APP. NO. 26A-______

In the Supreme Court of the United States

M.W.,

Applicant,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, N.G., AND O.A.,

Respondents.

To the Honorable Elena Kagan,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Ninth Circuit

EMERGENCY APPLICATION FOR ADMINISTRATIVE STAY AND STAY PENDING PETITION FOR CERTIORARI

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PARTIES TO THE PROCEEDING

Applicant M.W. was respondent in the trial court and petitioner in the California Court of Appeal and the California Supreme Court. Respondent Superior Court of California, County of Los Angeles, was the tribunal in the trial court and respondent in the California Court of Appeal and the California Supreme Court. Respondents N.G. and O.A., the Commissioning Parties, were petitioners in the trial court and real parties in interest in the California Court of Appeal and California Supreme Court.

LIST OF ALL PROCEEDINGS

California Superior Court, Los Angeles County, *N.G.* v. *M.W.*, No. 26STPT01581 (judgment June 22, 2026, order denying stay July 17, 2026).

California Court of Appeal, Second Appellate District, *N.G.* v. *M.W.*, case no. pending (appeal from June 22, 2026 judgment).

California Court of Appeal, Second Appellate District, *M.W.* v. *Superior Court*, B356235 (writ denied July 27, 2026), B355938 (writ denied July 31, 2026), B356109 (writ denied Aug. 7, 2026).

California Supreme Court, *M.W.* v. *Superior Court*, S297974 (Aug. 26, 2026).

Alaska Superior Court, Third Judicial District at Anchorage, *McKenna West* v. *A.B. et al.*, No. 3AN-26-07180 CI.

Texas District Court, 301st Judicial District, Dallas County, No. DF-26-09446, *In re Interest of an Unborn Child* (Aug. 11, 2026, and Sept. 2, 2026).

DECISIONS BELOW

The Superior Court's findings that M.W. made a general appearance are unreported and reprinted at Sealed Appendix A. The Superior Court's findings of parentage for the Commissioning Parties are unreported and reprinted at Sealed Appendix B. The Superior Court's denial of stay is unreported and reprinted at Sealed Appendix C. The California Court of Appeal's orders denying M.W.'s writ petitions are unreported and reprinted at Public Appendix O. The California Supreme Court's order denying M.W.'s petition for review and stay is unreported and reprinted within Public Appendix O.

JURISDICTION

The Commissioning Parties filed their petition in California Superior Court against M.W. on May 22, 2026, seeking a judgment of parentage of Baby G.,[1] the unborn child M.W. was carrying under a surrogacy contract with the Commissioning Parties. M.W. specially appeared to contest jurisdiction and forum and moved to quash service of the summons. App.F; App.E.11; App.M.12. On June 12, the Superior Court recharacterized M.W.'s special appearance as a general appearance manifesting consent to its jurisdiction, App.A.63–64, 110, but it did not issue a written order denying the motion to quash. On June 22, the Superior Court entered a judgment of parentage for the Commissioning Parties, which was stayed until Baby G's birth, App.B.227–31, which occurred on August 12.

M.W. filed an appeal of the judgment on June 23 and then filed a motion for a stay pending appeal, which the Superior Court denied on July 17. See App.C. M.W. filed timely petitions with the California Court of Appeal seeking a writ of mandate and stay or writ of supersedeas pending appeal on July 21, July 29, and August 3. See *ViaView, Inc.* v. *Retzlaff*, 1 Cal.App.5th 198, 212 (2016). Each was summarily denied, the last on August 7. App.O.1–10. The same day, M.W. petitioned the California Supreme Court for review and a stay, which it denied on August 26. App.O.12.

Because California makes a writ of mandate the ordinary vehicle to review an adverse ruling on personal jurisdiction, Cal. Code Civ. Proc. § 418.10(c), the California Supreme Court's denial of review is a final order under 28 U.S.C. 1257(a). And with a stay sought in and denied by every court below per Rule 23, this Court has jurisdiction to issue the requested stay under 28 U.S.C. 1257(a), 1651(a), and 2101(f).

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[1] After Baby G.'s birth, the Commissioning Parties named him Baby R. To avoid confusion with proceedings below, this application continues to refer to him as Baby G.

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To the Honorable Elena Kagan, as Circuit Justice for the Ninth Circuit:

This application seeks a stay of an ex parte judgment of parentage issued under California's expedited procedure for parentage awards under surrogacy contracts. That judgment was entered in a gross violation of federal due process that warrants this Court's review and reversal. To prevent irreparable harm in the interim, this Court should grant a stay.

The facts that gave rise to this dispute are both egregious and extraordinary. After a fetal diagnosis of a serious but treatable cardiac defect, Respondents N.G. and O.A., the Commissioning Parties, demanded that Applicant M.W., an Alaska woman, abort the child she was carrying for them. They recently testified they have no regrets about that demand. And they continue to defend their position in court, challenging an order requiring life-saving care and suing M.W. for damages for refusing to abort.

The procedural history was nearly as bad. M.W. was haled into California court on two days' notice, without proper service, and in violation of a forum selection clause requiring litigation in Alaska. Although M.W. made a special appearance, solely to challenge personal jurisdiction and forum, the Los Angeles Superior Court reached a shocking conclusion sua sponte: that by submitting 147 pages of exhibits in support of her jurisdictional challenge, M.W. had addressed the "substance of the issues" and thus manifested consent to litigate on the merits. App.A.64.

That ruling presents an important question that was raised but not resolved in both *Mallory* v. *Norfolk S. Ry. Co.*, 600 U.S. 122 (2023), and *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1 (2025): whether the Fourteenth Amendment's due process clause limits a state's ability to find that a litigant has consented to its jurisdiction. This case presents an ideal opportunity to resolve that question, since, unlike *Mallory* and *Fuld*, there is nothing in the record that would prevent the Court from reaching it. M.W. contested the trial court's jurisdiction unambiguously and repeatedly, and there is no alternate basis for jurisdiction since the Commissioning Parties failed to properly serve her. And M.W. is likely to prevail on the question because any reasonable view of consent would recognize that "no" does not mean "yes."

The stakes of the decisions below are enormous. The California courts have left the judgment in place, and other states have now enforced it and given it full faith and credit—including Texas, where the child, Baby G., was born last month. Ordinarily, M.W. would have been deemed Baby G.'s mother under Texas law by virtue of giving birth to him. But because of the unlawful California judgment, she has been dismissed with prejudice from the Texas proceedings and denied any information about or control over the medically fragile child.

That irreparable harm from Texas's enforcement of the California judgment matters immensely because Baby G. is in the midst of a course of several life-saving surgeries needed to treat his condition. With the assistance of the Texas Attorney General, M.W. obtained a last-minute order requiring life-saving care for Baby G. just a day before his birth. But the Commissioning Parties opposed that order and now seek to rescind it. And because the Texas Attorney General has now withdrawn from the case and M.W. has been dismissed from it, no remaining party defends that order, which may be reversed or lifted at any moment. Indeed, the child could be removed from the Texas hospital and taken to California for hospice—despite his treatable condition—around **September 17**, if not sooner.

A stay is needed to preserve the status quo and ensure M.W. can advocate for her rights and remain informed about Baby G. during this critical time in his young life. This Court has previously granted emergency stays of void parentage judgments, *V.L.* v. *E.L.*, No. 15A522 (Dec. 14, 2015), and last Term, it granted such relief to protect the right of a parent to "participat[e] in decisions regarding … children's … health." *Mirabelli* v. *Bonta*, 607 U.S. 492, 497 (2026) (per curiam). Relief is all the more warranted here, given that the stakes involve the child's life.

Without a stay, the Commissioning Parties may halt life-saving care for Baby G. before this Court can even consider a petition for certiorari, much less rule on the merits. And that can happen before M.W. gets word of anything. The resulting harm cannot be redressed on later review if Baby G. does not live to see it. These urgent needs of M.W. and Baby G. outweigh whatever interest the Commissioning Parties may have in enforcing a void judgment. Because M.W. is likely to prevail on the due-process question before this Court, she is entitled to an administrative stay and a stay pending certiorari or, in the alternative, certiorari and summary reversal. Either way, she needs relief immediately.

STATEMENT OF THE CASE

This case centers around the implosion of a surrogacy contract after invocation of its clause to force an abortion. The Commissioning Parties, a California couple, executed a surrogacy contract with M.W., a single mother and registered nurse from Anchorage, Alaska. App.P.2. The contract, negotiated when M.W. was represented by prior counsel paid by the Commissioning Parties, purported to give them the right to demand an abortion of any child with Down syndrome or a fetal abnormality. App.I.10–11. It also guaranteed that any legal proceedings would be filed *in Alaska*. *Id.* 2–3. Per the contract, a male embryo was implanted in M.W.'s womb in December 2025, and the parties prepared for the early September due date by filing a joint pre-birth parentage action in Alaska. App.P.13–14, 16–17.

I. After Baby G.'s diagnosis, Commissioning Parties demand abortion.

Everything changed when a 20-week anatomy scan in April showed Baby G had HLHS. App.P.17. Untreated, the condition is fatal within days of birth.[2] But a well-known, proven series of procedures exists, beginning with a first surgery within days of birth, that offers Baby G. a near-100% chance of survival beyond his first

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[2] See Mayo Clinic, HLHS, https://www.mayoclinic.org/diseases-conditions/hypoplastic-left-heart-syndrome/diagnosis-treatment/drc-20350605.

year.[3] To get that care, Baby G. had to be born outside Alaska. App.P.17–18; see also App.J.39–40.

The Commissioning Parties didn't want a child with that condition. So, within minutes of receiving the diagnosis, N.G. asked whether it was possible to abort him instead. App.J.41–42. M.W., in contrast, began searching immediately for delivery centers where Baby G. could receive life-saving surgery, identifying Texas as a source of care where she also had family support. App.P.18, 36, 48. She found and forwarded encouraging stories to the Commissioning Parties of children born with HLHS who were living happy and healthy lives. *Id.*18. In fact, M.W. herself has a friend whose daughter was born with HLHS and is now a thriving teenager. App.J.42.

Instead, O.A. informed M.W. the day after the diagnosis that the Commissioning Parties had already taken all their ultrasound photos of Baby G. down from their refrigerator. *Id.*44–45. Within days, they demanded that she undergo a two-day, late-term abortion in Seattle to end Baby G's life. *Id.*46–47. The Alaska parentage proceeding was dismissed due to the expected abortion. App.P.20.

II. M.W. declines the Commissioning Parties' demands to abort Baby G.

After much deliberation, M.W. refused to end Baby G.'s life and declined to attend the abortion appointment. App.J.51. She told the surrogacy agency that she could not live with herself if she terminated "this precious baby" whom she felt moving in her womb, and she hoped that the couple would have a change of heart. App.P.22. If the couple still decided that they did not want Baby G., she offered to let the Commissioning Parties "cut ties" so that they would have no further financial obligations to the child or to her. *Id.*5. She would raise the child herself or arrange for another to adopt him. *Ibid.*

[3] Csaba Siffel et al., *Survival of Children With Hypoplastic Left Heart Syndrome*, 21 Pediatrics 136 (2015), https://pmc.ncbi.nlm.nih.gov/articles/PMC4663985/ (noting 90% success rate nationally). The hospital where Baby G. was born has a 100% survival rate for the first surgery he needed.

But the Commissioning Parties doubled down. They invoked the contract's forced-abortion clause and repeatedly demanded she terminate Baby G, immediately. *Id.*5–6. They even enlisted the attorney representing M.W. at that time in this effort, having her send a demand letter to M.W. that threatened her with exorbitant financial penalties of more than $250,000 should she decline to kill the child. *Id.*27–28. That attorney then hired a process server to deliver that letter to her client. *Id.*27.

Still, M.W. did not back down. She did not abort Baby G., and she fired her then-attorney. With the Commissioning Parties having now sought to kill the child they promised to raise, M.W. committed herself to saving his life. And the Commissioning Parties stopped paying her. *Id.*32–33.

III. The Commissioning Parties pivot to California but fail to serve M.W.

Unable to obtain the abortion they demanded, the Commissioning Parties pursued the same ends through a different channel. They filed a new parentage action, this time in the Los Angeles Superior Court, in violation of the contract's forum-selection clause. See App.E.5. But they refused to commit to preserving Baby G.'s life. App.B.150–52. Thus, their claims for parentage focused on the right to make medical decisions on Baby G.'s behalf, while claiming—even up to the day before his birth—that it is impossible to say what those decisions would be.

The Commissioning Parties failed to properly serve M.W. with the petition. App.E.2. They did not personally serve her, and when they attempted substituted service via FedEx, see App.K, the package was delivered to M.W.'s babysitter, who is not a member of her household and was not informed of the package's contents. *Id.*; see App.G.142; Cal. Code Civ. Proc. § 415.20(b) (listing statutory requirements for substituted service).

On two days' notice, the Commissioning Parties changed course and applied for an ex parte hearing to establish parentage under California Family Code § 7962, in violation of the parties' Alaska venue agreement. See App.E.5. California's statute allows a court to issue an ex parte judgment of parentage upon proof of certain minimal elements of a surrogacy contract. Cal. Fam. Code § 7962(f)(2). It does not consider whether the parties have performed the contract—for example, it did not account for the Commissioning Parties' decision to stop paying M.W. when she refused to abort Baby G. See App.P.32–33. And California courts have held that the fact that a putative parent may have sought to abort the child is irrelevant. See *C.M.* v. *M.C.*, 7 Cal.App.5th 1188 (2017). The Respondent Court granted the couple's ex parte hearing request and heard the matter just two days later. See App.L.

IV. The trial court treats jurisdictional objections as consent.

Forced to retain counsel in California in two days, M.W. filed a notice of special appearance that she would appear to contest personal jurisdiction and the appropriateness of the forum. App.F. The same day, M.W. filed suit in Alaska. App.Q.1–5. The Alaska action seeks parentage to protect Baby G.'s life and asserts legal claims against the Commissioning Parties, their attorneys, the surrogacy agency, and her own former attorney for legal malpractice, civil conspiracy, and other harms. App.P.36–69. M.W. also moved for a TRO to prevent the Commissioning Parties from prosecuting the California action in violation of the forum selection clause. App.Q.4.

From the outset of the California ex parte proceedings, M.W. carefully limited her arguments to jurisdictional and forum issues. Her counsel specifically stated that he was "making a special appearance." App.L.2. When the trial court first substantively addressed M.W.'s counsel, the attorney expressed his reluctance to discuss the dispute's merits and stated that the proper forum for resolving this dispute was Alaska. *Id.*11–12. While the trial court acknowledged M.W.'s counsel's efforts to argue only jurisdiction and forum, the Court directed him to state his position on the underlying merits, which counsel then offered only as "back story." *Id.*10–11.

At the first hearing, the trial court ordered the parties to brief the merits of the dispute before returning for another session. *Id.*22–26. M.W. complied with the court's direction to submit a brief, but she expressly refused to address the merits "because there are no merits to engage—this Court lacks jurisdiction." App.E.11. Instead, she limited the brief and all requested relief to matters of personal jurisdiction and forum, *ibid.*, proffering several materials, including the complaint she had filed in Alaska, in support. App.E.2–5. Two days later, she also filed a motion to quash service of the summons for lack of jurisdiction. See App.M.6.

The trial court read these filings as standing for the opposite. At the next hearing on June 12, M.W.'s counsel repeatedly declared that he was only making a special appearance, declining to address the merits, App.A.4, 9, 13, 30, emphasizing that the trial court had to address the lack of service before it could proceed to the merits. *Id.*14. Yet rather than resolving those objections, the trial court held sua sponte that M.W. had made a *general* appearance and *consented* to jurisdiction—in its words, because she did not altogether refuse to "submit anything of substance." *Id.*63–64. In the trial court's telling, M.W.'s brief on jurisdiction and forum effected a general appearance that went "to the substance of the issues" because, with attachments, it consisted of 147 pages. *Id.*64.

The court did not identify any substantive issue that M.W.'s jurisdictional brief addressed or any substantive request for relief it made, and it denied M.W.'s request for an opportunity to brief the question. App.A.60–61. App.A.63–64. It also cited M.W.'s supposed evasion of service as evidence that she had consented to the jurisdiction of the court whose service it said she was evading. *Id.* The trial court never issued a written order denying M.W.'s motion to quash, thus failing to trigger any deadline for M.W. to seek a writ. See *ViaView*, 1 Cal.App.5th at 212.

V. The trial court enters judgment, which Alaska and Texas enforce.

The contrast between the parties was stark. Because M.W. sought parentage to protect Baby G.'s life, she testified that, if the Commissioning Parties would commit to giving him lifesaving care, she would withdraw her parentage claim. App.B.66.

The Commissioning Parties, in contrast, made no such commitment. Instead, N.G. testified that the only reason she and O.A. had changed their mind on aborting Baby G. was because M.W. had refused to do so. *Id.*137–39. When N.G. testified about her plans for Baby G., she simply said she would follow doctors' recommendations regarding "appropriate" care. *Id.*148–50. Hedging and equivocal, she refused to commit to providing Baby G. with the lifesaving care he would require. *Id.* That contrast was evident to the trial court—as it acknowledged, the dispute "[m]ay be a question of life and death" for Baby G. App.B.201.

Yet even that did not stop the trial court, which issued the ex parte parentage judgment the Commissioning Parties requested. App.B.227–31. A little more than an hour later—but too late to stop the judgment—the Alaska Court entered a temporary restraining order enjoining the Commissioning Parties from prosecuting the California action in violation of the surrogacy agreement's forum selection clause. See App.Q.9. M.W. appealed the California judgment the next day. App.M.10.

The parties' litigation focus then shifted to Alaska, which gave full faith and credit to the California judgment. See App.Q.9 (6/29/26 order granting motion to set aside TRO). M.W. then notified the Alaska court that she had moved to Texas on her doctors' advice to ensure that Baby G. was born at a center qualified to give him excellent treatment. App.Q.11 (7/17/26 notice of factual development). The Commissioning Parties then filed a Texas proceeding to enforce the California judgment. See No. DF-26-09446, *In re Interest of an Unborn Child* (July 29, 2026).

Meanwhile, M.W. worked her way through the appellate process in California. The trial court denied her motion for a stay pending appeal on July 17. App.C. Two business days later, M.W. filed a petition for writ of mandate (California's vehicle to review a personal jurisdiction ruling) and a stay. The Court of Appeal, in de novo review, see *Hunt* v. *Superior Ct.*, 81 Cal.App.4th 901, 905 (2000), summarily denied the writ. See App.O.1–3.[4] The same day, M.W. petitioned the California Supreme Court for review of that final decision and a stay. See *N.G.* v. *M.W.*, S97974 (Cal.).

VI. After Baby G.'s birth, M.W. is shut out from information and care.

Just before M.W. reached her 37th week, her doctors recommended labor be induced immediately for the sake of Baby G.'s health. That recommendation led to several emergency filings in the Texas enforcement proceeding—including a motion by the Texas Attorney General seeking an order requiring the hospital to give Baby G. life-saving care.[5] In a hearing just one day before Baby G.'s birth, the Commissioning Parties *still* refused to commit to authorizing any life-saving care and opposed the Texas Attorney General's request for such an order.

Ultimately, the trial court entered a modified version of the order requested by the Texas Attorney General, which appointed a guardian ad litem for Baby G., directed the hospital to provide life-saving care, and prohibited Baby G.'s removal from Texas. App.H.4–10. But at the same time, the Texas court granted a motion by the Commissioning Parties to enforce the California judgment and terminate M.W.'s access to Baby G. after his birth. App.H.1–3.

The next day, M.W. gave birth to Baby G., who was immediately taken from her and tendered to the Commissioning Parties. Bound by the order the Texas Attorney General obtained, the hospital performed his first required surgery.[6] But the Texas Attorney General then withdrew from the proceeding. And the Commissioning

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[4] The Court of Appeal summarily denied M.W.'s original petition on July 27, stating that M.W. had furnished an inadequate record. App.O.1–3. On July 29, M.W. refiled with the only transcript not included in her original petition, but the Court of Appeal again summarily denied the writ, finding the record still inadequate. *Id.*5–8. When M.W. then filed the complete record of every brief in the trial court, the Court of Appeal denied the writ without any reasoning. *Id.*10.

[5] Tex. Br. in Supp. of Intervention and Request for Life-Saving Treatment, https://www.texasattorneygeneral.gov/sites/default/files/images/press/G%20 Brief.pdf.

[6] Jordan Freiman, *Baby with heart defect at center of surrogate dispute receives first surgery, parents' lawyer says*, CBS News (Aug. 17, 2026), https://www.cbsnews.com/news/texas-surrogacy-dispute-baby-heart-surgery/.

Parties now challenge that order. App.N.1–3. Baby G. needs two more surgeries—one a few months after birth, and the next at or after two years—and the Commissioning Parties have stated they will not provide further updates about his condition.[7]

Finally, on September 2, the Texas court granted full faith and credit to the California judgment and dismissed M.W. from the proceeding with prejudice. App.D.2, 4. As a result, future care for Baby G. is uncertain and unknowable. The Commissioning Parties concede Baby G.'s condition is "critical,"[8] but they continue to challenge the order requiring life-saving care. App.N.1–3. And with M.W. dismissed from the case and the Texas Attorney General withdrawn, there is no party left in the case to defend that order, or even to be informed about Baby G.'s condition.

At the last hearing in Texas, N.G. testified that she did not regret demanding that M.W. abort the child she now claimed to want to save. App.G.75–76, 158. This testimony is consistent with the Commissioning Parties' litigation goals: they have sued M.W. for at least $100,000 and are seeking punitive damages for her refusal to abort a viable baby with a treatable heart condition. App.R.79.

Soon after the Texas hearing, the California Supreme Court denied M.W.'s petition for review and request for a stay. App.O.12. M.W. has sought relief in every court below and been denied. She has even sought resolution—in court and out—by offering the Commissioning Parties to resolve this dispute through their commitment to life-saving care, an offer they have rebuffed and ignored at every turn. With her case now dismissed in Texas last week, M.W. timely seeks a stay of the California judgment from this Court—the last one that can provide it—pending a petition for certiorari. If the Court stays the California trial-court ruling, M.W. can advocate for her rights as Baby G's natural mother, see Tex. Fam. Code Ann. § 160.201(a)(1), and remain informed about his condition to ensure that Baby G. receives all the medical

[7] Freiman, *supra*.
[8] *Id.*

care he needs. But without relief, she will receive no further information about the child she carried for 37 weeks and fought to save. And there is no certainty that he will survive until this Court's decision on a petition for certiorari.

ARGUMENT

I. The Court should grant a stay pending a petition for certiorari.

M.W. meets all requirements for a stay of the judgment. She has "made a strong showing that [she] is likely to succeed" on her challenge to the California courts' jurisdictional rulings. *Nken* v. *Holder*, 556 U.S. 418, 434 (2009) (citation modified). The issue presented by that challenge meets the "certworthiness" requirement, *Labrador* v. *Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring); *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring), as an important constitutional question this Court has expressly left open in its prior decisions. M.W. will "be irreparably injured absent a stay" because enforcement of the judgment is depriving her of her right to protect Baby G. life's, which is at stake in these proceedings. *Nken*, 556 U.S. at 434 (citation modified). That harm vastly outweighs any impact on the Commissioning Parties, who have no legitimate interest in a void judgment, and the public interest decidedly favors M.W. See *ibid.* The Court should issue a stay to preserve the status quo.

A. M.W. will likely prevail on a question that warrants review.

M.W. "g[ave] birth" to Baby G. in Texas, and per the ordinary operation of Texas law, would thereby be "established" as his mother. Tex. Fam. Code Ann. § 160.201(a)(1). This Court has upheld the constitutionality of such statutes that confer parentage without regard to genetics—even in cases like this with facts that "are, we must hope, extraordinary." *Michael H.* v. *Gerald D.*, 491 U.S. 110, 113 (1989). Once those rights are conferred by state law, they cannot be stripped away lightly. Even "[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Santosky* v. *Kramer*, 455 U.S. 745, 753–54 (1982).

That didn't happen here. The California courts stripped away M.W.'s rights to the child she carried for 37 weeks as she fought to save his life from those who sought him dead. They did so in overt breach of due process by construing M.W.'s *challenge* to jurisdiction and forum as *consent*. But because the Texas court has presumed the California judgment was rendered with jurisdiction, *V.L.* v. *E.L.*, 577 U.S. 404, 408 (2016) (per curiam), M.W. has been deprived of all access and information she would otherwise have to Baby G. under Texas law. She will likely prevail on the due process question she seeks to raise, and it is one on which this Court would likely grant review.

1. The due process limits of consent warrant review.

Since the Commissioning Parties failed to properly serve M.W. (and the trial court did not find otherwise), consent was the sole ground of the California courts' assertion of personal jurisdiction. This Court has recognized consent "is a separate basis for personal jurisdiction," *Mallory*, 600 U.S. at 153 (Alito, J., concurring in the judgment), having long held that "regardless of the power of the State to serve process, an individual may submit to the jurisdiction of the court by appearance." *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). Thus, this Court has recognized "[a] variety of legal arrangements … to represent express or implied consent to the personal jurisdiction of the court." *Id.* at 703. For example, "parties to a contract may agree in advance to submit to the jurisdiction of a given court," *National Equipment Rental, Ltd.* v. *Szukhent*, 375 U.S. 311, 316 (1964), or may do so by entry of a stipulation, *Petrowski* v. *Hawkeye-Security Insurance Co.*, 350 U.S. 495 (1956) (per curiam). Also, a defendant's compliance with state laws requiring consent to jurisdiction as a condition of doing business does "not deprive the defendant of due process of law even if it took the defendant by surprise."

Pennsylvania Fire Ins. Co. of Phila. v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95 (1917). And of course, "[a] defendant who appears 'specially' to contest jurisdiction preserves his defense, but one who forgets can lose his." *Mallory*, 600 U.S. at 145 (Gorsuch, J.).

Critically, while "waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law," *Brookhart* v. *Janis*, 384 U.S. 1, 4 (1966), this Court has not yet resolved whether and how due process limits a state's ability to find that a litigant has consented to its jurisdiction. On the one hand, the Court's personal jurisdiction jurisprudence has treated a state's finding of consent as dispensing with due process concerns, see *York* v. *Texas*, 137 U.S. 15, 20 (1890), suggesting at its high-water mark that conduct need not even be "voluntary" to establish consent. *Insurance Corp. of Ireland*, 456 U.S. at 704–05. But the Court's fractured *Mallory* decision raised the concern of whether giving states carte blanche to assert litigants' consent would swallow due process whole. That tension needs this Court's resolution.

The clash of opinions in *Mallory* sets the stage for this application. The Court's 4–4–1 split in *Mallory* concerned a Pennsylvania statute construed to require foreign corporations to consent to general jurisdiction in the commonwealth as a condition of doing business there. 600 U.S. at 144 (Gorsuch, J.). Writing for four members of the Court, Justice Gorsuch upheld Pennsylvania's longstanding consent-by-registration regime. See *ibid.* Discussing the wide latitude this Court has given to state-law consent regimes, Justice Gorsuch explained that "[t]o date, our personal jurisdiction cases have never found a Due Process Clause problem sounding in federalism when an out-of-state defendant submits to suit in the forum State." *Id.* at 144; accord *id.* at 156 (Alito, J., concurring in the judgment). Because the *Mallory* defendant complied with a statutory regime deemed by state law to constitute consent, the controlling plurality would hold that jurisdiction was consistent with due process. *Id.* at 145–46.

But Justice Barrett's dissent for four other members of the Court expressed concern with the reach of this reasoning: if defendants "impliedly consent" to expansive jurisdiction by complying with such a law, then a state could "defeat the Due Process Clause by adopting a law *at odds with the Due Process Clause*." *Id.* at 168 (Barrett, J., dissenting) (emphasis added). Declining to place due process limits on such theories would mean that "[b]y relabeling their long-arm statutes, States may now manufacture 'consent' to personal jurisdiction." *Id.* at 164 (Barrett, J., dissenting). Such unlimited power to determine what constitutes consent would authorize a state to override due process in its recognition of consent jurisdiction. *Ibid*. And that rule would return personal-jurisdiction doctrine to the era of "legal fictions" of "implied consent" that are incompatible with *International Shoe*. *Id.* at 175–76 (Barrett, J., dissenting).

Finally, Justice Alito joined neither opinion. He "presume[d] that by registering," the defendant had "consented to all valid conditions imposed by state law," but would not have reached the question of whether "the Constitution allows a State to impose such a registration requirement." *Id.* at 150–51 (Alito, J., concurring in part and in the judgment).

Whether due process constrains jurisdiction by consent still needs an answer, especially since *Mallory* did not produce binding precedent on that question. Justice Gorsuch's controlling plurality declined to stake out a firm position on whether there are any due-process limits on consent, stating only that it would "not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." *Id.* at 135–36 (Gorsuch, J.). But Justice Barrett's dissent read the controlling plurality as imposing no principled limits—she suggested it would hold that "because a defendant can *waive* its personal jurisdiction right, a State can never overreach in demanding its *relinquishment*." *Id.* at 170 (Barrett, J., dissenting). Regardless of whether that characterization of the controlling plurality is accurate, the dispute between these two positions presents an important and unsettled question that only this Court can resolve.

Nor did the Court leave the question alone after *Mallory*. Instead, it granted review in *Fuld*, which again presented an opportunity to decide whether due process imposes any limits on jurisdiction by consent. That case involved the constitutionality of a federal law providing that certain terrorist organizations "shall be deemed to have consented to personal jurisdiction" in certain tort actions. *Fuld*, 606 U.S. at 8 (quoting 18 U.S.C. 2334(e)(1), (5)). The Second Circuit held that provision "inconsistent with the Due Process Clause of the Fifth Amendment," due to the lack of a record that "the defendants have agreed to submit to the jurisdiction of the United States courts." *Fuld* v. *Palestine Liberation Org.*, 82 F.4th 74, 87, 91 (2d Cir. 2023). But this Court's opinion did not address that conclusion—it reversed because "the statute ties the assertion of jurisdiction to predicate conduct that in and of itself bears a meaningful relationship to the United States." *Fuld*, 606 U.S. at 23. As a result, the Court did "not further consider the matter through the lens of consent." *Ibid.*

Even still, the opinions in the Second Circuit in *Fuld* illustrated the weightiness of the issues. As Judge Bianco explained, upholding the statute under a consent framework would substitute "the well-established requirement that *consent* be knowing and voluntary" with the minimal requirement "that a person's *conduct* be knowing and voluntary, and that the conduct have some relation to the forum." *Fuld* v. *Palestine Liberation Org.*, 101 F.4th 190, 196–97 (2d Cir. 2024) (Bianco, J., concurring in the denial of rehearing en banc). That would make consent jurisdiction essentially limitless, see *ibid.*, and thus render consent itself meaningless.

Deciding that question is important not only to protect individual rights, but also to promote federalism and state sovereignty. As Justice Barrett observed in *Mallory*, this Court has "emphasized … in case after case" that limits on personal jurisdiction "are a consequence of territorial limitations on the power of the respective

States." 600 U.S. at 169 (Barrett, J., dissenting) (quotation omitted); see also *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294 (1980) ("[T]he Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment."). Justice Alito's concurrence likewise recognized that "constitutional restrictions on state court jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation,' but reflect 'territorial limitations' on state power." *Mallory*, 600 U.S. at 156 (Alito, J., concurring in the judgment) (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958)).

Indeed, while the due-process clause is primarily a concern of individual rights, if a state exercises consent jurisdiction "that ignores the territorial boundaries on its power, federalism interests are implicated too." *Mallory*, 600 U.S. at 169 (Barrett, J., dissenting). As this Court recognized in another case that trimmed back California's jurisdictional overreach, these "federalism interest[s] may be decisive." *Bristol-Myers Squibb Co.* v. *Superior Ct. of Cal., S.F. Cnty.*, 582 U.S. 255, 263 (2017). The controlling plurality in *Mallory* likewise recognized the validity of these concerns, noting that the Court's personal jurisdiction cases have "discussed the federalism implications of one State's assertion of jurisdiction over the corporate residents of another." 600 U.S. at 144.

Those limits on the states' territorial sovereignty matter especially for California, where "exorbitant" and "grasping" assertions of jurisdiction under its long-arm statutes have often led this Court to intervene and impose limits. See *Daimler AG* v. *Bauman*, 571 U.S. 117, 138–39 (2014); see also *Bristol-Myers Squibb*, 582 U.S. at 263. Indeed, this is not even the first time the Los Angeles Superior Court has made such sweeping assertions of jurisdiction by consent, the California courts have shirked meaningful review, and the issue was presented to this Court. See *Pfizer Inc.* v. *Superior Court*, No. 19-278 (U.S.) (cert. denied Nov. 25, 2019). If such conduct continues to stand, then state courts can, like the California courts here, hold that the very action of opposing their jurisdiction operates as consent to it.

2. The California consent findings violate due process.

M.W. is likely to prevail on this important question. If any findings of consent to jurisdiction offend due process, surely the rulings of the California courts in this case do. M.W. rigorously asserted and preserved her jurisdictional objections via special appearance. She made no general appearance—no manifestation of consent that would suggest she had consented to the California courts rendering a decision on the merits. Yet she was haled into California court on two days' notice in violation of a forum-selection clause, then held to have consented to California's jurisdiction by the mere act of opposing it. That is not consent by any measure, and declaring that it is violates due process.

First, just one day after receiving notice of the ex parte proceeding and one day before it was to commence, M.W.'s counsel filed a notice of "special" appearance, stating that she was not properly served and was preserving her jurisdictional arguments. App.F.

Second, M.W.'s counsel specially appeared at the ex parte parentage hearing, expressly noting he was specially appearing and was not there to discuss the merits. App.L.2, 9–10. The trial court recognized that: "I know you don't want to get into the merits of it, but the merits do matter to the extent that I understand what's actually happening." *Id.*10. To the extent counsel touched on the merits, he did so only as background and in direct response to the Court's direct request to inform it of what was happening. M.W.'s counsel said only that the merits should be "resolved in Alaska," *Id.*14, a forum objection that does not constitute a general appearance. Cal. Code Civ. Proc. § 418.10(d).

Third, after the trial court directed the parties to brief the merits, M.W. filed her court-directed opposition but specifically declined to address the merits. As she stated, she did "*not* engage on the merits because there are no merits to engage—this Court lacks jurisdiction." App.E.11. Instead, M.W. raised her jurisdiction and forum objections, *id.*6–11, and only asked the California court to quash service or dismiss or stay in favor of litigation in Alaska. *Id.*11. She then moved to quash. See App.M.12.

Despite all that, the trial court determined this was a general appearance by characterizing M.W.'s court-ordered filings as going "to the substance of the issues in this case." App.A.63. Its only explanation on that point? That M.W.'s opposition brief was "a 147-page document," *id.*64, as though the volume of exhibits could transform a jurisdictional challenge into consent on the merits. The trial court never identified a substantive issue that M.W. had addressed—nor could it, since the facts her brief recited concerning the Alaska proceeding were offered solely to support her request to defer to that forum. App.E.2–5, 8–9. The trial court even cited a finding that M.W. had resisted service as evidence that she had consented to the jurisdiction of the court whose service it said she was resisting. *Id.*63–64. And while the court later said M.W. had sought "a denial of the ex parte relief on the merits," App.J.12, that is simply incorrect: her brief sought relief related *only* to jurisdiction and inconvenient forum. App.E.6–11.

If any case presents a due-process limit on when state courts can find consent to jurisdiction, this is it. When "a defendant *contests* the court's authority," due process requires a court to "determine whether it can nevertheless assert coercive power over the defendant." *Mallory*, 600 U.S. at 164 (Barrett, J., dissenting). Yet here, the trial court found that M.W.'s challenge to its authority established consent to that jurisdiction. That finding cannot withstand due process.

The due process problems with these findings are even more troubling against the backdrop of California law. While states are free to dictate the process by which they will adjudicate jurisdictional objections, see *York*, 137 U.S. at 20, due process forbids a "bait and switch" that would change the rules "unfairly, in *midcourse*." *Reich*

v. *Collins*, 513 U.S. 106, 111 (1994). That is exactly what happened here, where California procedure gave M.W. every reason to think she had properly preserved her jurisdictional objections.

For one, California law dictates that "[a]n appearance at a hearing at which ex parte relief is sought"—like all the proceedings below here—"is *not* a general appearance and does not constitute a waiver of the right to make a motion" concerning personal jurisdiction or forum. Cal. Code Civ. Proc. § 418.11 (emphasis added); *Factor Health Mgmt.* v. *Superior Ct.*, 132 Cal.App.4th 246, 251 (2005). That should have made it impossible for M.W. to make a general appearance. And even apart from those protections, M.W. specifically entered a special appearance and filed a timely motion to quash and dismiss for forum non conveniens, Cal. Code Civ. Proc. § 418.10(a)(1)–(2), which California makes clear *cannot* "be deemed a general appearance by the defendant." *Id.* § 418.10(d). Rather than "fail[ing] to follow specific procedural rules" that led to a waiver, *Mallory*, 600 U.S. at 147–48 (Jackson, J., concurring), M.W. complied to a tee with every rule to preserve her objections. That the California Court of Appeal nevertheless summarily denied relief on de novo, non-discretionary review is incompatible with the fair notice that due process demands.

3. This case is an ideal vehicle to impose limits on consent.

This case provides an ideal vehicle to resolve the important constitutional question that *Mallory* and *Fuld* left open, since it presents the question cleanly where no other issues prevent the Court from reaching it. Unlike the factual record showing consent in *Mallory*, M.W. fastidiously registered her objections to California's jurisdiction under the established procedures for doing so. And unlike in *Fuld*, there is no alternate ground to find jurisdiction, since there is no question that the Commissioning Parties failed to meet the statutory requirements for service.

This case presents the inverse of *Mallory*. There, the Court did not decide whether due process limits jurisdiction by consent, since the defendant's long history of compliance with the Pennsylvania statute established the fact of consent. But here, the record of M.W.'s objections to the state court's jurisdiction is thorough and unbroken, and yet the trial court construed the act of her challenge as consent. This case thus clearly presents the question of whether due process places limits on consent jurisdiction. And it does so with a narrow vehicle that concerns the limits of state-court action, rather than the validity of a particular state law.

Further, unlike *Fuld*, there are no alternate grounds to uphold jurisdiction. That is because there is no dispute here that the Commissioning Parties failed to establish jurisdiction over M.W. under California's long-arm statute. They did not serve M.W. personally, so they attempted substituted service via FedEx by supposedly leaving a copy of the summons and complaint at her home with "a competent *member of the household*" who is "*informed of the contents thereof*." Cal. Code Civ. Proc. § 415.20(b) (emphasis added). But they failed both statutory requirements. The FedEx driver served M.W.'s babysitter, who is not a "member of the household," and the driver did not inform the babysitter of the package's contents. App.K; App.G.142. The Commissioning Parties thus didn't prove personal jurisdiction, and the trial court did not find otherwise.

These facts are incompatible with consent to jurisdiction. While *Mallory* found consent because of the defendant's longstanding compliance with state-law procedures where "the jurisdictional consequences of registration were clear," see *Mallory*, 600 U.S. at 148 (Jackson, J., concurring); *York*, 137 U.S. at 20, the trial court here held there was consent despite M.W.'s careful compliance with state-law procedures for *refusing* consent. Not only was she induced to sign the parties' agreement with a promise that she was guaranteed an Alaska forum, she did everything—and more—that the law required to protect that right: she filed a notice of special appearance, a motion to quash, a brief limited to jurisdiction and forum, and no requests for relief on the merits. See Cal. Code Civ. Proc. § 418.10. She scrupulously preserved her defense when questioned by the trial court, App.A.14, 19, and refused to brief the merits even when the Court ordered her to do so. App.E.11. Yet the California courts treated the act of resistance as acquiescence. App.A.63–64, 110.

This case thus offers an ideal platform to set forth the due process principles that govern states' ability to assert personal jurisdiction by consent. That question will be difficult for the Court to reach in a case like *Mallory* and *Fuld*, where alternate grounds to uphold a statute will often cloud a clear decision. But this case presents no such barriers: it presents the question in a context where it is dispositive and would allow the Court to set a clear outer bound on states' ability to find consent. At minimum, due process forbids finding consent where a litigant has complied with all state-law procedures for resisting it.

Nor does the fact that the California Court of Appeal approved the trial court's decision in an unpublished summary order pose any impediment to review. The "unpublished" nature of the "order under challenge … carries no weight" in determining whether to grant certiorari. *Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987) (per curiam). This Court has often granted review of unpublished decisions to decide important questions. See*, e.g.*, *Easter Associated Coal Corp.* v. *United Mine Workers*, 531 U.S. 57, 61 (2000); *Lynce* v. *Mathis*, 519 U.S. 433, 436 (1997); *Old Chief* v. *United States*, 519 U.S. 172, 177 (1997); *Harris* v. *Forklift Sys., Inc.*, 510 U.S. 17, 20 (1993). And this case provides an excellent opportunity to do so: if there are any federal limits on a state's ability to find consent to jurisdiction, the California courts breached them here.

B. The equities weigh decidedly in favor of a stay.

1. M.W. faces continuing irreparable harm without a stay.

Under the ordinary operation of Texas law, M.W. would likely be Baby G.'s rightful mother because she gave birth to him in Texas. Tex. Fam. Code Ann. § 160.201(a)(1). Motherhood conveys a "fundamental liberty interest" in the child's "care, custody, and management," *Santosky*, 455 U.S. at 753, which "includes the right not to be shut out of participation in decisions regarding" a child's "health." *Mirabelli*, 607 U.S. at 497. Yet because of the California judgment, M.W. is banished from the Texas proceedings and has been deprived of any information about Baby G., powerless to do anything to protect him. App.D.3–4. That is irreparable harm.

That matters even more to Baby G. than to M.W., since the stakes for him were—and are—no less than his life. While M.W. has unequivocally committed to giving Baby G. life-saving care, App.B.192–93; App.E.5, the Commissioning Parties have been unwilling to do so—even up to the day before he was born. And while the order obtained by the Texas Attorney General led to the first of three surgeries necessary to treat Baby G's HLHS, the Attorney General has now withdrawn from the case, and the Commissioning Parties are challenging that order in the Texas courts. App.N. If successful, they will be permitted to do what the Texas Attorney General thus far prevented them from doing: decline to provide Baby G. with any further care.

M.W.'s only recourse in Texas now is through a long appellate process. But her burden in the Texas litigation is much greater, since she must seek to rebut the full faith and credit presumption of the California judgment's jurisdictional validity, and she must do so despite having been dismissed from a sealed case and thus being forced to litigate in the dark. See *V.L.*, 577 U.S. at 408. The source of the ongoing harm to her is the unlawful California judgment that is the focus of this application. And unless this Court provides relief from that judgment, M.W. will have no access to information about Baby G.'s condition as the Commissioning Parties seek to overturn the Texas order requiring him to receive ongoing life-saving care. And Baby G. could be removed from the hospital by the Commissioning Parties and placed in hospice around **September 17**, if not sooner.

The Court should grant a stay to restore the status quo. A stay would not decide who Baby G.'s parents are or direct any Texas court to do anything. It would only suspend the operation of a judgment entered without jurisdiction. See *Nken*, 556 U.S. at 428–29. By nullifying the premise under which the Texas court excluded M.W. from the proceedings, App.D.2–3, M.W. would move in the Texas court to vacate the dismissal and to be restored as a party, so that she may receive information about Baby G.'s condition, defend the order requiring life-saving care, and advocate for her rights as his natural mother. This Court has stayed a state-court judgment in a parentage dispute before, see *V.L.* v. *E.L.*, No. 15A522 (Dec. 14, 2015), and M.W. request here is more modest than the relief ultimately granted there.

Leaving the California judgment in place and depriving M.W. of those rights to protect Baby G. "during the potentially protracted appellate process constitutes irreparable harm." *Mirabelli*, 607 U.S. at 497. And given "how much time it takes for the litigation process to run its course … often one to three years or even longer," *Labrador*, 144 S. Ct. at 928–29 (Kavanaugh, J., concurring), the prospect of federal review—limited to Full Faith & Credit—at the conclusion of the full appellate process in the Texas courts is little consolation. Not only will M.W. be deprived of her rights to protect Baby G. for that entire time, but Baby G. might not even live to see that day. Even emergency relief in Texas will take weeks—weeks that, at this point, she and Baby G. do not have. Unless M.W. obtains relief now, relief later in Texas proceedings may only restore her right to protect a child that has already passed. The irretrievable loss of the life of a child is the definition of irreparable harm.

2. The Commissioning Parties face no irreparable harm.

The Commissioning Parties face no irreparable harm from being deprived of the benefit of a void judgment. A stay will not deprive them of the ability to argue for parentage, but will simply remove their ability to do so based on a judgment rendered without jurisdiction. And the prospect that M.W. will be able to continue to advocate for herself and for Baby G. in his fragile medical condition is not irreparable harm either.

N.G.'s late-breaking post-birth testimony that she would approve life-saving care for Baby G. "if he's determined to be a candidate" only weighs in favor of a stay. App.G.73, 151. If N.G. in fact committed to that care, then she will not be harmed by a stay that gives M.W. the ability to advocate for the same thing. Plus, the legal positions the Commissioning Parties currently maintain in court cast doubt on this testimony: they are asking the Texas court to lift the order requiring life-saving care, App.O.1–3, and they maintain that M.W. is liable for damages for refusing to abort Baby G. App.R.77–78; App.G.150–51. And N.G. testified she does not regret demanding the abortion of the child. App.G.75–76. Absent a change in those positions, the child's life remains very much at stake.

3. The public interest warrants a stay.

Finally, a stay is in the public interest. The Court need not decide who is right about Baby G.'s care to grant this stay. The public interest lies in having that question decided by a court with jurisdiction over everyone who claims a stake in it. It is not served by a judgment that removed one of those people from the room without ever acquiring power over her.

Three public interests point the same way. First, the interest in the territorial limits the Due Process Clause imposes on state courts, which protect States and their residents as much as litigants. *World-Wide Volkswagen*, 444 U.S. at 294. In the interstate setting, this Court has recognized, the "federalism interest may be decisive." *Bristol-Myers Squibb*, 582 U.S. at 263. An Alaska resident who followed California's own procedures for contesting jurisdiction has been bound by a California judgment anyway; every nonresident who relies on such procedures has an interest in whether that is permitted. Second, the interest in full faith and credit operating as the Constitution intends. A sister-state judgment is entitled to recognition only where the rendering court had jurisdiction, and an enforcing court may inquire into that question. See *V.L.*, 577 U.S. at 408. A judgment entered without jurisdiction over the person it binds has no claim to be exported to Texas and Alaska on that Clause's authority. Third is the interest in decisions about a medically fragile newborn being made in Texas—the one court with undisputed jurisdiction over him and all other parties. Putting the woman who bore him back before that court is in the public interest.

II. Alternatively, the Court should grant certiorari and reverse.

In lieu of granting a stay, the Court may wish to construe this application as a petition for a writ of certiorari, grant the writ, and reverse the denial of writ of mandate by the California Court of Appeal. Indeed, this Court often construes applications like these as petitions for a writ of certiorari. *E.g.*, *Trump* v. *Mazars USA, LLP*, 589 U.S. 1120 (2019); *Nken* v. *Mukasey*, 555 U.S. 1042 (2008); *United States* v. *Texas*, 142 S. Ct. 14 (2021). And this Court has not hesitated to grant certiorari and summarily reverse state-court decisions that violate the clear dictates of federal law. See *James* v. *City of Boise*, 577 U.S. 306, 307 (2016) (per curiam). The Court should do that here too. As long as the Court recognizes—as it should—that due process places limits on jurisdiction by consent, it follows naturally that the California courts' theory that resistance means consent is incompatible with any view of due process. And since M.W. is now completely excluded from the life of the medically fragile infant she brought into the world, much less from the ability to make critical health decisions that protect him, time is of the essence. In these extraordinary circumstances—where a life hangs in the balance—the Court should grant certiorari and summarily reverse to re-affirm the federal due process limits on state-court personal jurisdiction.

CONCLUSION

The Court should issue an administrative stay pending disposition of this application and (1) stay the California judgment pending M.W.'s forthcoming petition for certiorari; or (2) treat this application as a petition for certiorari, grant it, and summarily reverse.

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Respectfully submitted,

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