499 MDA 2026, is referenced only to show the continuing practical effects of the jurisdictional process challenged here.

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OPINIONS BELOW

The order of the Supreme Court of Pennsylvania denying allowance of appeal in No. 142 MAL 2026 was entered April 9, 2026. App. A. The Superior Court of Pennsylvania memorandum in No. 334 MDA 2025 was filed March 13, 2026. App. B. The Berks County Court of Common Pleas memorandum opinion was dated April 7, 2025. App. C. The Berks County custody decision and final custody order were entered February 11-12, 2025. App. D. Relevant Nevada orders include the April 30, 2024 orders concerning enforcement, mootness, and jurisdiction, and the September 20, 2024 Nevada appellate order of affirmance. App. E-G.

JURISDICTION

The Supreme Court of Pennsylvania denied discretionary review on April 9, 2026. App. A. This Court has jurisdiction under 28 U.S.C. § 1257(a). This petition is filed within the time allowed by Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides that no State shall deprive any person of liberty without due process of law. This case also involves the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A; the Pennsylvania UCCJEA, including 23 Pa. Cons. Stat. §§ 5410, 5423, and 5428; the Pennsylvania relocation statute, 23 Pa. Cons. Stat. § 5337; and Nevada UCCJEA communication safeguards, including Nev. Rev. Stat. § 125A.275.

STATEMENT OF THE CASE

A. The Nevada decree allowed California, not Pennsylvania.

Petitioner is a military veteran and the father of two minor children. He served this country, including combat service in Iraq, and then litigated this custody matter pro se while living thousands of miles from the Pennsylvania forum.

Nevada entered the parties' divorce and custody decree in April 2022. The decree allowed Respondent to relocate with the children to Susanville, California, not Pennsylvania. App. D, G. That fact matters because the interstate jurisdiction problem did not begin with a neutral move to

a new forum. It began when the children were later taken to Pennsylvania, a location outside the relocation permission that had been granted.

The record reflects an alleged domestic-violence incident on November 13, 2021. App. D. The February 2025 custody order describes a battery plea arising from that incident, and separately discusses later California protective-order material. App. D. But the relevant chronology is critical: the alleged incident was in November 2021; Nevada entered its custody decree in April 2022 and still allowed relocation to Susanville, California; Respondent did not move the children to Pennsylvania until July 1, 2023. App. D, G.

The February 2025 order also illustrates the danger of allowing a disputed abuse narrative to become a post-hoc jurisdictional excuse. In its findings, the Pennsylvania court stated that Petitioner had a "conviction for domestic violence against Mother in California," while its later discussion described a guilty plea to battery arising from the November 2021 incident and separately referred to protective-order material. App. D. Petitioner disputed the domestic-violence characterization and the underlying allegation. The point for this Court is not to reweigh that record, but that such a disputed and internally imprecise characterization could not retroactively supply a lawful basis for the July 2023 Pennsylvania relocation, the unrecorded interstate jurisdiction transfer, or the conversion of Nevada's decree into a new Pennsylvania custody regime.

No court made a contemporaneous jurisdictional finding that a November 2021 incident legally caused or excused a July 2023 move to Pennsylvania. No court explained why the already-authorized California relocation became insufficient. No court identified a specific July 2023 threat, act, or finding that made Pennsylvania necessary rather than the State already permitted by the Nevada decree.

The same is true of the California protective-order material. Petitioner has disputed the legality and scope of any later inclusion of the children in that protective order and contends that treating that later inclusion as proof that the children were properly covered was legal error. But even if such material is considered, it was not a UCCJEA jurisdiction order, did not amend the

Nevada custody decree, did not authorize relocation to Pennsylvania, and did not supply a finding that the July 2023 Pennsylvania move was caused by abuse. A protective-order issue may be relevant to safety factors, but it cannot retroactively create interstate modification jurisdiction or cure the absence of a recorded, participatory UCCJEA jurisdiction process.

Petitioner does not ask this Court to retry the merits of any protective-order proceeding. The federal point is narrower: a later, disputed protective-order development cannot retroactively become the missing jurisdictional finding. If children were later included because of legal error, misunderstanding, or a later proceeding unrelated to the July 2023 Pennsylvania relocation, that later development cannot substitute for a contemporaneous finding that abuse caused the Pennsylvania move or excused failure to seek Nevada permission before the move.

B. Pennsylvania's own hearing officer recognized the relocation violation and the financial barrier before the final trial.

Respondent moved the children to Pennsylvania on July 1, 2023. App. D. On March 11, 2024, Respondent registered the Nevada order in Pennsylvania. App. D. On March 15, 2024, Respondent filed a Pennsylvania petition to modify custody. App. D. On March 25, 2024, Petitioner filed a motion in Nevada to change custody or visitation. App. D.

On June 14, 2024, Pennsylvania Custody Hearing Officer Kelly S. Kline issued a recommended order. App. I. Its footnote recognized that the April 30, 2024 Nevada order stated that Respondent's relocation of the children to Pennsylvania without seeking the Nevada court's or Petitioner's permission violated the Nevada court's orders. App. I. The same footnote recognized that Petitioner lacked the financial means to fly to Pennsylvania and that failing to accommodate Respondent's actions would result in the children losing contact with their father. App. I.

The hearing officer did not treat that admitted violation as requiring Pennsylvania to stop and decide whether the forum had been created by unjustifiable conduct. Instead, the footnote

gave the first Pennsylvania reason for allowing the admitted Pennsylvania move to remain operative: it stated that Petitioner, proceeding without counsel, had not followed proper procedure to address the violation. App. I.

That reasoning matters because it converted an admitted violation by the relocating parent into a procedural default against the nonrelocating parent. Pennsylvania did not first hold a recorded, adversarial jurisdiction hearing deciding whether the admitted violation required Pennsylvania to decline jurisdiction under 23 Pa. Cons. Stat. § 5428 or whether Nevada still retained continuing authority while appellate review of the Nevada jurisdiction order was ongoing. It simply accommodated the move and placed the burden on Petitioner to litigate from a forum the record already said he could not afford to reach.

The recommended order stated: "Unfortunately, Mr. Herrmann is unrepresented and did not follow proper procedure to address this violation." App. I.

That finding is central. The Pennsylvania record itself recognized, before the final custody trial, that the forum had been created by conduct described as violating the Nevada order and that the resulting forum placed the father behind an unaffordable travel barrier. Yet the final custody process proceeded in Pennsylvania and ultimately required Petitioner to pay for travel to Pennsylvania and paid supervised visitation there. App. D.

Pennsylvania law contains an unjustifiable-conduct safeguard. Under 23 Pa. Cons. Stat. § 5428, when jurisdiction exists because a party seeking to invoke it engaged in unjustifiable conduct, the court ordinarily must decline jurisdiction unless a statutory exception applies. The record-recognized relocation violation therefore was not background. It went directly to whether Pennsylvania could constitutionally and statutorily proceed as the forum.

That point also matters under the PKPA. The federal full-faith-and-credit scheme does not let a second State simply start over as if there were no prior custody determination. At most, Pennsylvania was exercising modification authority over a Nevada custody determination. That required threshold compliance with the limits on modification jurisdiction, including 23 Pa. Cons. Stat. § 5423 and the PKPA, 28 U.S.C. § 1738A. The proceedings below treated a modification case as if Pennsylvania could cleanse the forum problem by entering a new comprehensive custody order after the fact.

The timing deepens the problem. The recommended order was dated June 14, 2024. The Nevada appellate order affirming relinquishment did not issue until September 20, 2024. App. G, I. Thus, when Pennsylvania first accommodated the admitted Pennsylvania relocation, the Nevada jurisdiction dispute had not yet reached appellate finality. Pennsylvania nevertheless treated the order-violating relocation as a practical fact to be accommodated, rather than as a threshold jurisdictional problem to be resolved before custody merits were tried.

The Nevada orders show why the problem is not merely procedural. In the Order After Hearing on Enforcement entered the same day as the jurisdiction order, Nevada acknowledged that Respondent relocated the children to Pennsylvania without seeking the Nevada court's or Petitioner's permission and that this violated Nevada's orders. App. E. Yet in the separate Order Finding Motion Moot, Nevada used the unrecorded UCCJEA conference to remove the case from Nevada and direct future proceedings to Pennsylvania. App. F. Thus, the decree state acknowledged the violation and, the same day, shifted the case away from the forum where Petitioner had sought relief.

That timing is not a technicality. At the point Pennsylvania first treated the admitted illegal relocation as a problem of Petitioner supposedly not following the right procedure, the Nevada appellate process had not yet ended. Pennsylvania therefore was not simply implementing a final, uncontested Nevada jurisdictional result. It was accommodating a Pennsylvania forum created by an order-violating relocation while the Nevada appeal was still pending, and without first providing the recorded, adversarial jurisdiction process required before the merits were reached.

The practical consequence was a jurisdictional trap. When Petitioner sought relief from law enforcement and prosecuting authorities concerning the relocation, he was told in substance that enforcement depended on the other jurisdiction. Yet when he sought relief in the custody courts, each court relied on the other: Nevada pointed to Pennsylvania, Pennsylvania pointed

back to Nevada, and Pennsylvania's first written response to the admitted violation faulted Petitioner for procedure. That is precisely the sort of black-box interstate process that due process is supposed to prevent.

C. The interstate handoff occurred through an unrecorded judge-to-judge process.

On April 17, 2024, Petitioner filed a written request for a conference between judges to establish jurisdiction, asking the Nevada court to contact the Pennsylvania court and place the jurisdiction issue into proper judicial process. App. H. Petitioner contended that Nevada remained the decree State and that Pennsylvania jurisdiction was being created by Respondent's unauthorized relocation.

On April 30, 2024, Judge Unsworth entered a Nevada order stating that, on April 26, 2024, an "unrecorded judicial conference" had been held between the Nevada court and the Court of Common Pleas of Berks County, Pennsylvania. App. F. The order then stated that, after conferring with Pennsylvania, it was agreed Pennsylvania had assumed jurisdiction because neither party was located in Nevada, declared that Nevada had lost jurisdiction, and dismissed Petitioner's pending March 25, 2024 custody/visitation motion as moot. App. F.

This is the core due-process defect. Petitioner requested a judge-to-judge conference to place jurisdiction into lawful judicial process; instead, the resulting unrecorded conference became the mechanism for extinguishing his pending Nevada motion without a recorded opportunity to present facts and legal argument before jurisdiction was shifted. The later affirmance did not cure that defect by stating that the courts followed the UCCJEA. The Nevada order itself states the conference was unrecorded, and that unrecorded result was used to make Petitioner's motion moot.

That procedure conflicted with the very safeguards built into interstate custody law. Pennsylvania's UCCJEA communication rule, 23 Pa. Cons. Stat. § 5410, requires a record of non-scheduling inter-court communications and requires parties, when they cannot participate, to be given the opportunity to present facts and legal arguments before a jurisdiction decision is made. Nevada has analogous safeguards. Nev. Rev. Stat. § 125A.275. Those safeguards exist

because interstate custody jurisdiction is not a technicality. The forum often determines the practical ability of a parent to maintain contact with his children.

Pennsylvania's own appellate law confirms why this matters. In *J.C. v. K.C.*, 179 A.3d 1124 (Pa. Super. Ct. 2018), the Superior Court reversed jurisdictional orders where a parent was not given the required opportunity to present facts and legal argument before a UCCJEA jurisdiction decision. The court below distinguished *J.C.* only because Nevada, not Pennsylvania, entered the relinquishment order. But that distinction does not answer the federal question presented here: whether a receiving state may enforce the same unrecorded, nonparticipatory handoff when the result is to impose a distant forum and functionally destroy meaningful parent-child contact.

D. The Pennsylvania court proceeded with trial while jurisdiction remained contested.

The December 4, 2024 Pennsylvania custody trial did not begin after jurisdiction had been transparently resolved through a recorded adversarial process. The trial court acknowledged that Petitioner's motion and objection went to jurisdiction. N.T. 12/4/24, at 5. The court then stated: "I am going to interview the child. If we do keep jurisdiction here in Pennsylvania, that is something that has to be done." *Id.*

The next page is even clearer. The court told Petitioner that it would listen to jurisdiction arguments and had the Nevada background information, but then stated: "That being said, I'm also going to proceed with the trial today because should -- you know, depending on what the decision is, I don't want to come back here in three months and have -- run you back and forth across the country. So at least I'll have the testimony taken as well." N.T. 12/4/24, at 6. The court described this as preserving Petitioner's objection and as the cleanest and most efficient way to handle the proceedings. *Id.*

The constitutional problem is plain. Petitioner's poverty and distance were used as a reason to proceed with a merits custody trial before the court supplied a clear, record-based explanation of how Pennsylvania lawfully obtained modification jurisdiction over Nevada's custody

determination. Petitioner was not told, before the merits trial went forward, how Pennsylvania had lawfully acquired jurisdiction despite the admitted relocation violation, the unrecorded UCCJEA handoff, and his preserved objection. He was forced to defend custody on the merits while still contesting the court's authority to try the case at all.

Jurisdiction should have been a threshold issue. A court may preserve an objection in form while still depriving a litigant of meaningful process in substance. That is what happened here: the trial went forward because it was efficient, not because the jurisdictional defect had been fully and fairly resolved.

E. The February 2025 order did not use domestic violence as the jurisdictional excuse for the Pennsylvania relocation.

The February 11, 2025 custody decision contained a jurisdiction section. App. D. It did not hold that Respondent's July 2023 Pennsylvania relocation was jurisdictionally excused because of domestic violence. It instead held that Pennsylvania had home-state jurisdiction, that Nevada had divested itself of jurisdiction by the April 30, 2024 order, that Pennsylvania could modify the Nevada order under the UCCJEA, and that Petitioner could not reestablish Nevada jurisdiction by later listing a Nevada address. App. D.

Although Pennsylvania itself described the posture as modification of a foreign custody determination, the proceedings functioned as a new Pennsylvania custody case. The final order did not merely enforce or make a limited modification to the Nevada decree. It replaced the practical custody structure with a comprehensive Pennsylvania regime: sole legal custody, primary physical custody, paid Pennsylvania supervised visitation, AppClose communication rules, and restrictions that depended on Father's ability to litigate and travel in Pennsylvania. Under 23 Pa. Cons. Stat. § 5423 and the PKPA, 28 U.S.C. § 1738A, that could not lawfully happen unless Pennsylvania first had valid modification jurisdiction over the Nevada order. The courts below never supplied a recorded, adversarial, pretrial jurisdiction determination explaining how an admitted order-violating relocation could become the basis for that new regime.

The distinction is critical. Pennsylvania was not writing on a blank slate. Nevada had entered the existing custody decree. Pennsylvania therefore could not proceed as a first-instance custody court unless and until the statutory prerequisites for modifying another State's custody determination were satisfied on the record. See 23 Pa. Cons. Stat. § 5423; 28 U.S.C. § 1738A. The court recognized the posture as modification, but the final result operated as a new

Pennsylvania custody regime without first curing the jurisdictional defect that brought the children to Pennsylvania.

Judge Bodor himself recognized the legal posture as modification of a foreign custody determination: the Pennsylvania action was filed as a petition to modify custody, and the jurisdiction section cited the UCCJEA provisions governing modification of another State's custody order. App. D. That makes the later comprehensive replacement order more serious, not less. Pennsylvania could not avoid the limits on modification jurisdiction by treating the Nevada decree as a starting point only when convenient and then entering a new Pennsylvania custody regime after the forum had been created by the challenged relocation.

The domestic-violence discussion in the February 2025 order appeared in the custody-factor analysis, not as the jurisdictional basis for excusing the Pennsylvania forum. App. D. The order discussed an alleged November 2021 incident, a battery plea, and later protective-order issues as part of best-interest and safety factors. App. D. It did not make the required causal finding that alleged abuse caused the July 2023 Pennsylvania relocation or caused Respondent's failure to seek permission before that relocation.

The February order also stated that "the facts are the facts" and that neither a recorded conversation nor argument by Petitioner could change those facts. App. D. That reasoning treats the lack of a recorded, participatory jurisdiction process as immaterial. Due process treats it as central.

F. The domestic-violence relocation rationale appeared later, after appeal, as a post hoc justification.

The domestic-violence relocation rationale appears in the April 7, 2025 Pa.R.A.P. 1925(a) memorandum. App. C. After the custody order had already been entered and after appeal had begun, the trial court analogized the case to an unpublished relocation decision and stated that Respondent's failure to provide notice was mitigated by abuse under 23 Pa. Cons. Stat. § 5337(k). App. C.

The courts did not originally say they were ignoring the relocation violation because of the protection order or because Pennsylvania had made a contemporaneous abuse-based jurisdiction finding. That is not the theory on which the Pennsylvania forum was accepted. The later theory was broader and more troubling: the trial court's appellate memorandum portrayed Respondent as a battered former spouse and used past-abuse mitigation as the reason the admitted relocation

violation should not matter. That reasoning was not in the February 2025 jurisdiction ruling, was not tied to a specific causal finding, and was not a substitute for the statutory modification analysis required by § 5423.

That later rationale did not cure the constitutional defect. Section 5337(k) is a relocation-notice mitigation provision. It does not itself create interstate custody jurisdiction. It does not erase the UCCJEA requirement for a recorded inter-court process and a meaningful opportunity to present jurisdictional facts and legal argument. It does not override § 5428's unjustifiable-conduct safeguard. And it does not retroactively make an unrecorded jurisdictional handoff constitutional.

Nor can the later protective-order discussion do the work that the missing jurisdictional findings were supposed to do. Petitioner maintains that any inclusion of the children in the protection-order framework was legal error or was corrected. But even setting that dispute aside, the lower courts did not rely on that point as the contemporaneous jurisdictional basis for Pennsylvania's acceptance of the case. A protective-order dispute is not a UCCJEA modification-jurisdiction finding, does not amend the Nevada decree, does not authorize a Pennsylvania relocation, and does not establish that abuse caused the July 2023 failure to seek permission or give notice.

The timing also matters. A November 2021 incident cannot automatically excuse a July 2023 relocation to Pennsylvania when the April 2022 Nevada decree, entered after the alleged incident, authorized only Susanville, California. If a court believed abuse legally excused the Pennsylvania relocation, it had to identify the act, date, causal connection, and statutory basis before using the Pennsylvania forum to decide custody. It did not do so.

This Court has long rejected post hoc rationalization in other review contexts. See *SEC v. Chenery Corp.*, 318 U.S. 80, 87-88 (1943). The principle is even more important where fundamental parent-child liberty is at stake. A court should not be permitted to take jurisdiction through one theory, proceed to judgment, and then defend the result on appeal through a

different theory that was not the basis for the original jurisdictional decision and was never tested before the merits trial.

G. The appellate courts left the constitutional defect unanswered.

The Pennsylvania Superior Court did not squarely decide whether the interstate handoff itself satisfied due process. It treated Nevada's relinquishment as controlling, reasoned that Pennsylvania was bound by Nevada's decision, and then accepted Pennsylvania's later mitigation reasoning. App. B. Nevada, in turn, treated Pennsylvania as the proper forum after the unrecorded conference. App. G. The result was a jurisdictional trap: each State relied on the other, while no court provided a full, recorded, adversarial determination of whether the handoff was constitutionally valid.

The Nevada appellate decision did not cure the defect. It acknowledged the argument that Respondent relocated from California to Pennsylvania without seeking Petitioner's or the Nevada court's permission and acknowledged that the Nevada court found Respondent relocated without seeking the court's permission. App. G. It nevertheless accepted the unrecorded conference and the premise that the two judges agreed Pennsylvania would assume jurisdiction. App. G. That is the constitutional problem: a reviewing court cannot transform an unrecorded, nonparticipatory jurisdiction conversation into due process simply by describing the result of that conversation after the fact.

The contradiction is direct. Petitioner asked for interstate communication to resolve jurisdiction. Judge Unsworth held an unrecorded communication. The result of that unrecorded communication was then used to deny Petitioner's pending Nevada custody/visitation motion as moot. When the Nevada appellate court treated that process as sufficient, it did not provide the missing process; it ratified the very off-record procedure that had prevented Petitioner from being heard before his chosen forum was extinguished.

This is the jurisdictional trap Petitioner asks this Court to review. Nevada relied on Pennsylvania. Pennsylvania relied on Nevada. The Pennsylvania hearing officer acknowledged the move violated the Nevada order but faulted Petitioner for procedure while his Nevada appellate challenge was still pending. The trial court later proceeded with a merits trial while jurisdiction was still contested. The appellate court then used the Nevada orders and the later domestic-violence rationale to affirm. At no point did any court provide the constitutionally

required answer to the threshold question: how did Pennsylvania become a lawful forum through an unrecorded interstate handoff and an admitted order-violating relocation?

Petitioner does not ask this Court to order a criminal prosecution. The point is that every available channel treated the unlawful relocation as someone else's problem. That left Petitioner without a meaningful forum to test the interstate jurisdictional premise before Pennsylvania orders stripped him of practical contact with his children.

Petitioner also does not ask this Court to decide disputed criminal accusations or to weigh newly discovered evidence. The relevance of excluded evidence is prejudice: Petitioner had material facts and communications bearing on Respondent's relocation rationale, ability to contact him, police-report inconsistencies, body-camera references, disputed photographs, and the timing of the alleged abuse narrative. Because the jurisdictional transfer was handled through an unrecorded and nonparticipatory process, those facts were not presented before the forum decision hardened into the premise for Pennsylvania's custody power.

The same prejudice applied to Respondent's notice explanations. Respondent later asserted that she did not believe she had to contact Petitioner to obtain permission to relocate and that, when he was homeless, she did not know how to contact him. But the record also contains Respondent's July 17, 2023 Nevada notice of change of address, filed after she moved to Pennsylvania, listing 210 Wert Road, Lenhartsville, Pennsylvania, and a certificate of service executed under penalty of perjury reflecting service on Petitioner through a known address/service route and service on the Nevada Supreme Court. App. L. That filing undermines any later suggestion that notice was impossible or that the relocation problem could be excused without findings. Petitioner does not ask this Court to reweigh new evidence; he points to the record contradiction to show prejudice. The unrecorded jurisdiction process prevented him from presenting material facts before the relocation narrative and Pennsylvania forum hardened into operative custody consequences.

That is why this case is appropriate for review. It presents a federal due-process question that cannot be answered by simply saying Nevada gave up jurisdiction or Pennsylvania became the home state. The question is whether the process by which that result was reached was constitutionally adequate, especially where the Pennsylvania record itself recognized that the

move creating the forum violated the Nevada order and would sever contact unless accommodated. App. I.

H. The result was the practical destruction of Petitioner's relationship with his children.

The Pennsylvania order awarded Respondent sole legal and primary physical custody, limited Petitioner to remote calls and one professionally supervised visit per month in Pennsylvania, required Petitioner to arrange and pay for supervised visits, and required him to pay for his own transportation across the country. App. D. This was imposed despite the June 14, 2024 recognition that Petitioner lacked the means to fly to Pennsylvania. App. I.

Later, on March 17, 2026, the Berks County court found Petitioner in contempt, imposed \$2,077.50 in attorney's fees, imposed a \$405 fine or paid-class condition, and further restricted Petitioner's direct access to school and medical information. App. J. The order invoked Pennsylvania contempt authority that includes incarceration, while stating that jail was not being ordered "at this time." App. J. That later order is not the judgment under review, but it illustrates the continuing coercive consequence of the challenged jurisdictional process: once Pennsylvania accepted the case through the defective handoff, Petitioner remained subject to financial and liberty-threatening orders from a forum that the record already showed he could not realistically access.

REASONS FOR GRANTING THE PETITION

I. This case presents an important federal due-process question at the intersection of parental rights and interstate custody jurisdiction.

Rule 10 recognizes review when a state court decides an important federal question or so departs from accepted judicial proceedings as to call for this Court's supervisory attention. This petition fits that category. The question is not whether a state custody court weighed evidence correctly. The question is whether the State may select and enforce an interstate custody forum through opaque procedures that leave a parent without a meaningful opportunity to contest jurisdiction before the parent-child relationship is practically destroyed.

The parent-child interest is fundamental. *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000), recognizes the fundamental liberty interest of parents in the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651-58 (1972), holds that a parent may not be deprived of custody through shortcuts and presumptions rather than individualized process. *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982), explains that parents have a commanding interest in the accuracy and fairness of proceedings that sever or burden the parent-child relationship. *May v. Anderson*, 345 U.S. 528, 533-34 (1953), recognizes the special due-process concerns implicated by custody judgments entered without adequate personal process.

The required process is also settled. Due process requires notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). When a deprivation is foreseeable and pre-deprivation process is practicable, the opportunity to be heard generally must come before the deprivation. *Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972). *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), requires consideration of the private interest, the risk of erroneous deprivation, and the government's interest. Each factor favors review here.

The private interest is a father's meaningful relationship with his children. The risk of error is high when jurisdiction is transferred through an unrecorded judge-to-judge call and when the affected parent is not given a meaningful pre-decision opportunity to present jurisdictional facts. The government's interest in efficient custody administration cannot justify skipping the very safeguards that make interstate custody jurisdiction reviewable.

II. The decision below permits interstate custody jurisdiction to become a black box.

Interstate custody statutes are designed to prevent jurisdictional competition, abduction incentives, and forum manipulation. The PKPA, 28 U.S.C. § 1738A, reflects a federal policy requiring States to respect custody determinations made consistently with specified jurisdictional requirements. *Thompson v. Thompson*, 484 U.S. 174 (1988), held that the PKPA does not create a private federal cause of action to resolve competing custody decrees, making it all the more

important that state procedures themselves provide a meaningful and reviewable jurisdictional process.

The UCCJEA likewise requires process. Pennsylvania's § 5410 requires a record of non-scheduling inter-court communications and gives parties the opportunity to present facts and legal arguments before a jurisdiction decision when they cannot participate in the communication. Section 5428 addresses jurisdiction created through unjustifiable conduct. These are not optional formalities. They are the mechanisms that prevent interstate custody jurisdiction from becoming a black box.

J.C. v. K.C. illustrates the point. Pennsylvania law recognized that a party must be allowed to present facts and legal arguments before the jurisdiction decision is made. The Superior Court acknowledged that rule, but refused relief here because the decisive relinquishment order came from Nevada. That is the constitutional gap: if the decree state conducts the defective handoff and the receiving state treats that handoff as binding, the affected parent can be left with no court that remedies the due-process violation before the merits trial proceeds.

Here, the black box controlled the outcome. Nevada relied on an unrecorded conference. Pennsylvania relied on Nevada's relinquishment. The Superior Court relied on Nevada and on Pennsylvania's later reasoning. The result was that the actual constitutional question - whether the handoff itself was recorded, participatory, and fair before custody merits were tried - was never squarely remedied.

III. The post hoc domestic-violence rationale cannot substitute for a jurisdictional finding made before the merits trial.

Safety allegations may be considered in custody proceedings. But safety evidence cannot be used after the fact to cure a defective jurisdictional transfer. The distinction is essential. If abuse is relevant to relocation notice under § 5337(k), the court must identify how the abuse caused the failure to give notice or seek permission. If jurisdiction exists because a parent's unjustifiable conduct created the forum, § 5428 requires the court to confront that problem. If courts

communicate about jurisdiction outside the parties' presence, § 5410 requires a record and an opportunity to present facts and legal arguments.

The point is not that abuse allegations are irrelevant. The point is that due process requires the court to identify the legal consequence of those allegations before using them to alter jurisdiction. Past abuse is not a free-standing interstate relocation exception. Section 5337(k) mitigates failure to give reasonable notice only when the failure was caused in whole or in part by abuse. It does not authorize a court, after the custody order is entered, to supply a new explanation for why Pennsylvania could modify Nevada's decree in the first place.

The courts below blurred those distinct safeguards. The alleged incident was in November 2021. Nevada entered the decree in April 2022 and allowed Susanville, California. Respondent moved the children to Pennsylvania on July 1, 2023. Pennsylvania's own hearing officer later recognized the Pennsylvania relocation violated the Nevada order and that Petitioner could not afford travel to Pennsylvania. App. I. Yet the February 2025 custody order did not use domestic violence as the jurisdictional basis for excusing the Pennsylvania forum. The domestic-violence mitigation theory appeared later in the April 2025 appellate memorandum. App. C-D.

The first Pennsylvania response to the admitted relocation violation was not a § 5428 unjustifiable-conduct analysis, not a recorded § 5410 jurisdiction hearing, and not a finding that abuse caused the Pennsylvania move. It was a procedural statement that Petitioner had not followed the proper procedure to address the violation. App. I. That is not a constitutionally adequate substitute for deciding jurisdiction before the merits trial, particularly where the Nevada appeal remained unresolved and the receiving forum was the very forum created by the challenged relocation.

That reasoning was particularly improper because the Nevada appeal was still pending. Pennsylvania's hearing officer faulted Petitioner for not following the proper procedure to address the relocation violation before the Nevada appellate court had issued its September 20, 2024 order. App. G, I. Pennsylvania therefore treated the violation as procedurally forfeited while the decree State's appellate process had not yet completed and while the receiving State's own jurisdiction depended on the challenged transfer.

That was the first Pennsylvania legal reasoning used to tolerate the admitted relocation violation: not that Respondent had lawfully invoked Pennsylvania jurisdiction, not that abuse caused the Pennsylvania move, and not that Section 5428 had been satisfied, but that Petitioner supposedly failed to use the proper procedure to address the violation. Due process does not permit a State to transform a relocating parent's violation into the nonrelocating parent's procedural default before the court has first established lawful jurisdiction through a recorded and participatory process.

That sequence matters constitutionally. A parent cannot meaningfully litigate jurisdiction if the court proceeds on one jurisdictional theory, takes custody testimony, enters judgment, and then supplies a different rationale after the appeal is filed. Post hoc reasoning cannot provide the pre-deprivation process that due process requires.

Nor can the later inclusion of children in a protective order do that work. The constitutional defect is not cured by pointing to safety evidence after the forum has already been accepted. The due-process question is whether the jurisdictional handoff was recorded, participatory, and lawfully decided before the merits trial and before the parental relationship was burdened by a distant and unaffordable forum.

IV. The courts converted Petitioner's poverty and distance into a reason to proceed, rather than a reason to resolve jurisdiction first.

The June 14, 2024 recommended order recognized that Petitioner lacked the financial means to fly to Pennsylvania and that failure to accommodate Respondent's conduct would result in the children losing contact with their father. App. I. At the December 4, 2024 trial, the court acknowledged jurisdiction was contested but proceeded because it did not want to bring Petitioner back and forth across the country. N.T. 12/4/24, at 5-6; App. K.

That turned due process upside down. A parent's inability to afford repeated cross-country travel should not be used to justify taking merits testimony before jurisdiction is lawfully and

transparently resolved. It should trigger heightened care to ensure the threshold forum question is decided first, on a record, with the affected parent given a meaningful chance to be heard.

The same problem infects the appellate review. Once the Pennsylvania forum was treated as established, later courts characterized the issue as settled by Nevada or excused by post hoc mitigation. But the question Petitioner preserved was never merely where the children were living by then. It was whether Pennsylvania could lawfully accept jurisdiction when its own record acknowledged that the children were in Pennsylvania because of a move violating the Nevada order, when the Nevada appeal was still ongoing, and when the parent opposing the forum could not afford to litigate custody in Pennsylvania.

The harm was not theoretical. The final order required travel and paid supervised visitation in Pennsylvania, even though the record already recognized Petitioner could not afford that travel. App. D, I. The forum decision therefore effectively determined contact. That is why the jurisdiction process had to be constitutional before the merits trial proceeded.

V. This case is a suitable vehicle.

The federal issue was preserved. Petitioner repeatedly challenged jurisdiction, requested a judge-to-judge conference, objected to the lack of recorded and participatory process, and raised the issue in the Pennsylvania appeal. App. B-D, H. The lower courts addressed the jurisdictional chain and relied on the state orders that produced it. App. B-G.

The issue is outcome-determinative. If the interstate handoff and Pennsylvania's acceptance of jurisdiction violated due process, the custody order that flowed from that process cannot stand as a constitutionally valid deprivation of Petitioner's parental relationship. At minimum, the case should be remanded for a recorded, adversarial, record-based jurisdiction determination that confronts the relocation violation, the timing of the alleged abuse, the limited scope of § 5337(k), and the requirements of §§ 5410, 5423, and 5428.

The case also presents a recurring problem. Interstate custody disputes often involve distance, poverty, accusations of abuse, and competing state-court orders. Without clear

constitutional limits, a parent can be trapped between states: one state says the other has jurisdiction; the other says it is bound by the first; and no court ever decides, before the merits trial, whether the transfer itself satisfied due process. This Court's review is needed to ensure that interstate custody mechanisms do not become tools for erasing a parent without a meaningful hearing.

CONCLUSION

The petition for a writ of certiorari should be granted. The question is not whether this Court should reweigh custody evidence. The question is whether state courts may use an unrecorded interstate jurisdiction process, an admitted relocation violation, a poverty-based rush to trial, and a post hoc abuse-mitigation rationale to transform what could only be a modification proceeding into a new custody regime that effectively erases a parent-child relationship without meaningful pre-decision process.

Respectfully submitted,



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