ORIGINAL

26-6031

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 17 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

C. S.,
Petitioner,
v.
TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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August 17, 2026

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment permits a State permanently to terminate parental rights where the trial proceeded in the parent's absence after the court denied requests intended to secure her participation and testimony, the Department testified that it could attempt to arrange transportation but no attempt or other workable means of participation was provided, and the defense ultimately presented no witnesses or exhibits.

2. Whether a State may treat appointed counsel's presence, and procedural defaults that counsel alone controlled, as the parent's own appearance, readiness, waiver, and forfeiture, where the contemporaneous record shows the parent's contrary instructions and their denial.

INTRODUCTION

Texas appoints counsel for indigent parents it sues to terminate parental rights, Tex. Fam. Code § 107.013, and applies its ordinary error-preservation rules to those proceedings without exception for fundamental error. This case does not involve a parent who simply chose not to participate. The contemporaneous record reflects that Petitioner was attempting to attend, that counsel requested transportation assistance and delay before evidence was taken, that Petitioner continued communicating with counsel during trial, and that counsel ultimately requested additional time so Petitioner could testify. Those requests were denied. Counsel cross-examined the State's witnesses but presented no defense witnesses or exhibits. The judgment nevertheless recited that Petitioner appeared through counsel and announced ready. The question is whether that process afforded the meaningful opportunity to be heard required by the Fourteenth Amendment before the State permanently terminated the parent-child relationship.

PARTIES TO THE PROCEEDING

Petitioner C. M. S. was the respondent mother in the trial court, the appellant in the Court of Appeals of Texas, Seventh District, and the petitioner in the Supreme Court of Texas.

Respondent Texas Department of Family and Protective Services was the petitioner in the trial court, the appellee in the Court of Appeals, and the respondent in the Supreme Court of Texas. The children's father did not appeal the judgment and was not a party to the proceeding under review.

RELATED PROCEEDINGS

In the Interest of G.P.-J.R. and C.S.-L.R., Children, Cause No. 84755-L1, County Court at Law No. 1 of Randall County, Texas, Hon. James W. Anderson presiding. Final termination order signed June 12, 2025.

In the Interest of G.P.-J.R. and C.S.-L.R., No. 07-25-00187-CV, Court of Appeals of Texas, Seventh District. Memorandum opinion and judgment entered December 10, 2025.

In the Interest of G.P.-J.R. and C.S.-L.R., No. 26-0028, Supreme Court of Texas. Petition for review denied January 23, 2026; rehearing denied March 20, 2026.

C. M. S. v. Texas Department of Family and Protective Services, No. 25A1436, Supreme Court of the United States. On June 25, 2026, Justice Alito extended the time to file a petition for a writ of certiorari to and including August 17, 2026.

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OPINIONS AND ORDERS BELOW

The memorandum opinion of the Court of Appeals, entered December 10, 2025, is unpublished and reproduced at App. 1a. Its judgment is reproduced at App. 13a. The orders of the Supreme Court of Texas denying review on January 23, 2026, and rehearing on March 20, 2026, are reproduced at App. 14a and 15a. The trial court's final termination order is reproduced at App. 16a–34a.

JURISDICTION

The Court of Appeals entered judgment on December 10, 2025. The Supreme Court of Texas denied discretionary review on January 23, 2026, and denied a timely motion for rehearing on March 20, 2026. Because that court declined review, the Court of Appeals is the highest court of the State in which a decision could be had. On June 25, 2026, Justice Alito extended the time to file this petition to and including August 17, 2026. No. 25A1436. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in relevant part: "No State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Relevant provisions of the Texas Family Code and the Texas Rules of Civil Procedure are reproduced at App. 36a–38a.

STATEMENT OF THE CASE

I. The State sought the permanent destruction of a parent-child relationship.

Texas sued to terminate Petitioner's parental rights to her two children under Texas Family Code § 161.001(b)(1)(D), (E), and (O), as a modification of a January 2018 order. App. 16a–34a, ¶ 2.1. The interest at stake was not custody or scheduling. It was the permanent legal destruction of a family relationship — an interest this Court has called "far more precious than any property right." Santosky v. Kramer, 455 U.S. 745, 758–59 (1982).

The Department alleged dangerous home conditions, failure to protect one child from sexual abuse by a sibling, exposure to domestic violence and drug use, and noncompliance with services. Petitioner disputed central allegations and the attribution of the home's condition to her. The case therefore turned on credibility, context, and the parent's ability to know and answer the evidence. Yet the State's case was heard without Petitioner's testimony and without any witness or exhibit offered in her defense. RR3:212. The trial court terminated on all three grounds and found termination in the children's best interests. The father's rights were not terminated.

Petitioner initially retained counsel, exhausting her savings to do so. By trial she was indigent and was represented by court-appointed counsel; over the course of the proceedings she was represented by three successive attorneys. Tex. Fam. Code § 107.013. Petitioner does not ask this Court to retry disputed facts. She asks whether the evidentiary record could constitutionally be created through a process that denied her every effective avenue of personal participation, testimony, and written rebuttal, and then treated the void that exclusion produced as her own knowing waiver.

II. Appointed counsel conveyed Petitioner's contemporaneous efforts to participate.

By the time of trial Petitioner could not afford counsel of her choice, and could not replace the counsel the court had appointed. At a permanency hearing in January 2025, according to a sworn eyewitness, Petitioner

asked the court to dismiss her appointed attorney — the third lawyer to represent her — and stated that she would represent herself. The court ordered that the attorney continue to represent her. The same witness describes counsel berating Petitioner in the courthouse hallway before that hearing, in terms that caused the witness to intervene, and states that Petitioner "was prevented from stating her own case" and was afterwards unable to obtain the hearing's transcript. Declaration of L. Rierson ¶¶ 16–28. Trial counsel's own electronic message on the trial day, offering "to ask to be removed as your counsel yet again," contemporaneously acknowledges the prior requests. The trial court later confirmed on the record that no motion to withdraw had ever been filed: "there is no motion in the file." RR2:7, 16. The Final Order extended the appointment "until all appeals of a final order terminating parental rights are exhausted or waived." App. 16a–34a, ¶ 14.1.

On May 14, counsel told the court she was receiving e-mails from Petitioner and was making motions at Petitioner's request. RR3:126–27. Petitioner was not disengaged: she was sending pleas into a courtroom she could not reach, with no way to know what was happening inside it, while the State characterized her absence as a choice. Petitioner states that counsel told her she could not check messages during trial because she was occupied with the proceedings — so even that channel operated only in the gaps, at counsel's availability, and after the testimony each message concerned had already been given. Counsel could cross-examine and argue. Counsel could not supply Petitioner's testimony, personal knowledge, or contemporaneous rebuttal — and told the court that hearing from Petitioner was "imperative." RR3:211.

III. April 28: failed remote participation.

Trial began April 28, 2025. Petitioner reported illness and appeared by Zoom. She was disconnected after attempting to record the proceeding contrary to the court's instructions. The court reset the trial for May 14 and required physical appearance because, in its words, "the technology was not working for her." RR3:8–9. Whatever the propriety of forbidding recording, a failed technology channel did not establish waiver of participation, testimony, or the ability to answer evidence.

IV. May 14: the transportation failure and the refused safeguard.

Petitioner states that she told her appointed counsel her ride had failed two to three hours before the hearing; that counsel did not tell her the Department could collect her until the hearing was under way; and that counsel told her she would lose her rights if she did not appear. At 10:12 a.m. counsel informed the court that the ride had failed "at the last minute," that Petitioner was "trying to get here desperately," "absolutely wants to be present," and was walking from Amarillo to Canyon. RR3:9–10. Counsel requested a delay or transportation assistance, and placed a due-process objection on the record before the evidence was taken. RR3:13–14. The Department, the children's attorney ad litem, and the father objected. The court denied the requests. RR3:11–12.

The Department's permanency specialist, Erin Tindall, then testified that the Department "absolutely could have put in for help" had a request been made at the recess, and that she knew of no rule preventing assistance merely because the parent had not asked the Department directly. RR3:16–18. Asked whether assistance could be arranged through counsel that morning, she answered, "We could attempt to." Asked by the court what an attempt meant, she answered: "I could see if there's somebody able to, or if you would like me to leave the proceedings and go." The court responded: "I'm not asking you to do anything." RR3:18–19. She attached no condition to the offer, expressed no concern about delay, and gave no indication that the distance made it impractical.

The court declined to act on the offer, reasoning that Petitioner had earlier asked that Department contact be routed through her attorney, so that it "would be problematic for the court to order the Department to try and contact her about getting a ride," and that "[i]t is up to her to ask for help or to get herself here." RR3:20–21. But the request was at that moment being made through her attorney, in open court, with the Department present and its witness on the stand. The channel Petitioner had designated was the channel in use. The trial proceeded without her.

V. The jury request, the rebuttal request, and the final request to testify.

That afternoon, counsel stated: "I've been receiving e-mails from my client and so I am making these motions at her request with information she's provided me electronically." RR3:126–27. Counsel conveyed Petitioner's request for a jury. The court denied it: "the trial has already started and it's too late to change to a jury." RR3:127. Counsel conveyed Petitioner's request to place her written rebuttal of the testimony before the court. The Department objected that Petitioner had "made the decision not to essentially facilitate her appearance," and the court denied that too. RR3:127. The State thus converted the transportation failure into a finding of choice, and the court denied the only contemporaneous means Petitioner proposed for answering the testimony being used to sever her family.

After the Department rested, counsel asked for a continuance so that Petitioner could testify. Counsel noted that the Department's witnesses had completed their testimony, that the transportation failure was unexpected, that hearing from Petitioner would be "extremely useful," and that "it is imperative that the court hear from her." RR3:211. The court did not weigh the value of her testimony or of any alternative — a brief continuation, renewed remote access, telephone participation, or a sworn proffer. It instead made a credibility judgment about a woman it had refused to hear:

> "[S]he represented to the court that she was walking here. That's been five hours and she's not here yet. As out of shape as I am, I could have walked from my home to the courthouse. And my home is farther away than her address. I could have done it in five hours." RR3:211–12.

The court denied the request. Counsel stated, "I have no witnesses," and rested. RR3:212. Petitioner states that she began walking at approximately 10:30 a.m., that the route available to a pedestrian is longer than the highway distance, that she walked through the afternoon heat, and that when her telephone battery died at about 5:00 p.m. she was still miles from the courthouse. No one asked her, and the court's comparison of her pace to its own was made without hearing from her.

Electronic correspondence between Petitioner and trial counsel during the trial day, described and reproduced in Petitioner's declaration, records the exclusion in counsel's own contemporaneous words. At 12:58 p.m., counsel wrote: "If you do not appear, none of your statements will be admitted into evidence. There is no legal way to admit statements." In a further message that afternoon counsel wrote: "You cannot proceed pro se at this time because you are not here," and offered "to ask to be removed as your counsel yet again" — counsel's own written acknowledgment that Petitioner had previously sought counsel's removal — while warning that "the court will go on without you having any representation." Counsel also identified the dispositive issue in terms: that the child "has stated that she told you about the abuse and you did not stop it," and that "if the court believes she told you and you did nothing that is what matters." The lawyer trying the case thus recorded, while the trial ran, that in counsel's own assessment the case turned on whether the court believed the child had told Petitioner and Petitioner did nothing — a matter of Petitioner's own knowledge and conduct — that her absence excluded every statement she might make, and that her one alternative — speaking for herself — was foreclosed by the very absence the court had declined to cure.

VI. The judgment's recitals of readiness and waiver.

The final order states that Petitioner "appeared through attorney of record TRACIE REILLY and announced ready." It states: "A jury was waived." App. 16a, 17a. The transcript records the opposite: repeated requests to delay, to secure transportation, to have a jury, to admit rebuttal, and finally to hear Petitioner — each denied. RR3:9–14, 126–27, 211–12. "Ready" and "waived" are conclusions about consent. The State relied on counsel's bodily presence to attribute consent to a parent who was outside the courtroom sending contrary instructions that the court was denying as they arrived.

VII. The appellate disposition and the Rule 251 ruling.

The Court of Appeals analyzed the case as an abuse-of-discretion challenge under Texas Rule of Civil Procedure 251. It emphasized the absence of a written, verified continuance motion, the approaching dismissal deadline of Texas Family Code § 263.401, and its conclusion that Petitioner knew transportation assistance

could be available but did not request it in time. App. 1a–12a. It did not address the jury request, the rebuttal request, the decree's waiver recital, the absence of defense witnesses or exhibits, or whether the combination produced a constitutionally reliable termination procedure. It affirmed on grounds (D) and (E) — reaching them, notwithstanding the unchallenged (O) ground, because § 161.001(b)(1)(M) makes a (D) or (E) finding a predicate for terminating a parent's rights to any future child. App. 1a–12a (citing In re N.G., 577 S.W.3d 230 (Tex. 2019)).

The appellate proceedings repeated the trial's pattern. Appointed appellate counsel briefed the appeal without consulting Petitioner. She was not asked what issues she wished raised and received the briefs only after briefing had closed. She did not learn of the Court of Appeals' judgment from her counsel; she learned of it from a third party. Counsel filed a petition for review, and then a motion for rehearing, without informing her, and she learned of each denial from a third party. At no stage of the appellate proceedings did her own lawyer tell her the outcome of anything filed in her name. The omission of any challenge to the (O) ground — the omission that insulated the judgment — was made in a brief she never saw.

VIII. Preservation.

Trial counsel raised a due-process objection before the May 14 evidence was taken. RR3:13–14. The opening appellate brief identified the fundamental parental liberty interest protected by the Fourteenth Amendment and argued, under a separately developed point of error, that denial of a continuance deprived Petitioner of procedural due process and prevented her meaningful participation and testimony. Appellant's Br. 52, 71–76 (Point of Error No. 3). The reply brief renewed the federal argument under a dedicated heading, "Denial of a Continuance Deprived Appellant of Due Process," invoking Santosky v. Kramer and quoting In re K.M.L., 443 S.W.3d 101, 112 (Tex. 2014): due process requires heightened scrutiny because termination implicates fundamental constitutional rights. Appellant's Reply Br. 11–13. The brief also relied on Villegas v. Carter, 711 S.W.2d 624, 626 (Tex. 1986), and on In re B.L.D., 113 S.W.3d 340, 352 (Tex. 2003), for the proposition

that parental testimony and participation are essential to the truth-finding function — the same decision the State invokes for its preservation bar.

The Court of Appeals resolved the continuance issue under Texas Rule of Civil Procedure 251 and abuse-of-discretion review without separately deciding the federal claim. The petition for review framed Issue Two under Article I, § 19 of the Texas Constitution and did not expressly invoke the Fourteenth Amendment. Petitioner states this candidly. The petition nevertheless described the issue as a fundamental procedural due-process question, asserted that § 37 codified existing federal constitutional parental rights, and pursued materially the same participation claim. Where the highest state court is silent, the petitioner must show that the federal claim was presented with fair precision and in due time. Adams v. Robertson, 520 U.S. 83, 86–90 (1997) (per curiam). The claim presented here was raised in the opening and reply briefs before the court whose judgment is under review; that court resolved it under state procedural rules without deciding it; and on June 5, 2026, in In re K.N., No. 24-0881, slip op. at 17–18, the Supreme Court of Texas declined to chart the parameters of Article I, § 37, leaving fuller consideration for another case — after Petitioner's own § 37 petition had been refused. Petitioner does not contend that presentment is beyond dispute; she contends that the federal claim was pressed with fair precision at the only stage where merits briefing was available, and that the discretionary petition continued the same participation claim in substance and gave the Supreme Court of Texas a fair opportunity to recognize its federal character.

IX. This petition.

This petition is the first filing in these proceedings whose content Petitioner has personally directed, reviewed, and approved. From the outset she litigated through counsel: first counsel she retained until her savings were exhausted, then counsel the State appointed; when she asked to be relieved of counsel and to speak for herself, the request was refused; and the appointment was extended by court order through the exhaustion of appeals. She is unrepresented now not because she waived counsel but because the appointment has run its course, and this Court's door is the first she has reached on her own. These facts are set out in Petitioner's declaration and

the Declaration of L. Rierson, both submitted with this petition; they are not part of the state-court record and are relied upon only as so identified. They bear directly on the question presented: whether positions selected, and omissions made, by counsel a parent could not remove may be treated as her own.

REASONS FOR GRANTING THE PETITION

I. The decision below converts appointed counsel's defaults into unreviewable facts about the parent, in conflict with the requirement of a meaningful opportunity to be heard.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976). A hearing is not meaningful merely because a lawyer occupies a chair while the person whose fundamental relationship is being destroyed cannot hear the evidence, communicate, testify, or answer. Armstrong v. Manzo, 380 U.S. 545, 552 (1965). And termination demands especially reliable procedure. Santosky, 455 U.S. at 753–64; Lassiter v. Department of Social Services, 452 U.S. 18, 27–32 (1981); M.L.B. v. S.L.J., 519 U.S. 102, 119–24 (1996).

Texas mandates appointed counsel for an indigent parent who opposes a State suit to terminate parental rights, Tex. Fam. Code § 107.013, and applies its ordinary error-preservation regime to those proceedings without exception. In In re B.L.D., 113 S.W.3d 340 (Tex. 2003), the Supreme Court of Texas considered and rejected the argument that due process requires a fundamental-error exception in termination appeals. The two rules operate together in a way this Court has never examined: the State creates the representation, then treats every failure of that representation as the parent's own act, and forecloses review of the resulting judgment on that basis.

The Supreme Court of Texas itself recently reiterated the extraordinary character of these judgments. In In re K.N., No. 24-0881, slip op. (Tex. June 5, 2026), the court emphasized the deeply rooted sanctity of the family, the strong presumption against termination, and the principle that a termination order must remain a last resort rather than a first impulse. K.N. concerned evidentiary sufficiency, not participation; its insistence on rigorous adjudication nevertheless underscores the antecedent question here: whether the record supporting permanent termination was produced through constitutionally adequate procedure.

This record shows the mechanism operating five times. A continuance request failed for want of a written, verified motion. A statutory extension under § 263.401(b) was never sought. An evidentiary objection was not

made. The (O) ground was not challenged on appeal — in a brief Petitioner never saw. And a request for help made to appointed counsel hours before the hearing did not reach the court until the court would no longer act on it: the court refused relief on the ground that "[i]t is up to her to ask for help," when she had asked the only person the State had appointed to speak for her. Each omission was then given legal effect against Petitioner as though it expressed her own position.

Nor could Petitioner escape the attribution by speaking for herself. She asked to do exactly that, and was refused. Faretta v. California holds that the right to be heard would be of little worth if it did not include the right to be heard in one's own voice. 422 U.S. 806, 819–21 (1975). That holding rests on the Sixth Amendment and does not govern here. But a parent who is told she may not remove the lawyer the State assigned her, may not speak in her own voice, and is then bound by everything that lawyer does and fails to do, has no avenue left through which to be heard at all.

The ordinary rule that a litigant is bound by counsel's acts rests on agency: the client selected the lawyer and bears the consequences of the selection. Link v. Wabash Railroad Co., 370 U.S. 626, 633–34 (1962); Coleman v. Thompson, 501 U.S. 722, 753–54 (1991). Maples v. Thomas holds that where the attorney-client relationship has failed, counsel's defaults are not attributable to the client. 565 U.S. 266, 281–83 (2012). Petitioner does not ask the Court to transplant Maples wholesale or to create an ineffective-assistance rule for civil cases. The question is anterior: whether attribution's agency premise holds where the State appointed the agent, mandated the appointment by statute, extended it by court order through the exhaustion of appeals, brought the action, and now invokes the agent's omissions to defend its judgment. This Court has never decided that question.

The private interest, finally, is of an unusual character, because Petitioner's dependence upon the State was not incidental to the litigation but was its setting. The State subsidized the housing whose condition it charged against her. It held the file that began with her own request for protection. It supplied, and declined to remove, the lawyer through whom alone she was permitted to speak. In Trop v. Dulles this Court described the destruction of a person's "status in organized society" as a punishment more primitive than torture. 356 U.S.

86, 101 (1958) (plurality opinion). Trop does not govern; its measure is apt. Where a State is at once the source of a person's means, the custodian of the record about her, the provider of her voice in court, and the party seeking to deprive her, the ordinary assumption that a litigant can protect her own interests by her own diligence does not hold.

The Court of Appeals relied upon Texas Rule of Civil Procedure 251 and the absence of a written, affidavit-supported motion in rejecting Petitioner's challenge to the denial of a continuance. Petitioner does not ask this Court to reinterpret Rule 251, invalidate Rule 251, or hold that the Court of Appeals incorrectly applied Texas preservation law. The federal question is different. Even assuming counsel's oral request did not satisfy Texas procedural requirements for obtaining reversal of a continuance ruling, that conclusion establishes only that Petitioner was not entitled to reversal merely because the trial court denied a procedurally deficient request for continuance. It does not necessarily establish that the procedure through which the State permanently terminated Petitioner's parental rights satisfied the Due Process Clause of the Fourteenth Amendment. The trial court was not unaware of the participation problem: before evidence was taken, counsel informed the court that Petitioner was attempting to attend, identified transportation as the immediate obstacle, requested assistance, and raised a due-process objection. RR3:9–14. A Department witness then testified that the Department "absolutely could have put in for help" and, when asked whether assistance could be arranged that morning, answered, "We could attempt to." RR3:16–19. Petitioner continued communicating with counsel during the proceeding, and after the Department rested counsel requested additional time specifically so Petitioner could testify, telling the court that hearing from her was "imperative." RR3:126–27, 211. Thus, the constitutional question does not depend upon whether Texas law required the trial court to grant an oral continuance. The state-law question is whether counsel's oral motion satisfied Rule 251 sufficiently to preserve reversible error from denial of a continuance. The federal question is whether the termination proceeding, viewed as a whole, afforded the meaningful opportunity to be heard required by the Fourteenth Amendment. Those questions are not necessarily coextensive. State procedural rules govern the manner in which litigants request relief; they do not themselves define the minimum process required by the Fourteenth

Amendment before the State may extinguish a fundamental liberty interest. Petitioner therefore does not ask this Court to excuse noncompliance with Rule 251 as a matter of Texas law. She asks whether that noncompliance, standing alone, answers the distinct federal constitutional question presented here.

II. Mathews required an assessment the court below never made, and what was lost was concrete.

Mathews requires consideration of the private interest, the risk of erroneous deprivation together with the probable value of additional safeguards, and the government's interests. 424 U.S. at 335. No such balancing appears in the opinion below. The court equated fault in transportation planning with complete constitutional forfeiture. Fault can affect the balance; it cannot erase it.

The safeguard was not hypothetical. The Department's witness testified that the Department "absolutely could have put in for help" and, asked whether transportation could be arranged that morning, answered, "We could attempt to," explaining that she could determine whether another worker was available or could potentially go herself — an offer elicited by the court's own question, made without condition and without any suggestion that the distance made it impractical. The court, having elicited the offer, answered that it was not asking her to do anything. RR3:18–19. Other safeguards — a brief continuation after the Department rested (when, as counsel noted, no witness would have to be recalled), renewed remote access, telephone participation, a sworn proffer — went unconsidered.

The opinion below recites that the home lacked electricity and running water. Petitioner does not concede that account, and the record already undermines it: the Department's investigator conceded on cross-examination that he never obtained utility records and later observed the utilities working. RR2:33–35. Her testimony would have completed what the cross-examination began. She states that during the investigation the electricity and the water were on; that at the investigator's April 2024 home visit she ran the water in his presence, and at his request sent him photographs showing the electricity on, which he acknowledged; that the investigator's own notes in the Department's records state that she turned the water on; and that the allegation

rested on past, resolved service interruptions drawn from utility account histories and presented as the current condition of the home. As for the home's condition more broadly: essential maintenance, repairs, and safety were the exclusive responsibility of a landlord who neglected them; she asked the Department for help leaving; the Department inspected and recorded the conditions against her instead; and the landlord's neglect eventually caused the federal subsidy for those premises to be terminated. Her own continued eligibility was approved: she was issued a voucher to find qualifying premises elsewhere. She states that no available residence would both accept the subsidy and meet her disabled son's needs, and she became homeless — still qualified for the assistance, with nowhere permitted to use it.

Nor would her evidence have been limited to her own account. Among the exhibits never offered — the defense offered none — were four written determinations of the Department's own Office of Consumer Affairs, dated November 7, 2023, June 21, 2024, January 2, 2025, and March 5, 2025, each reviewing the investigation of her family for policy compliance and each acknowledging violations: an examination of her daughter conducted at school without appropriate personnel present, investigations not completed within required time, an extension "not done per policy guidelines," a formal apology "that you were not required to submit to a drug test in accordance with agency policy" — and, in the January 2025 letter, the acknowledgment that the alleged perpetrator of the abuse underlying the failure-to-protect findings "did not have an opportunity to speak with CPI regarding the allegations," though policy required it. Each letter contains a formal apology on behalf of Child Protective Investigations. These letters are identified, with their signatories and quoted findings, in Petitioner's declaration submitted with this petition; they are not part of the state-court record, and that is the point: the factfinder that terminated her rights never saw the agency's own written admissions that its investigation of her family had repeatedly violated its own rules.

These incidents also bear on the conduct held against her. Each preceded the trial. Petitioner states that together they grounded her belief that the Department was prejudiced against her family, and made her wary of dealing with the Department directly — the reason she asked that Department contact be routed through her attorney, and the reason she would not enter a Department vehicle on the trial day while her own complaint

against the agency was pending. That wariness is the very conduct the trial court invoked in denying relief: "[i]t is up to her to ask for help." RR3:21. The person faulted for not asking the Department for help was a person to whom the Department had four times apologized in writing for the conduct of its investigations of her family. Whether her caution was reasonable was a question for a factfinder who had heard her explain it. No factfinder ever did.

The State's interests in safety, permanency, and statutory deadlines are substantial. But the § 263.401 deadline that supplied the neutral ground for refusing delay was itself shaped by appointed counsel's omission ever to seek the extension subsection (b) provides. And the State shares with the children an interest in an accurate and legitimate determination. Santosky, 455 U.S. at 760–61.

III. State courts of last resort conduct the federal participation inquiry that the court below never reached — an important and recurring question warranting review.

Texas resolves the question under state procedural rules: absent a written verified motion, denial of a continuance is presumed proper, In re B.L.D. forecloses a fundamental-error exception, and the federal inquiry is never reached. That is what happened below.

Other state courts of last resort conduct the federal inquiry. In In re A.S., 319 Kan. 396, 555 P.3d 732 (2024), the Kansas Supreme Court reversed a termination judgment on federal due-process grounds where the parent appeared by videoconference but could not testify, communicate with counsel, or participate fully — and held the error was not harmless because the State could not show the outcome would have been the same had he participated and testified. In In re Welfare of M.B., 195 Wash. 2d 859, 467 P.3d 969 (2020), the Washington Supreme Court applied Mathews and held a parent ordinarily has a right to be present, with alternatives sufficing only if they preserve a meaningful opportunity to be heard and defend. In Adoption of Patty, 489 Mass. 630, 186 N.E.3d 184 (2022), the Massachusetts Supreme Judicial Court held a virtual termination trial violated due process where its conduct prevented effective participation.

Petitioner does not overstate these decisions as a square holding-against-holding conflict. In re B.L.D. is a preservation decision, while In re A.S. and the other state decisions involve materially different participation failures. They nevertheless demonstrate that meaningful-participation questions recur in termination proceedings and that courts sometimes reach the federal procedural inquiry directly. The petition therefore relies on those authorities as evidence of the importance and recurrence of the constitutional question, not as proof that another jurisdiction would necessarily excuse the Rule 251 defect or decide this case differently.

IV. The judgment's readiness recital does not resolve the federal participation question.

Waiver of a fundamental procedural protection cannot be manufactured by recitation where the contemporaneous record shows objection. The transcript records a jury request and its denial. RR3:127. The judgment recites: "A jury was waived," without identifying who waived it, when, or how. The transcript records repeated efforts to participate, each denied. RR3:9–14, 126–27, 211–12. The judgment recites that counsel "announced ready." Petitioner does not ask this Court to decide whether the Seventh Amendment applies to state termination proceedings — it does not — nor whether Texas Rule 216 was satisfied. The federal question is whether a State may attribute knowing waiver and readiness to a parent when the same record captures her contrary instructions and their denial. That goes to the integrity of the hearing, not state jury procedure.

V. The heightened standard Santosky requires cannot validate a record the parent was prevented from answering.

Santosky requires clear and convincing evidence because of the gravity of erroneous termination. 455 U.S. at 747–48, 758–70. But a standard of proof does not create evidence; it measures the evidence the adjudicatory process has produced. A heightened burden protects only after the procedures employed have produced the record to which it is applied.

The point is not that the Department's witnesses went unchallenged. They were cross-examined — by a lawyer who told the court, on the record, that hearing from her client would be "extremely useful" and that "it is imperative that the court hear from her." RR3:211. Cross-examination conducted without the knowledge that would have directed it is a procedural form rather than a test of the evidence. The court then denied the rebuttal, denied the testimony, and decided the case on a record containing no defense witnesses or exhibits — and the appellate court assessed sufficiency on that one-sided record while treating the absence as Petitioner's fault. Clear-and-convincing review cannot repair an adjudicatory process that prevented the contrary evidence from entering the record. Review is needed to prevent state default rules from insulating the deprivation they produced.

VI. The unchallenged subsection (O) ground does not cure the antecedent due-process defect.

The Court of Appeals noted that Petitioner did not separately challenge the (O) ground, and under Texas law a single unchallenged predicate ground with a best-interest finding sustains the judgment. That omission was an act of appellate counsel — made in a brief Petitioner was never shown — not a concession Petitioner placed on any record. The ordinary attribution rule makes the omission consequential; it does not establish that the hearing afforded due process. A statutory finding produced through the challenged hearing cannot render that hearing harmless merely because counsel did not separately contest the finding's sufficiency. Petitioner sought to testify and to rebut the Department's service-compliance narrative; the court denied both. RR3:127, 211–12. Her testimony on that ground was not hypothetical: counsel's contemporaneous May 2, 2024 email, which she has preserved, records that her first, retained attorney told the assistant district attorney handling the Department's case that "a service plan at this point is not necessary," instructed Petitioner to sign nothing without counsel, and reported that the Department's attorney "agreed" and would confirm with the caseworker. The case thus began with the two lawyers initially agreed that a service plan was not then necessary, subject to confirmation with the caseworker — and ended with Petitioner alone held responsible, under the (O) ground her appellate counsel never challenged, for imperfect compliance with the plan that followed. She asks for a proceeding in which the evidence on every ground, including (O), is created through

a constitutionally adequate opportunity to participate. If counsel's unreviewed omission conclusively bars that inquiry, then the attribution question is the whole case — which is why it warrants this Court's answer.

VII. The Fourteenth Amendment is the provision the United States identified as performing Article 16 of the Convention Against Torture.

When the United States ratified the Convention Against Torture, it defined the treatment prohibited by Article 16 by reference to a composite domestic comparator — the protection secured by the Fifth, Eighth, and Fourteenth Amendments. That was a representation that the domestic provision performs the international function. Petitioner does not contend the Convention is self-executing, creates a private right of action, or supplies a rule of decision. She invokes an interpretive principle this Court has applied since Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804): where a construction is available that performs the Nation's obligations rather than defeats them, that construction is preferred. The canon counsels against a reading of the Fourteenth Amendment under which the protection the United States represented as its treaty equivalent is unavailable to the person it was identified to protect.

VIII. This is an appropriate vehicle for a narrow rule and conventional relief.

The Court need not decide disputed allegations of abuse, housing conditions, retaliation, professional misconduct, torture, or ill-treatment. It need not establish an absolute right to physical presence, an automatic continuance, a federal jury right in state civil cases, or an ineffective-assistance doctrine for civil litigation. It need decide only whether due process requires a trial court, before permanent termination, to preserve some meaningful channel for the parent to hear, consult, testify, and respond — and whether the State may treat appointed counsel's defaults, and its own recitals, as that parent's waiver when the contemporaneous record shows her contrary instructions. RR3:126–27 and 211–12 make the issue concrete. Petitioner acknowledges the Court of Appeals concluded she bore responsibility for her absence, and does not ask this Court to revisit that conclusion; fault may weigh in the balance, but it cannot erase the balance, and it cannot retroactively supply the waiver the record refutes.

Petitioner requests that the Court grant certiorari and, upon review, vacate the judgment and remand for a termination proceeding that satisfies the Fourteenth Amendment.

NOTICE OF ALLEGATIONS OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

This Notice is not asserted as an independent Question Presented, jurisdictional basis, private cause of action, or ground upon which this Court must grant certiorari. Petitioner's Questions Presented arise under the Due Process Clause of the Fourteenth Amendment. The Notice is separately provided to preserve and identify Petitioner's allegations concerning the broader treatment and consequences documented in connection with these proceedings and should not be understood as asking this Court to adjudicate an independent claim under the Convention Against Torture in deciding this petition.

Petitioner respectfully gives notice to this Court, under Articles 1, 12, 13, and 16 of the Convention Against Torture and the standards of the Istanbul Protocol (2022), that she alleges she has been subjected to torture and to cruel, inhuman or degrading treatment by officials of the State of Texas in and around the proceedings from which this petition arises.

Petitioner states plainly what she does not ask. This notice does not oblige the Court to grant certiorari. Review remains a matter of judicial discretion under Rule 10, and nothing here suggests otherwise. Nor are these allegations offered as a substitute for the state-court record or as a source of jurisdiction; the constitutional question rests on the certified record alone.

She gives this notice because the Convention and the Protocol attach consequences to the receipt of the information itself. Under paragraph 259 of the Istanbul Protocol, where allegations of torture or ill-treatment are raised in the course of legal proceedings, judges are to use their judicial authority to initiate investigations or to inform prosecutors so that they may intervene, and are to take action to ensure that a prompt, impartial and effective investigation is carried out. Paragraph 261 applies that responsibility to all legal proceedings, expressly including civil and administrative proceedings and asylum cases. Paragraph 258 provides that where officials, judges included, know or have reasonable grounds to believe such treatment has occurred and fail to

act, the State bears responsibility. The triggering standard is reasonable grounds to believe, not proof; information that is informal or incomplete suffices, particularly from a person whose ability to report has been impaired by trauma, fear, indigence, or the absence of counsel acting on her instructions.

The grounds

Petitioner identifies the following as supplying reasonable grounds, and states the evidentiary status of each. (a) The permanent severance of her relationship with both children, adjudicated in her absence, with no evidence offered on her behalf: established by the decree and the reporter's record. (b) Her arrest inside the courtroom immediately following a permanency hearing in January 2025, in the presence of the presiding judge and her appointed counsel, neither of whom intervened; her overnight detention; and the reduction the following day of an asserted liability of approximately $4,000 to $97: attested under penalty of perjury by an eyewitness. (Declaration of L. Rierson ¶¶ 29–36, submitted with this petition). (c) Her exclusion from the conduct of her own case: the May 14 denials of her jury and rebuttal requests appear in the reporter's record, RR3:127; the January 2025 refusal of her request to dismiss appointed counsel and represent herself is attested by the same eyewitness, who states Petitioner could not obtain that hearing's transcript. (d) Her indigence, homelessness, Indigenous heritage, and history of domestic violence, which bear on severity.

Petitioner states candidly that the final clinical component of the documentation the Istanbul Protocol contemplates — forensic-level evaluation and sign-off — has not yet been completed. She does not ask this Court to find that torture occurred. Determining that question is the purpose of the independent inquiry the Convention contemplates, and an institution may not decline to inquire by demanding in advance the proof that an inquiry exists to obtain.

No relief is requested

Petitioner requests no relief in connection with this notice, joins no other pleading to her petition, and asks the Court for nothing beyond its consideration of the petition itself. Cf. Sup. Ct. R. 12.4. The notice is informational: the duties the Convention and the Protocol describe attach, where they attach, upon receipt of

the information, and are not contingent on any request by Petitioner. Petitioner further states that she left the United States in June 2025 in fear of retaliation and further deprivation of liberty, and that proceedings concerning her protection are pending before the authorities of the United Kingdom.

CONCLUSION

The petition for a writ of certiorari should be granted. The judgment should be vacated and the case remanded for a termination proceeding that affords Petitioner meaningful personal participation, access to the material evidence, the opportunity to consult with counsel, to testify, and to answer the State's case, and a record that accurately reflects any waiver.

Respectfully submitted,



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August 17, 2026