

# The Burger Court Opinion Writing Database

## *Kulko v. Superior Court of California*

436 U.S. 84 (1978)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University in St. Louis

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

3

CHAMBERS OF  
THE CHIEF JUSTICE

May 8, 1978

Dear Thurgood:

Re: 77-293 Kulko v. Superior Court of California

I join.

Regards,

WRB

Mr. Justice Marshall

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 3, 1978

RE: No. 77-293 Kulko v. Superior Court of Calif., etc.

Dear Byron and Lewis:

The three of us are in dissent in the above. I'll  
be happy to undertake the dissent.

Sincerely,

*Bill*  
7.

Mr. Justice White

Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

O.T. 1977

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Brennan  
Mr. Justice Stevens

Ezra Kulko, Appellant,

v.

Superior Court of California  
in and for the City and  
County of San Francisco (Sharon  
Kulko Horn, Real Party in Interest).

From: Mr. Justice Brennan

Circulated: 5/9/77

Recirculated: \_\_\_\_\_

On Appeal from the Supreme  
Court of California.

[May \_\_\_\_ 1978]

MR. JUSTICE BRENNAN, dissenting.

The Court properly treats this case as presenting a single narrow question. That question is whether the California Supreme Court correctly "weighed" "the facts", ante, at 7, of this particular case in applying the settled "constitutional standard", id. at 6, that before state courts may exercise in personam jurisdiction over a nonresident, nondomiciliary parent of minor child domiciled in the state, it must appear that the nonresident has "certain minimum contacts [with the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'". International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The Court recognizes that

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Brennan  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: \_\_\_\_\_

Recirculated: 11 MAY 1978

*Printed*  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-293

Ezra Kulko, Appellant, v. Superior Court of California in and for the City and County of San Francisco (Sharon Kulko Horn, Real Party in Interest).	}	On Appeal from the Su- preme Court of Cali- fornia.
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[May —, 1978]

MR. JUSTICE

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE<sup>1</sup>  
joins, dissenting.

The Court properly treats this case as presenting a single narrow question. That question is whether the California Supreme Court correctly "weighed" "the facts," *ante*, at 7, of this particular case in applying the settled "constitutional standard," *id.*, at 6, that before state courts may exercise *in personam* jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled in the State, it must appear that the nonresident has "certain minimum contacts [with the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945). The Court recognizes that "this determination is one in which few answers will be written 'in black and white.'" *ante*, at 7. I cannot say that the Court's determination against state court *in personam* jurisdiction is implausible, but, though the issue is close, my independent weighing of the facts leads me to conclude, in agreement with the analysis and determination of the California Supreme Court, that appellant's connection with the State of California was not too attenuated, under the standards of reasonableness and fairness implicit in the Due Process Clause, to require him to conduct his defense in the California courts. I therefore dissent.

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Brennan  
Mr. Justice Souter

From: Mr. Justice Brennan

Re: *Sharon Kulko Horn v. Superior Court of California*

2nd DRAFT

11 MAY 1978

**SUPREME COURT OF THE UNITED STATES**

No. 77-293

Ezra Kulko, Appellant,  
v.  
Superior Court of California in and  
for the City and County of San  
Francisco (Sharon Kulko Horn,  
Real Party in Interest).

On Appeal from the Su-  
preme Court of Cali-  
fornia.

[May —, 1978]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE  
and MR. JUSTICE POWELL join, dissenting.

The Court properly treats this case as presenting a single narrow question. That question is whether the California Supreme Court correctly "weighed" "the facts," *ante*, at 7, of this particular case in applying the settled "constitutional standard," *id.*, at 6, that before state courts may exercise *in personam* jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled in the State, it must appear that the nonresident has "certain minimum contacts [with the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945). The Court recognizes that "this determination is one in which few answers will be written 'in black and white.'" *ante*, at 7. I cannot say that the Court's determination against state court *in personam* jurisdiction is implausible, but, though the issue is close, my independent weighing of the facts leads me to conclude, in agreement with the analysis and determination of the California Supreme Court, that appellant's connection with the State of California was not too attenuated, under the standards of reasonableness and fairness implicit in the Due Process Clause, to require him to conduct his defense in the California courts. I therefore dissent.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 28, 1977

Re: No. 77-293, Kulko v. Superior Court

Dear Byron,

I agree with you dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

(2)

CHAMBERS OF  
JUSTICE POTTER STEWART

May 5, 1978

No. 77-293, Kulko v. Calif. Superior Court

Dear Thurgood,

I am glad to join your opinion for the Court in this case. I agree with Harry in hoping that you will see fit to delete the final sentence of footnote 6 on page 8.

Sincerely yours,

P.S.  
/

Mr. Justice Marshall

Copies to the Conference

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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr.~~ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 11-23-77

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

EZRA KULKO *v.* SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN  
FRANCISCO (SHARON KULKO HORN, REAL  
PARTY IN INTEREST)

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF  
CALIFORNIA

No. 77-293. Decided November —, 1977

MR. JUSTICE WHITE, dissenting.

The case whose appeal is dismissed today involves a very broad extension of *in personam* jurisdiction under a long-arm statute. California has exerted personal jurisdiction over appellant in connection with his wife's suit to reopen the terms of their Haitian divorce regarding child custody and support obligations.

The marital domicile where the couple's two children were born was in New York. After appellant and his wife were separated, she became a California resident. Six months later, she obtained a Haitian divorce with appellant's consent. The separation agreement provided that appellant would have custody in New York of the two children, except that they could visit their mother over Christmas, Easter, and the summer months when school was not in session.

The premise for California's exertion of personal jurisdiction stemmed from the decision of one child to stay with her mother in California following the child's usual Christmas visit. Appellant acceded to his child's request, and paid her fare to California. This was the sole basis for jurisdiction; a similar move by the couple's second child two years later was not used as a basis for jurisdiction by the California courts because it was not supported in any way by appellant.

The California courts considered the elder child's move as an action by appellant outside the State with impact within the State, sufficient under California's long-arm statute whose

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 8, 1978

Re: 77-293 - Kulko v. California

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Dear Thurgood,

I shall wait for the dissent in  
this case.

Sincerely yours,



Mr. Justice Marshall

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 9, 1978

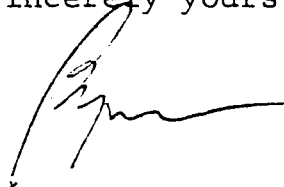
Re: 77-293 - Kulko v. Superior Court  
of California

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Dear Bill,

Please join me in your dissenting  
opinion in this case.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

4 MAY 1978

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 77-293

Ezra Kulko, Appellant,	}	On Appeal from the Supreme Court of California.
<i>v.</i>		
Superior Court of California in and for the City and County of San Francisco (Sharon Kulko Horn,		
Real Party in Interest).		

[May —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue before us is whether, in this action for child support, the California state courts may exercise *in personam* jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled within the State. For reasons set forth below, we hold that the exercise of such jurisdiction would violate the Due Process Clause of the Fourteenth Amendment.

## I

Appellant Ezra Kulko married appellee Sharon Kulko Horn in 1959, during appellant's three-day stopover in California en route from a military base in Texas to a tour of duty in Korea. At the time of this marriage, both parties were domiciled in and residents of New York State. Immediately following the marriage, Sharon Kulko returned to New York, as did appellant after his tour of duty. Their first child, Darwin, was born to the Kulkos in New York in 1961, and a year later their second child, Ilsa, was born, also in New York. The Kulkos and their two children resided together as a family in New York City continuously until March 1972, when the Kulkos separated.

THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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PP 5, 8

8 MAY 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-293

Ezra Kulko, Appellant,	}	On Appeal from the Supreme Court of California.
v.		
Superior Court of California in and		
for the City and County of San		
Francisco (Sharon Kulko Horn,		
Real Party in Interest).		

[May —, 1978]

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I

Appellant Ezra Kulko married appellee Sharon Kulko Horn in 1959, during appellant's three-day stopover in California en route from a military base in Texas to a tour of duty in Korea. At the time of this marriage, both parties were domiciled in and residents of New York State. Immediately following the marriage, Sharon Kulko returned to New York, as did appellant after his tour of duty. Their first child, Darwin, was born to the Kulkos in New York in 1961, and a year later their second child, Ilsa, was born, also in New York. The Kulkos and their two children resided together as a family in New York City continuously until March 1972, when the Kulkos separated.

12 MAY 1978

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-293

Ezra Kulko, Appellant,	}	On Appeal from the Supreme Court of California.
v.		
Superior Court of California in and for the City and County of San Francisco (Sharon Kulko Horn,		
Real Party in Interest).		

[May —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue before us is whether, in this action for child support, the California state courts may exercise *in personam* jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled within the State. For reasons set forth below, we hold that the exercise of such jurisdiction would violate the Due Process Clause of the Fourteenth Amendment.

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Supreme Court of the United States  
Washington, D. C. 20543

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CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 5, 1978

Re: No. 77-293 - Kulko v. Superior Court  
of California

Dear Thurgood:

Please join me. I would feel a little bit happier if the last sentence of footnote 6 on page 8 were omitted, but I am with you in any event.

Sincerely,

*Harry*

Mr. Justice Marshall

cc: The Conference

*Take note*

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 29, 1977

No. 77-293 Kulko v. Superior Court

Dear Byron:

Your dissenting opinion has persuaded me. I will  
join you in a grant.

Sincerely,



Mr. Justice White

Copies to the Conference

LFP/lab

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 8, 1978

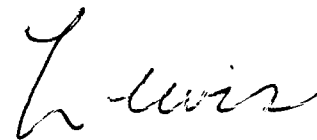
No. 77-293 Kulko v. Superior Ct. of California

Dear Thurgood:

Although I voted the other way at Conference, I find your excellent opinion quite persuasive.

I will, however, await further writing - if Bill Brennan or Byron circulates a dissent - before coming to rest.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

LFP/lab

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 10, 1978

No. 77-293 Kulko v. Superior Court

Dear Bill:

Please add my name to your dissent.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

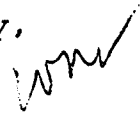
November 25, 1977

Re: No. 77-293 - Kulko v. Superior Court

Dear Byron:

I voted to note probable jurisdiction in this case at Conference, and if your circulating dissent concluded that the case were properly an appeal, I would join you. Since you conclude it is not a proper appeal, and therefore your circulation is both in form and in substance a dissent from the denial of certiorari, I will not join it. I will continue to be available as a fourth vote to note probable jurisdiction or to grant certiorari when and if the case is again voted upon at Conference.

Sincerely,



Mr. Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

(4)

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 8, 1978

Re: No. 77-293 - Kulko v. Superior Court

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 10, 1978

Re: 77-293 - Kulko v. Superior Court of  
California, etc.

Dear Thurgood:

Would you consider omitting note 13? If you can see your way clear to doing so, I will be happy to join your excellent opinion.

I do not feel qualified to speculate about the possible significance of your suggested "special jurisdictional statute" (p. 13). Indeed, I would hope you might even consider omitting the sentence in the text immediately following the citation of Hanson v. Denckla.

Respectfully,



Mr. Justice Marshall

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

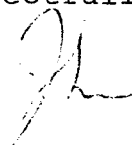
May 12, 1978

Re: 77-293 - Kulko v. Superior Court of  
California

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference