

No. 26A325

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

**RESPONDENTS' OPPOSITION TO EMERGENCY APPLICATION
FOR ADMINISTRATIVE STAY AND STAY PENDING
PETITION FOR CERTIORARI**

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INTRODUCTION

Five different courts have denied Applicant's requests for emergency relief. The result should be no different here.

The Application for an emergency stay should be denied for numerous independent reasons. In short, the Court has no jurisdiction over this matter, Applicant cannot prevail on the merits of her personal-jurisdiction argument because her counsel repeatedly and vociferously argued the merits in the trial court, and there is no emergency whatsoever because Respondents have been ensuring their child receives the life-saving care he needs—and they are committed to doing so for the rest of his life. A stay would serve only to cause chaos and confusion regarding the medical decision-making for Respondents' child.

First, this Court has no jurisdiction to adjudicate this matter. There is no final judgment subject to review by the Supreme Court. *See* 28 U.S.C. § 2101(f); 28 U.S.C. § 1257(a). The judgment from which Applicant seeks a stay is currently on appeal in the California Court of Appeal. On this basis alone, the Application must be denied.

Second, Applicant will not prevail on the merits. The crux of Applicant's argument is that the Due Process Clause prevents a State from asserting personal jurisdiction by consent when the defendant makes a special appearance to contest jurisdiction and never argues the merits of the case. But that is not what occurred here. Rather, [REDACTED]

[REDACTED]

[REDACTED] but that fact-based determination by the trial

court makes this a particularly poor vehicle to test the interplay between the Due Process Clause and consent to jurisdiction.

Third, Applicant has not satisfied the “heavy burden” of demonstrating she “will suffer irreparable injury if the judgment is not stayed.” *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979). Applicant’s main professed concern is that Respondents will not ensure their child will receive the medical treatment that could save his life. That is false. Respondents are steadfastly providing that life-saving care, and they have committed to continuing that course of treatment for their child. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On September 16, 2026, the Texas court found after an evidentiary hearing that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Because Respondents are providing the precise medical care for their child that Applicant also desires, there is no emergency. A right to life is not at issue here.

Fourth, the stay requested would upend, rather than preserve, the status quo. Respondents have been with their child around-the-clock in a hospital's pediatric intensive care unit. The child has been receiving critical medical care by his team of doctors at the consent and direction of Respondents. A stay of the parentage order would create significant uncertainty regarding parental rights and medical decision-making authority, which would threaten whether the child continues to receive the healthcare required for his survival. Such chaos would be devastating for Respondents and, most importantly, their child.

STATEMENT OF THE CASE

I. Respondents and Applicant Enter into a Gestational Agreement, and Applicant Travels Repeatedly to California for the Pregnancy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. The Child's Health Condition and Respondents' Decision to Fight for Their Child's Life.

1. On [REDACTED], the child was diagnosed in utero with a rare, severe congenital heart condition, hypoplastic left heart syndrome ("HLHS"). [REDACTED]. Children with this condition, if determined to be candidates, may undergo a series of three open-heart surgeries within the first few years of life. [REDACTED]. The first of these surgeries is the Norwood, which, if elected, is performed within days of the child's birth. [REDACTED]. The Glenn surgery typically occurs within six months, and the Fontan surgery usually is performed a few years later. Cleveland Clinic, *HLHS*, available at <https://my.clevelandclinic.org/health/diseases/12214hypo-plastic-left-heart-syndrome-hlhs> (last visited Sept. 15, 2026),

Applicant paints an overly optimistic picture, unfortunately, of the child's life expectancy and medical outlook. Only "20-60% of babies with [HLHS] survive their first year of life." *Id.* Even after the first surgery, survival rates decrease further. *Id.*

For those who opt for surgery (as opposed to palliative care), the child is at significant risk for cardiac arrest, liver disease, kidney malfunction, blood clots, and other serious heart conditions. *Id.*

2. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] After deciding on the path of surgical intervention,

Respondents never wavered from that plan. They immediately moved from California

to Texas upon finding out that Applicant had moved to Texas, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Although omitted from the Emergency Application, [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]. The court-appointed guardian ad litem, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

III. The California Court Enters a Final Parentage Order and, After Significant Merits-Based Arguments from Applicant, Confirms Respondents as the Legal Parents of the Child.

Respondents filed an action in California Superior Court to confirm their parentage of their child. [REDACTED]

1. Applicant's Emergency Application is premised on the contention that, in the California action, her attorney "expressly refused to address the merits" of the claims for parentage and stuck strictly to personal-jurisdiction arguments. Emerg. Applic. at 7. [REDACTED], this is patently false. [REDACTED]

[REDACTED]

[REDACTED]

A handful of examples (among many more) are illustrative:

First, during the initial hearing in the matter, Applicant argued [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] this is not
a close call.

Third, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fourth,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That is undeniably a merits

issue, not a matter pertaining to personal jurisdiction. [REDACTED]

[REDACTED]

[REDACTED]—the opposite of an objection to discussing the merits.

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

Fifth, Applicant's written submissions to the trial court also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

The documents Applicant submitted [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the court entered a judgment that declared Respondents to be the legal parents of the child, [REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

Applicant then filed multiple procedurally improper petitions for a writ and a stay in the California Court of Appeal. App. O 3, 7, 10. The Court of Appeal summarily denied both the writ and the stay request. *Id.*

Undeterred, the Applicant sought review and a stay in the California Supreme Court. App. O 12. That court, too, summarily denied the request for a stay and interlocutory review. *Id.*

Finally, Applicant filed an appeal from the judgment. Supp. App. D. That appeal is still pending. *Id.*

IV. The Texas Court Issues Emergency Relief Enjoining Applicant from Interfering with Respondents' Parental Rights.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Only after the California judgment was entered were Respondents able to discover that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Pursuant to Texas Family Code § 107.001(5), the guardian ad litem's role is to "represent the best interests of the child."

V. The Child Is Born in Texas and, Upon Instruction from Respondents, Received Immediate Open-Heart Surgery.

The child was born on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. Applicant Publicly States, [REDACTED] to the Media, That She Does Not Want Custody of Respondents' Child.

Both during pregnancy and after the child's birth, Applicant consistently stated she did not want custody of the child. Most recently, on August 20, 2026, Applicant published an op-ed in the *New York Post* stating the following: "I am not fighting to take someone else's baby. . . . I have asked for only one thing from the very beginning, a commitment that this baby will be provided the lifesaving treatment he needs. That's all it would take to end this." *Id.* 107:13-18, 108:18 - 109:4.

Applicant publicly posted her commitment to "end" her pursuit of custody if there was a "commitment" to live-saving treatment. But she stated this *after* Respondents already elected the Norwood surgery—and even after that procedure was performed. Moreover, she published the op-ed even though [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

VII. The Dallas Court of Appeals and Texas Trial Court Rejected Applicant's Claimed Emergency.

On September 14, 2026, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

On September 15, 2026,

[REDACTED]

[REDACTED] That same day, the Dallas Court of Appeals denied Applicant's request. Supp. App. G.

Also on September 15, 2026, the Texas court

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On September 17, 2026, the Supreme Court of Texas became the sixth court to deny Applicant's request for an emergency stay. Supp. App. I. It held:

The motion for temporary relief is denied. Sustaining the life of the medically fragile child is the paramount concern in this time-sensitive matter. The limited materials before this Court describe uncontroverted medical testimony of the child's Texas physician indicating that "the child's best interest in order to preserve the child's life as long as possible [i]s an ICU-to-ICU transfer of the child" and that "the timing of the recommended transfer is ripe now, with the window only open for a short time to do so." Guardian ad Litem's Status Report at 1-2. At this preliminary stage, no materials before this Court rebut that characterization of the evidence or cast doubt on the district court's conclusion that its September 16, 2026 Order facilitates the child's

access to the time-sensitive, life-saving medical treatment recommended by the child's doctors.

Id. As the Supreme Court of Texas recognized, Applicant's purported "emergency" is non-existent. Rather, inserting Applicant into the medical decision-making would run counter to medical advice and could be disastrous for Respondents' child.

ARGUMENT

A stay is "rare and exceptional"; it is granted only "upon the weightiest considerations." *Fargo Women's Health Org. v. Schafer*, 507 U.S. 1013, 1013 (1993) (O'Connor, J., concurring in denial of stay) (denying stay despite view that the lower court's decision was "inconsistent" with this Court's precedent) (quotation marks and citations omitted); *Heckler v. Redbud Hosp. Dist.*, 473 U.S. 1308, 1312 (1985) (Rehnquist, J., in chambers) ("[A] stay application to a Circuit Justice on a matter before a court of appeals is rarely granted.") (quotation marks and citation omitted). An applicant bears a "heavy burden" to justify the "extraordinary" relief of a stay. *Williams*, 442 U.S. at 1311. M.W.'s burden is "especially heavy" "[b]ecause this matter is pending before the Court of Appeals, and because the Court of Appeals denied [the] motion for a stay." *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers); *accord Edwards v. Hope Med. Group for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers).

The Applicant has not met this strikingly heavy burden. As a threshold matter, this Court does not have jurisdiction over this case, which is presently on appeal in the California Court of Appeal. Moreover, the stay factors militate strongly in favor of not disturbing the order below.

I. The Court Lacks Jurisdiction to Issue a Stay Because There is No Final Judgment Subject to Review by This Court.

This Court lacks jurisdiction to adjudicate the Application. The judgment from which the Applicant seeks a stay lacks the requisite finality to confer jurisdiction at this relatively early stage of the proceedings. Indeed, M.W. is still litigating in the court of appeal the due process issue on which she bases her Application.

“Federal courts are courts of limited jurisdiction and generally can resolve only the cases that Congress grants them power to hear.” *Hain Celestial Group, Inc. v. Palmquist*, 607 U.S. 421, 424 (2026). This Court can review state-court judgments only when they are “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had” 28 U.S.C. § 1257(a); *see also T.M. v. Univ. of Md. Med. Sys. Corp.*, 608 U.S. --, 146 S. Ct. 1739, 1746 (2026). “Compliance with the provisions of § 1257 is an essential prerequisite” to this Court’s consideration of a matter. *Johnson v. Cal.*, 541 U.S. 428, 431 (2004); *see also* 28 U.S.C. § 2101(f) (similarly providing that the Court can consider granting a stay only when there is a “final judgment or decree”).

The jurisdictional requirements of Sections 1257(a) and 2101(f) are plainly not satisfied here. Applicant only recently filed her notice of appeal, which is pending in California’s Second Appellate District. Supp. App. D. Thus, there is no final judgment “rendered by the highest court of a State in which a decision could be had.” 28 U.S.C. § 1257(a).

Tacitly acknowledging this problem, M.W. claims that the judgment is somehow “final” because the California Court of Appeal and the California Supreme

Court did not find Applicant’s petition for a writ of mandate worthy of interlocutory review. Emerg. Applic. at iii. While California procedure provides that a party may seek a writ of mandate when a trial court denies a motion to quash based on lack of personal jurisdiction, Cal. Code Civ. Proc. § 418.10(c), the Court of Appeal has discretion not to issue a substantive ruling on such interlocutory review, Cal. Code Civ. Proc. § 1086. Here, for instance, the Court of Appeal (like the California Supreme Court) summarily denied a writ of mandate. App. O 3, 7, 10, 12.

A summary denial of a writ petition is not a final determination on the merits. *Kowis v. Howard*, 3 Cal.4th 888, 897, 901 (1992); *Bank of Am., N.A. v. Superior Court*, 212 Cal.App.4th 1076, 1097 (Cal. Ct. App. 2013) (“A summary denial of a petition for writ of mandate is not a denial on the merits and does not become law of the case.”). In such situations, the party who unsuccessfully moved to quash is left to pursue her appeal in the Court of Appeal. Indeed, it is common for defendants to raise—and for the California Court of Appeal to adjudicate—personal jurisdiction arguments on appeal. *See, e.g., Park v. Chon*, Case No. B310411, 2022 WL 1564568, at *5 (Cal. Ct. App. May 18, 2022); *In re Marriage of Obrecht*, 245 Cal.App.4th 1, 7-9 (Cal. Ct. App. 2016); *Pan v. Huang*, Case No. E061462, 2015 WL 5051300, at **2-3 (Cal. Ct. App. Aug. 27, 2015); *Bank of New York Mellon v. Boone*, Case No. APP1300199, 2014 WL 4049938, at **2-3 (Cal. Ct. App. Aug. 11, 2014); *Chang v. Wei*, Case No. B192902, 2007 WL 1704920, at *4 (Cal. Ct. App. June 14, 2007); *Collier v. Sweeney*, Case No. B158245, 2003 WL 1784915, at **1-3 (Cal. Ct. App. Apr. 3, 2003).

Presumably, that is exactly what Applicant intends to argue through her pending appeal. After all, if her appeal is about anything other than personal jurisdiction, then she would be making a merits-based argument that would be a consent to personal jurisdiction.

The judgment below is not final. The twin issues of Due Process and the parentage issues that are wrapped into that judgment have not been considered by the Court of Appeal (let alone the California Supreme Court). [REDACTED]

[REDACTED]

[REDACTED] Because the judgment below is not final, there is no jurisdiction to consider the Application.

II. None of the Stay Factors Is Satisfied.

Because this Court lacks jurisdiction to consider M.W.'s Application, that should end the inquiry. But even if the Court were inclined to consider the merits of the Application, it should be denied because the stay factors are not satisfied.

This Court will grant a stay “only in extraordinary circumstances.” *Williams*, 442 U.S. at 1311. The Applicant “must meet a heavy burden of showing not only that the judgment of the lower court was erroneous on the merits, but also that the applicant will suffer irreparable injury if the judgment is not stayed pending his appeal.” *Id.* Moreover, where, as here, an applicant already has unsuccessfully sought a stay in a lower court, the lower court’s decision carries extra weight and “should not lightly be disturbed.” *Id.*

A. M.W. will not prevail on the merits, which are not worthy of certiorari.

M.W.'s Application is grounded in an erroneous contention that her counsel never consented to jurisdiction. On the contrary, [REDACTED]

[REDACTED] Thus, not only will M.W. not prevail, but this case is a particularly poor vehicle to address the Due Process issue discussed at length in the Application.

1. M.W. acknowledges that a party may consent to personal jurisdiction. Emerg. Applic. at 12 (quoting *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 153 (2023) (Alito, J., concurring)). Consent can occur when a party's counsel argues matters unrelated to personal jurisdiction. Emerg. Applic. at 13; *see also Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxietes de Guinee*, 456 U.S. 694, 703 (1982) (noting that "an individual may submit to the jurisdiction of the court by appearance"); *Mallory*, 600 U.S. at 145 (Gorsuch, J.) ("A defendant who appears 'specially' to contest jurisdiction preserves his defense, but one who forgets can lose his.")).

That is precisely what occurred here. Time and again, [REDACTED]

[REDACTED] As discussed in detail above, [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

No wonder the trial court held that Applicant consented to jurisdiction through her appearance. The record [REDACTED]

[REDACTED] Especially where the trial court's ruling "should not lightly be disturbed," *Williams*, 442 U.S. at 1311, M.W. will not prevail on the merits.

2. This case is ill-suited to explore any Due Process limits of consent to jurisdiction.

First, Applicant admits that California procedure for consenting to jurisdiction comports with Due Process. Emerg. Applic. at 19. Citing the statutory framework and decisional law regarding challenges to personal jurisdiction, Applicant acknowledges that the law—as written—is constitutional. *Id.*

The purported problem, Applicant contends, is that the trial court veered from those procedures and safeguards. But even assuming this is true (it is not), Applicant is arguing for mere fact-bound error correction. That is hardly cause for the Court to issue a significant ruling on a constitutional question. *See generally* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

Second, Applicant's [REDACTED] make this case particularly unsuitable for exploring the interplay between Due Process and personal jurisdiction. Indeed, the Emergency Application makes the point clear. The premise

of Applicant’s good-vehicle contention is that her trial-court counsel “scrupulously preserved her [personal-jurisdiction] defense” and “refused” to brief or engage in a discussion of the merits. Emerg. Applic. at 20-21. However, as discussed above, that is plainly untrue. Time and again, [REDACTED]

B. The equities tip decidedly against issuing a stay.

Applicant has not met the “heavy burden” of showing irreparable harm. While Applicant claims the main harm is her inability to dictate the medical care for Respondents’ child, in reality, Respondents are ensuring their baby receives the same care that Applicant wants for the child. Moreover, if there were ever any doubt about that (there should not be), [REDACTED]

[REDACTED] Finally, a stay would not effectuate the relief Applicant seeks, while it would throw into disarray the parenting of, and care for, Respondents’ child.

1. Applicant’s claim that the judgment causes her irreparable harm is based on a demonstrably false recitation of the factual record. M.W. notes that the “loss of the life of a child is the definition of irreparable harm,” Emerg. Applic. at 23—presuming that only she would ensure Respondents’ child receives an opportunity for life-saving care, *id.* at 22. But the record reflects that Respondents have done everything in their power to ensure their child has the best medical care possible, and they are committed to providing that care into the future. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition to electing the Norwood surgery, Respondents [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Furthermore, on September 16, 2026, after [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

There is simply no truth whatsoever to Applicant's unsupported claim that Respondents intend to admit their child into hospice. The premise of Applicant's purported emergency and alleged irreparable harm is a fabrication.

2. On the other hand, a stay would upend the status quo and cause serious irreparable harm to Respondents. Applicant admits that the requested stay "would not decide who [the child's] parents are or direct any Texas court to do anything." Emerg. Applic. at 22. It would, Applicant claims, "only suspend the operation of a judgment entered without jurisdiction." *Id.* at 22-23. Thus, a stay would create considerable confusion over medical decision-making authority and the medical providers' ability to rely on Respondents'—the parents'—consent to treatment. If a stay were granted, who would dictate medical care for Respondents' child?

The uncertainty would endanger the child instead of safeguarding him. A stay, ironically, would threaten the ability of Respondents' baby to continue to receive the healthcare he needs to survive. No parents should face such uncertainty and confusion regarding their child's life.

3. Nor would a stay likely redress the alleged harm that Applicant describes. Indeed, a stay would create chaos at first, and then likely leave the parties in their same pre-stay position.

A stay of the judgment would not automatically confer parental rights to Applicant or enable her to be involved in the child’s medical care. Applicant concedes a stay would not in and of itself redress the harm she alleges. *Emerg. Applic.* at 23. Rather, Applicant identifies additional steps she would need to take after a stay is granted in order to try to address the harm she alleges. She states that if the Court grants a stay, she “would move in the Texas court to vacate the dismissal and to be restored as a party, so that she may receive information about [the child’s] condition, defend the order requiring life-saving care, and advocate for her rights” *Id.*

In the meantime, chaos would ensue and Respondents would move to validate the gestational agreement under Texas law in order to be recognized—yet again—as their baby’s parents. *See* Texas Family Code Ann. § 160.756; *see also* Texas Family Code Ann. § 160.758 (providing courts with jurisdiction to consider validation until 6 months after the child’s birth). Thus, even though a stay would create uncertainty, fear, chaos, and agony for all involved, it ultimately would leave the parties in the same position they find themselves without a stay.

CONCLUSION

The Court should deny the application for a stay.

Dated: September 18, 2026

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CERTIFICATE OF SERVICE

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