Supreme Court, U.S.
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No. 26-608

In the
Supreme Court of the United States

MICAH STUBBS,
Petitioner,

v.

APRIL STUBBS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a State may, consistent with the Fourteenth Amendment's Due Process Clause, require by local court rule that every application for payment of court-appointed counsel fees "shall be made ex parte," with the application then resolved by default on the papers—after an opportunity for written opposition, but without any required case-specific live hearing—and the resulting fee obligation effective upon entry and payable within 45 days.

2. Whether a State denies procedural due process when, having authorized court-appointed counsel's fees to be imposed through that mandatory ex parte procedure, its rules then extinguish the only mechanism for redetermining the obligation thirty days after appointed counsel withdraws—so that the post-deprivation evidentiary hearing the parent was promised can lapse, and here did lapse, without ever being held, while every court holds review belongs somewhere else.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court whose judgment is sought to be reviewed are:

- **Petitioner:** Micah Stubbs
- **Respondent:** April Stubbs

Corporate disclosure (Rule 29.6). Petitioner is an individual; no corporate disclosure statement is required.

Directly related proceedings (Rule 14.1(b)(iii)).

- *In re Marriage of Stubbs*, Superior Court of California, County of Santa Clara, No. 21FL002119 (trial court proceedings; venue later transferred to Sacramento County).
- *In re Marriage of Stubbs*, Superior Court of California, County of Sacramento, No. 24FL04580 (transferred dissolution proceedings; ongoing).
- *In re Marriage of Stubbs*, California Court of Appeal, Sixth Appellate District, No. H050909 (opinion filed July 15, 2024).
- *In re Marriage of Stubbs*, California Court of Appeal, Sixth Appellate District, No. H051346 (opinion filed May 28, 2025).
- *Stubbs v. Superior Court*, California Court of Appeal, Sixth Appellate District, No. H052511 (writ petition denied September 12, 2024).
- *In re Marriage of Stubbs*, California Court of Appeal, Sixth Appellate District, No. H051518, consolidated with H051866, H051966, H051967, H051968, and H051969 (opinion filed November 14, 2025; rehearing denied and opinion modified December 9, 2025).
- *Stubbs v. Superior Court*, California Court of Appeal, Third Appellate District, No. C104377 (writ

petition denied August 22, 2025).

- *Marriage of Stubbs*, Supreme Court of California, No. S294302 (petition for review and request for publication denied February 25, 2026).
- *Micah Stubbs v. April Stubbs*, Supreme Court of the United States, No. 25A1282 (application to extend the time to file a petition for a writ of certiorari granted May 19, 2026).

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I. OPINIONS AND ORDERS BELOW

The opinion of the California Sixth District Court of Appeal (filed November 14, 2025, modified December 9, 2025) is unpublished. It is reproduced in the Appendix at App. 3.

The order of the California Supreme Court denying the petition for review and request for publication (entered February 25, 2026) is reproduced in the Appendix at App. 49.

The trial court's order of December 21, 2023 granting Fee Application No. 1 is reproduced in the Appendix at App. 34.

II. STATEMENT OF JURISDICTION

Question 1. The Court of Appeal held the December 21, 2023 order granting Fee Application No. 1 final and appealable under California Code of Civil Procedure § 904.1(a)(2), affirmed it, and rejected Petitioner's facial federal due process challenge to the prescribed fee procedure. (App. 9–13, 23–25, 31–32.) The California Supreme Court denied review on February 25, 2026. (App. 49.) This Court has jurisdiction under 28 U.S.C. § 1257(a). Under Rule 13.1 the time to file ran to May 26, 2026; on May 19, 2026, Justice Kagan extended the time to and including July 25, 2026 (No. 25A1282). Because that day is a Saturday, the period extends to the next business day, Monday, July 27, 2026. Rule 30.1. The petition is timely.

Question 2. The Court of Appeal dismissed Petitioner's appeal from the Fee Application No. 2 orders as not presently appealable, reasoning that those orders were "preliminary to a future evidentiary hearing." (App. 12–13, 32.) Section 1257(a)'s finality re-

quirement is jurisdictional. In applying it, this Court looks to the judgment's practical effect and, where necessary, to local law bearing on whether further state proceedings remain. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477–487 & n.8 (1975). Petitioner submits that the disposition is final because the only further proceeding the opinion presupposed appears unavailable under the current text of California law. Rule 5.241(a)(2) and (b)(3) state that the court may redetermine appointed counsel's compensation or the parties' ability to pay "[n]o later than 30 days after counsel is relieved as attorney of record." That date passed in mid-2024, and the evidentiary hearing vacated on June 7, 2024 (App. 42–47) was never reset. (Cal. Rules of Court, rule 5.241(a)(2), (b)(3); see Cal. Fam. Code § 3150(a).) Petitioner relies on those provisions solely as present California law bearing on this jurisdictional inquiry, not as a contention presented below. The state courts were not asked to construe those subdivisions.

Whether the state procedural ground is adequate to foreclose review is itself a federal question for this Court. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457–458 (1958); *Ford v. Georgia*, 498 U.S. 411, 423–424 (1991). Petitioner objected to the unbriefed appealability theory by petition for rehearing, invoking Cal. Gov. Code § 68081, and renewed the no-forum federal claim in the California Supreme Court, which denied review. See Cal. Rules of Court, rule 8.500(c)(2) (review policy where a factual or procedural statement was not first challenged on rehearing). Petitioner acknowledges that no published California decision construes rule 5.241's thirty-day provisions or addresses the consequence of the deadline. If this Court concludes that an authoritative construction is needed, it

may request certification to the Supreme Court of California. (Cal. Rules of Court, rule 8.548(a).)

Petitioner does not contend that any California statute is unconstitutional. Because Question 2 concerns the operation of rules adopted pursuant to California Family Code § 3150(a), this petition is nonetheless being served on the Attorney General of California out of an abundance of caution, and 28 U.S.C. § 2403(b) may apply. (See Rules 14.1(e)(v), 29.4(c).)

III. CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

A. Fourteenth Amendment to the United States Constitution

> nor shall any State deprive any person of life, liberty, or property, without due process of law;

B. Santa Clara County Local Family Rule 9(C)(1)

> Appointed counsel may apply for payment of fees and costs when counsel has billed a minimum of 10 hours or when representation has concluded. Appointed counsel shall promptly apply for payment when costs and fees at the applicable billing rate reach $4,000. Application for payment shall be consistent with any Court determinations under CRC 5.241 and shall be made ex parte, using local form Application for Payment of Fees and Costs of Children's Counsel (attached form FM-1067), and following

the procedures set out in that form.

This is the version of the rule (effective January 1, 2009) in effect when the fee order at issue was entered. An amendment effective January 1, 2026 retained the ex parte mandate, now phrased "will be made ex parte."

C. California Family Code § 3150(a)

> the court may appoint private counsel to represent the child "provided that the court and counsel comply with the requirements set forth in Rules 5.240, 5.241, and 5.242 of the California Rules of Court."

D. California Rules of Court, Rule 5.241(a)(2)

> "No later than 30 days after counsel is relieved as attorney of record, the court may make a redetermination of counsel's compensation: (A) On the court's own motion; (B) At the request of a party or a party's counsel; or (C) At the request of counsel for the child."

E. California Rules of Court, Rule 5.241(b)(3)

> "No later than 30 days after counsel is relieved as attorney of record, the court may redetermine the parties' ability to pay: (A) On the court's own motion; or (B) At the request of counsel or the parties."

IV. STATEMENT OF THE CASE

A. Factual Background

Petitioner is a parent in a post-judgment family law proceeding that originated in Santa Clara County Superior Court, California. In September 2023, the trial court appointed attorney Sue Helen Saign as minors' counsel under California Family Code § 3150 over Petitioner's objection. Between November 2023 and January 2024, the court expanded the appointment to full scope.

B. The Prescribed Ex Parte Fee Procedure

Under Santa Clara County Local Family Rule 9(C)(1), every application for payment of minors' counsel's fees "shall be made ex parte" on the county's local form (FM-1067). As the Court of Appeal described the procedure, a parent receives the application and has 21 days to submit a written response on a companion form, with no limit on accompanying written evidence; the procedure does not require a live hearing before the court rules, although it does not categorically forbid one. (App. 23–25.) The fee order at issue here made the resulting obligation effective upon entry and payable within 45 days.

C. Fee Application No. 1

In November 2023, minors' counsel submitted her first fee application under this procedure. Petitioner submitted the mandatory written response form contesting the fees, and on December 12, 2023 filed a request for order seeking to strike the application or stay it pending trial of underlying disputes; that request

was set for hearing on January 31, 2024. On December 21, 2023—before that hearing date—the trial court granted the fee application on the paper record, making the fees payable within 45 days. No live hearing preceded the order, and no current Income and Expense Declarations were on file. (App. 27–28.) Rule 5.241(b)(1)(B) requires current financial information before an ability-to-pay determination, and Family Code § 3153(b) directs that any portion the parties cannot pay be paid by the county. On April 30, 2024, the court found both parents unable to pay. (2 AA 315, 318.)

On appeal, the Court of Appeal affirmed. It rejected Petitioner's facial due process challenge to the prescribed procedure, reasoning that the 21-day written-response opportunity, the absence of any limit on written evidence, and the availability of hearings in an appropriate case satisfied the Fourteenth Amendment on the rule's face. (App. 23–25.) The court separately held that Petitioner had forfeited any as-applied claim to a live hearing on the reasonableness of the accrued fees, or to examination of minors' counsel concerning them. (App. 24–25.)

D. Fee Application No. 2 and the Vacated, Unfulfilled Hearing

Minors' counsel submitted a second fee application, and the trial court made the resulting fees payable subject to reallocation at a promised future evidentiary hearing. The orders addressing that application (January–March 2024) were held "not presently appealable," and the Court of Appeal dismissed that portion of the appeal without reaching its merits, reasoning the orders were "preliminary to a future eviden-

tiary hearing." (App. 12–13, 32.) But a June 7, 2024 Findings and Order After Hearing (App. 42–47) vacated the scheduled evidentiary hearing; it was never reset. The current text of rule 5.241 states that the court may redetermine appointed counsel's compensation or the parties' ability to pay no later than thirty days after counsel was relieved. (Cal. Rules of Court, rule 5.241(a)(2), (b)(3).) That date passed. Petitioner offers that construction here as present state law bearing on 28 U.S.C. § 1257(a) finality, not as a construction adopted below. The promised hearing therefore appears unavailable under the rule's text, while the fee obligations remain enforceable.

E. Preservation of the Federal Questions

Petitioner raised the facial due process challenge to Local Family Rule 9(C)(1) in his opening brief (AOB H051866 at pp. 24–27); the Court of Appeal passed on it (App. 22–25); Petitioner renewed it in the California Supreme Court (Petition for Review at pp. 14, 33), which denied review. As to Question 2, Petitioner objected in his petition for rehearing under Government Code § 68081 to the unbriefed appealability theory. That petition stated: "He raises and preserves these objections here so that any later petition for review may properly invoke them, as required by rule 8.500(c)(2)." (Petition for Rehearing at p. 28.) He then presented the no-forum claim as Issue 1 of the Petition for Review. (Pet. Rev. at pp. 9, 18–20.)[1] The state

[1]On rehearing, Petitioner asked the Court of Appeal, as alternative relief, to treat the notices of appeal as mandate petitions, direct the trial court to reinstate and conduct the vacated hearing, and enter an order "expressly clarifying that the trial court retains jurisdiction and must hold that evidentiary hearing notwithstanding the prior 6/7/2024 FOAH and the prior appeal."

courts were never asked to construe rule 5.241(a)(2) or (b)(3). Petitioner advances that state-law construction solely as present law bearing on this Court's 28 U.S.C. § 1257(a) finality inquiry, not as a contention litigated below; no California court passed on it. The California Supreme Court denied review. (App. 49.)

The Court of Appeal separately attributed to Petitioner a forfeiture of the as-applied demand for a live hearing concerning Fee Application No. 1. (App. 24–25.) This petition does not seek review of that as-applied ruling. Question 1 is facial; Question 2 concerns the different fee evidentiary hearing the trial court actually granted and later vacated. For that later hearing, the trial court reserved whether Saign would be required to testify (10 RT 7:17–28 (Jan. 31, 2024)), and Petitioner announced a billing expert (10 RT 8:2–3, 12:16–13:3). (Citations "[vol.] RT [page:line]" are to the volumes of the Reporter's Transcript in the record on appeal.) Those facts identify the process that was lost; they do not revive the separate as-applied claim concerning Fee Application No. 1.

(Petition for Rehearing at pp. 30–31.) The Court of Appeal denied rehearing on December 9, 2025, without granting that requested direction. (App. 50–52.) Petitioner thus sought the very forum the opinion presupposed. The trial court had found the fee applications "in the jurisdiction" of the Court of Appeal and vacated the hearing (App. 46–47); the Court of Appeal treated the orders as "preliminary to a future evidentiary hearing" and dismissed them as not presently appealable (App. 12–13, 32); and rehearing ended without the requested direction. Petitioner submits that sequence completed the no-forum vacuum.

V. REASONS FOR GRANTING THE WRIT

A. The Decision Below Conflicts With This Court's Case-Specific Framework for Paper and Ex Parte Deprivations

Due process requires notice and a meaningful opportunity to be heard "at a meaningful time and in a meaningful manner" before a final deprivation of property. *Goldberg v. Kelly*, 397 U.S. 254, 267–268 (1970); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Whether that opportunity may be confined to papers depends at least in part on the questions the decision must resolve. *Califano v. Yamasaki*, 442 U.S. 682, 695–697 (1979), supplies the closest functional guide. The Court rejected a constitutional oral-hearing claim for routine overpayment computations, but construed the governing statute to require an oral prerecoupment hearing when waiver turned on fault, equity, living expenses, and credibility. The Court therefore did not decide whether the Constitution independently required that hearing. *Id.* at 696–697.

For more than half a century, the Court has subjected ex parte procedures by which one private party obtains a deprivation of another's property to exacting scrutiny. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 341–342 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 80–82 (1972) (the opportunity to be heard must come "at a time when the deprivation can still be prevented"); *Connecticut v. Doehr*, 501 U.S. 1, 10–11 (1991) (applying *Mathews* and examining the risk of erroneous deprivation). A minors' counsel fee application is that configuration: a private applicant invoking a state procedure to create a final fee obligation against a parent, effective upon entry and due within 45 days.

Petitioner acknowledges the distinction: the procedures condemned in *Sniadach*, *Fuentes*, and *Doehr* afforded the deprived party no pre-deprivation opportunity to oppose at all, while the procedure here affords a written response, with any live hearing left to the court's discretion. The conflict is narrower but real: this Court's cases treat ex parte procedures as exceptions requiring case-specific justification, while the rule below makes the ex parte application channel universal—and disposition on the papers the default—for every minors' counsel fee application, without any finding of necessity or exigency in the particular case.

Lower courts applying that distinction to substantial monetary sanctions have reached fact-sensitive results. The Second Circuit required a hearing and cross-examination where a substantial sanction depended critically on a relatively unitemized affidavit. *McFarland v. Gregory*, 425 F.2d 443, 449–450 (2d Cir. 1970). Where responsibility and allocation were disputed, the same court required further proceedings and an opportunity for both targets to be heard. *In re Yellen & Herstic*, 804 F.2d 191, 193 (2d Cir. 1986). The Tenth Circuit ordinarily permits decision on full written briefing if the applicant supplies enough detail to permit an intelligent response. *White v. General Motors Corp.*, 908 F.2d 675, 686 (10th Cir. 1990). And the Eleventh Circuit requires an evidentiary hearing when one is requested, material facts are disputed, and the paper record cannot resolve them, but not when detailed affidavits are uncontroverted. *Aetna Insurance Co. v. Meeker*, 953 F.2d 1328, 1334–1335 (11th Cir. 1992). Those outcomes do not establish opposing categorical rules. They identify the case-specific inquiry for which the local rule supplies no required finding or standard.

The same boundary has divided courts reviewing professional reports. The Fifth Circuit gives a Social Security claimant who requests it an absolute right to subpoena and cross-examine an examining physician who supplied an adverse report. *Lidy v. Sullivan*, 911 F.2d 1075, 1077 (5th Cir. 1990). The Second, Sixth, and Eighth Circuits require a showing that cross-examination is reasonably necessary. *Yancey v. Apfel*, 145 F.3d 106, 112–113 (2d Cir. 1998); *Flatford v. Chater*, 93 F.3d 1296, 1305–1307 (6th Cir. 1996); *Passmore v. Astrue*, 533 F.3d 658, 661–665 (8th Cir. 2008). That regulatory conflict is analogous, not controlling, but confirms recurring uncertainty over when professional evidence may be tested only on papers.

Question 1 neither asks for a live hearing on every application nor seeks review of the forfeited as-applied claim. It asks whether a final, immediately effective obligation may issue under a written rule that makes paper disposition the universal default without requiring the court to decide whether live process is necessary in the particular case.

Nor does the rule's current text make later process an enduring safeguard. It states that the court may redetermine compensation or ability to pay no later than thirty days after counsel is relieved, on a clock triggered when the fee claimant is relieved rather than by the paying parent. Cal. Rules of Court, rule 5.241(a)(2), (b)(3). That date passed. Ability to pay further illustrates why a required case-specific standard matters. Federal appointed-counsel recoupment decisions require an evidence-based current inquiry identifying available funds, although not categorically a full adversarial hearing. *United States v. Moore*, 666 F.3d 313, 320–323 (4th Cir. 2012). The record's later inability-to-pay finding illustrates that facial risk

without furnishing a separate as-applied ground.

Whether a State may adopt a mandatory ex parte application channel, coupled with a paper-disposition default and no required case-specific live hearing, for substantial fee obligations payable within 45 days of entry is a question this Court has not decided. The lower-court decisions above arise in adjacent settings and do not place the decision below in a square circuit split. They do, however, expose the unresolved boundary that the decision below crossed in a manner difficult to reconcile with *Yamasaki*, *Sniadach*, *Fuentes*, and *Doehr*. Review is warranted.

B. A No-Forum Sequence: The Promised Hearing Was Vacated and No Court Confirmed Authority to Hold It

The Court of Appeal dismissed the appeal from the Fee Application No. 2 orders as not presently appealable because they were "preliminary to a future evidentiary hearing." (App. 12–13, 32.) But the trial court had already vacated that hearing (App. 47), and the thirty-day period stated in rule 5.241(a)(2) and (b)(3) later passed. Petitioner relies on that deadline here as present California law bearing on 28 U.S.C. § 1257(a) finality; the state courts did not pass on its construction. Under the rule's current text, the result is a closed loop: fees became payable on papers; the promised safeguard was vacated; the stated redetermination period passed; and appellate review was denied on the premise that safeguard remained in the future. The hearing was concrete: the court had reserved whether Saign would testify, and Petitioner had announced a billing expert. (10 RT 7:17–28, 8:2–3, 12:16–13:3.)

Logan closely tracks that architecture. There, an agency failed to convene a hearing before a statutory deadline, and expiration of the deadline extinguished the claimant's cause of action. Because the loss followed from the established state system, a later tort action could not supply the process due. 455 U.S. at 426–427, 432–437. The State likewise cannot make a property deprivation final "by operation of law" without adjudication anywhere. *Id.* at 436; *Fuentes*, 407 U.S. at 81; *Mathews*, 424 U.S. at 333.

Williams v. Reed, 604 U.S. 168, 174–178 (2025), rejected a related catch-22 that withheld access to court until claimants completed the very administrative process whose delay they challenged. *Williams* concerned access under 42 U.S.C. § 1983 and expressly did not decide the due process merits, but its forum-access principle bears directly on reliance upon a route that cannot be completed. See *Reed v. Goertz*, 598 U.S. 230, 236–237 (2023) (a procedural due process claim becomes complete when the State fails to provide the required process).

Tax-refund cases provide a related but limited analogy: in that setting, a State may not hold out a clear postpayment remedy and then withdraw it after inducing reliance. *Reich v. Collins*, 513 U.S. 106, 110–113 (1994); *Newsweek, Inc. v. Florida Department of Revenue*, 522 U.S. 442, 443–445 (1998) (per curiam). *Office of the U.S. Trustee v. John Q. Hammons Fall 2006, LLC*, 602 U.S. 487, 503–504 (2024), described those decisions as addressing bait-and-switch schemes but held that they did not mandate a refund where a predeprivation challenge had been available and no refund remedy was guaranteed. Here the court did more than leave a remedy uncertain: it designated an evidentiary hearing for reallocation, then vacated it be-

fore the rule's thirty-day period passed.

Culley v. Marshall, 601 U.S. 377, 384–390 (2024), is not to the contrary. It rejected a separate preliminary retention hearing because a timely ultimate civil-forfeiture merits hearing remained available. Here no live merits hearing is required, and the particular hearing on which the appellate disposition depended was vacated, never reset, and appears unavailable under rule 5.241's current text.

A State may organize appealability and fee-modification timing however it chooses; what it may not do is arrange them so that no forum—trial or appellate, state or otherwise—ever tests a substantial, enforceable fee obligation a private appointee obtained ex parte. When the state ground said to defer review (prematurity) rests on a premise the current text of the State's own rules places in serious doubt, whether that ground is adequate to foreclose this Court's consideration is itself a federal question. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457–458 (1958); *Ford v. Georgia*, 498 U.S. 411, 423–424 (1991).

Nor would a merely theoretical corrective remedy automatically answer a deprivation caused by written rules. Where a foreseeable deprivation is practicable to prevent and the State has delegated the power to effect it, postdeprivation process does not automatically excuse the missing safeguards. *Zinermon v. Burch*, 494 U.S. 113, 136–139 (1990).

The circuits nevertheless differ over the breadth of substitute postdeprivation process. The Eleventh Circuit treats adequate state corrective process as defeating claims involving allegedly biased officials or a denied name-clearing hearing even when the plaintiff did not use it. *McKinney v. Pate*, 20 F.3d 1550, 1562–1565

(11th Cir. 1994) (en banc); *Cotton v. Jackson*, 216 F.3d 1328, 1331–1333 (11th Cir. 2000). The Fifth Circuit took the narrower approach in analogous fee litigation: because court fees were systematically imposed as official policy, supposed mandamus and other postdeprivation remedies were irrelevant. *Woodard v. Andrus*, 419 F.3d 348, 353–354 (5th Cir. 2005). That § 1983 tension was not passed on below and matters here only if a respondent identifies a theoretical remedy that was not actually usable. If no remedy existed at all, *Logan* and *Zinermon* resolve the point without reaching the broader circuit disagreement.

C. The Questions Are Important and Recurring

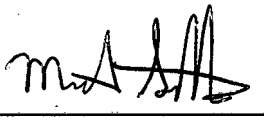
California Family Code § 3150 authorizes the appointment of minors' counsel in contested custody cases statewide, and Santa Clara County Local Family Rule 9(C)(1) governs every application for payment of such counsel's fees in that county. The prescribed procedure is written policy, not an aberration, and its ex parte mandate has remained in force through the rule's January 1, 2026 amendment. The rule 5.241 thirty-day limitation applies in every California minors'-counsel case. The decisions above also show that the boundary between adequate paper process and necessary live testing recurs in benefit adjudication, substantial monetary sanctions, and appointed-counsel recoupment, although no circuit has confronted this precise state fee scheme. Nor are parents' Fourteenth Amendment claims against California policies touching their children beyond this Court's attention: in *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam), the Court intervened at the stay stage to restore an injunction for parents pressing free exercise and due

process claims against state policies withholding information about their own children. The question here presents the same concern in its most basic procedural form—whether a parent may be bound to pay for his child's court-appointed counsel without the case-specific hearing state law promised. The Court of Appeal's unpublished opinion provides no precedential guidance, and the California Supreme Court declined review.

VI. CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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