S233757

IN THE SUPREME COURT OF CALIFORNIA

BIANKA M.,
Petitioner,
v.

THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,
Respondent;

GLADYS M.,
Real Party in Interest.

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL
FOR THE SECOND APPELLATE DISTRICT, DIVISION THREE
CASE NO. B267454

APPLICATION ON BEHALF OF THE HARRIETT BUHAI CENTER FOR FAMILY LAW AND THE ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS FOR LEAVE TO FILE *AN AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER'S BRIEF

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to rule 8.520, subdivision (f) of the California

Rules of Court, the Harriett Buhai Center for Family Law ("the Center") and the Association of Certified Family Law Specialists ("ACFLS") request leave to file the accompanying *amicus curiae* brief in support of Bianka M. Put simply, under *Bianka M.* and the suggestion in the Respondent's Brief, Bianka and other SIJS applicants would be faced with impossible roadblocks hampering or preventing their paths to freedom and a better life in this country where, as here, one of their parents is ready, willing and able to provide that path and has already begun to do so. The Center represents a number of willing single parents in the United States.

Abandoned by her alleged father before birth, Bianka left Honduras in August 2013 when she was ten years old to escape gang violence and reunite with her mother in the United States. As her Opening Brief on the Merits ("OB") states, Bianka lives in a safe family environment that promotes her health, safety and welfare, in stark contrast to the situation she left behind in Honduras. (OB 2-3.) Because she lacks legal status, however, Bianka remains in jeopardy of deportation.

The Center is a well known and respected non-profit organization in Los Angeles providing free family law and domestic violence assistance. The Center was established in 1982 and has helped some 30,000 people since it opened its doors. Special Immigrant Juvenile status ("SIJS") is intended to provide relief for children like Bianka, many of whom, along with their parents, may be the Center's clients. (8 U.S.C. §§ 1101, *et seq*.) Code of Civil Procedure section 155 gives the trial courts an important role in facilitating federal SIJS status.

According to the Office of Refugee Resettlement, since October 2013, more than 12,000 children apprehended by U.S. Customs and Border Protection (CBP) have been released to a sponsor in California. (Office of Refugee Resettlement, Unaccompanied Children Released to Sponsors by State (March 25, 2016).) Some forty percent of Central American children qualify for SIJS status, and 10,000 entered the United States last year alone. These children, like Bianka, are often undocumented, unaccompanied children entering the United States who have been the victims of

parental abuse, neglect, or abandonment.

SIJS status is a form of humanitarian relief aimed at protecting the most vulnerable children (often girls), who have been mistreated or abandoned. (Fitzpatrick and Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls*, 4 Penn. St. J.L. & Int'l Aff. 614, 617 (2016).) Many of the parents of these children will become clients of the Center.

The circumstances of many of the Center's clients are remarkably similar to those of Bianka and her mother. Many have experienced and witnessed violence in their homes and communities in Central and South America. They often lack the support and involvement of one of their two parents. The Center's clients are poor and, like Bianka and her mother, seek stability, security and better futures. The 2016 United States Federal Poverty Guidelines (also known as the Federal Poverty Level) for a family of two (one parent and one child) was $1,328 per month, or $15,930 per year. (Annual Update of the HHS Poverty Guidelines, 81 Fed. Reg. 4036, 4037 (Jan. 25, 2016).) The Center's clients are in more dire straights.

The Center's most recently-compiled client data reflect that the average income for a household of two is substantially lower than the federal guideline: $1,000 per month, or $12,000 per year.

Many of the children of the Center's clients have traveled from Central or South America to be in the United States with one parent. In some instances the other parent, while known, may not be subject to the jurisdiction of the court. Others may not be known or cannot be located. Because of the thousands of impoverished mothers and children whose lives parallel that of Bianka and her mother, the Center has a clear interest in the Court's decision whether single parents should and can obtain findings under Code of Civil Procedure section 155 and custody orders in situations bearing similarities to Bianka's.

The Center is also concerned about the impact of the *Bianka M.* decision even where there is no foreign country component. Many of the Center's clients have difficulty obtaining a custody order from the trial court when there are insufficient grounds to obtain personal jurisdiction against

the other, alleged, parent, even within the United States. Therefore, the Center has a strong interest in preventing overly-expensive or onerous barriers to obtaining *any* custody orders where the Family Code does not mandate or justify these hurdles. As we explain below, the requirement of an adjudication of the father's paternity for persons over whom the trial court does not have personal jurisdiction is without support in family law, and could potentially affect many of the Center's clients who seek custody over children where an alleged parent is in Central America -- or in Central Kansas. Joinder of absent, alleged parents over whom the court lacks personal jurisdiction is one such onerous barrier in all parentage cases, domestic or international. The *amicus* brief filed with this Court in place of a Respondent's Brief (ARB) suggests that this Court could hold that if the trial court finds that Bianka's father does not speak or read English, it should require Bianka to serve him with copies of "the relevant documents," including the requested SIJS status findings, translated into Spanish. (ARB 5,25- 26.) This requirement would be cost-prohibitive and daunting for the Center's

clients. As Bianka's Reply Brief (RB) argues, it is also without proper legal support. (RB 12-21.)

The Association of Certified Family Law Specialists (ACFLS) is a nonprofit, statewide bar association with 656 members certified by the State Bar of California, Board of Legal Specialization as family law specialists. Since its founding at the inception of the certification of family law specialists by the State Bar, ACFLS has played an active public policy role when the appellate courts, legislature and Judicial Council consider matters of significance to family courts, family court populations or the family law bar. ACFLS has appeared as *amicus* in many family law appellate cases, including cases where the organization's participation was invited by the appellate court. Its briefs have been cited in appellate opinions.

ACFLS has an active amicus committee that reviews cases, and makes recommendations to the Executive Committee and Board of Directors regarding letters in support of publication or de-publication of opinions, letters supporting or opposing California Supreme Court review, and

amicus briefs. The members of the *amicus* committee of ACFLS are all volunteers. The *amicus* committee includes all three lawyers in the state who are dual-certified as family law and appellate law specialists.

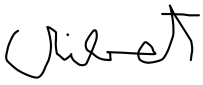
ACFLS members represent family law litigants, many of whom are parents. Some of its members have also served as court-appointed minors' counsel in California family courts.

ACFLS has no direct ties to or interest in the litigants in the *Bianka M.* case. ACFLS's interest is to promote the welfare of children, like Bianka, whose lives and care are governed by orders of California Family Courts.

The Center and the ACFLS seek an Order reversing and remanding the matter to the trial court with instructions to make the SIJS findings and custody order that Bianka requested.

Accordingly, the Harriett Buhai Center for Family Law and the ACFLS respectfully request leave to file this *amicus* brief in support of Petitioner Bianka M.

Date: April 6, 2017



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PROPOSED *AMICUS* BRIEF

OF THE HARRIETT BUHAI CENTER FOR FAMILY LAW

AND THE ASSOCIATION FOR CERTIFIED

FAMILY LAW SPECIALISTS

BACKGROUND

The Court of Appeal approved the family court's refusal to place Bianka in her mother's custody, despite Bianka's best interests, or to make the SIJS findings Bianka requested and supported with evidence, until it adjudicated her alleged father's paternity. (*Bianka M. v. Superior Court* (2016) 245 Cal.App.4th 406, rev. granted and opinion superseded sub nom (2016) 370 P.3d 1052.) ("*Bianka M.*") This holding means that Bianka would "not only need to join [her alleged father] to the action but must also establish a basis for personal jurisdiction over him." (*Id.*, at pp. 430-431.) Because the family court lacked, and could not compulsorily obtain, personal jurisdiction over Bianka's alleged father, however, this condition effectively ended Bianka's chances of obtaining a custody order or SIJS findings (and therefore

SIJS). (Please see OB 4-5.)

These requirements result in an inappropriate and legally unjustifiable shifting of the burden to a SIJS applicant, a juvenile, or her parent, to demonstrate that an abandoning, "alleged" parent has been joined or attempted to be joined, or that he or she filed a stipulation agreeing to the jurisdiction of the trial court. The requirements impose a greater duty towards alleged parents than is required by the California Family Code and the Code of Civil Procedure, which only requires service of the moving papers – service that Bianka accomplished "in spades."

Bianka's father is just an "alleged" parent who has received all the due process to which he is entitled. The trial court's failure to make the requisite findings to allow her to seek SIJS status flies in the face of her best interests. A requirement that documents be translated into Spanish is unsupported by the law and sets up yet another barrier to access to the courts for Bianka and her mother.

ARGUMENT

A. The Family Code Provides for Different Parentage Statuses. Bianka's Father is a Mere "Alleged Parent" With Limited Rights.

Bianka's father is an alleged parent, namely, one who, while a possible biological parent, has done nothing to step forward and take responsibility as a parent. Under the *Bianka M.* decision he is invested with greater parental rights than exist under the Family Code, the Code of Civil Procedure, and case law. As a mere alleged parent, Bianka's father was given all the process that he was due; specifically, notice and an opportunity to be heard with respect to Bianka's petition to be placed in her mother's sole custody. Should he wish to be heard, he may seek to obtain "presumed" father status under California law.

More particularly, the Uniform Parentage Act (UPA), enshrined in the California Family Code ("the Code"), provides the framework by which California courts make parentage determinations. (*Neil S. v. Mary L.* (2011) 199 Cal.App.4th 240,

246.)

The Code addresses the concepts of biological, presumed and alleged parents. The statutory scheme creates three classifications of parents: mothers, biological fathers who are presumed fathers, and biological fathers who are *not* presumed fathers (*i.e.*, natural fathers), like Bianka's father in this case. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 825.)

A biological parent is one who has a genetic relationship with the child. (Section 7610, subd. (a).)[1] A presumed father is one who "is presumed to be the natural father of a child ..." if the man meets any of several conditions set forth in the

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[1] All future references are to the Family Code, unless noted.

Section 7610 , subdivision (a) provides in full as follows:

"The parent and child relationship may be established as follows: (a) Between a child and the natural parent, it may be established by proof of having given birth to the child, or under this part."

statute. (Section 7611.)[2]

More particularly, "[a] man is presumed to be the natural father of a child," if he is the husband of the child's mother, is not impotent or sterile, and was cohabiting with her (section 7540); if he signs a voluntary declaration of paternity stating he is the "biological father of the child" (section 7574, subd. (a)(6)); **or** if "[h]e receives the child into his home and openly holds out the child as his natural child" (section 7611, subd. (d)). (*Elisa B. v.*

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[2] Section 7611 states in relevant part as follows:

> "A person is presumed to be the natural parent of a child if the person meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:
> (a) The presumed parent and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.
> * * *
> (c) After the child's birth, the presumed parent and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:
> (1) With his or her consent, the presumed parent is named as the child's parent on the child's birth certificate.
> (2) The presumed parent is obligated to support the child under a written voluntary promise or by court order.
> (d) The presumed parent receives the child into his or her home and openly holds out the child as his or her natural child . . ."

Superior Court (2005) 37 Cal.4th 108, 116). As the responding *amicus* recognizes (ARB 11-12), section 7611 paternity presumptions reflect "the state's interest in the welfare of the child and the integrity of the family," rather than the interests of the alleged or biological father. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 611, citation and quotations omitted.) "'The statutory purpose [of section 7611] is to distinguish between those fathers who have entered into some familial relationship with the mother and child and those who have not.'" *(Jason P. v. Danielle S.* (2014) 226 Cal.App.4th 167, 177, quoting *In re T.R.* (2005) 132 Cal.App.4th 1202, 1209.) "'The paternity presumptions are driven by state interest in preserving the integrity of the family and legitimate concern for the welfare of the child. The state has an 'interest in preserving and protecting the developed parent-child ... relationships which give young children social and emotional strength and stability.'" *(Id.,* quoting *In re Nicholas H.* (2002) 28 Cal.4th 56, 65.) (Please see AB 11-12.)

The facts of this case demonstrate that Bianka's father is not a presumed father. He was not married to Bianka's mother;

he did not sign a voluntary declaration of paternity, and he did not bring Bianka into his home. To the contrary, he did not want her to be born in the first place and had nothing to do with her after she was born.

Therefore, Bianka's father, who may be her biological father, has not achieved presumed father status, and is an alleged father. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn.15; *In re Jason J.* (2009) 175 Cal.App.4th 922, 932, fn. 4.) Because he never attempted to exercise his right to be heard or attempted to exercise parental duties, he has no parental rights.

On this point Bianka's Reply Brief states:

> "Bianka's alleged father has no parental rights. He is not entitled to the privileges of parenthood, such as custody or visitation, because he has not accepted his parental responsibilities. (OB 42.) As Bianka explained in her Opening Brief, 'Parental rights do not spring full-blown from the biological connection between parent and child' (and Bianka's alleged father has not even established this connection). (*Id.*, citing *Lehr v. Robertson* (1983) 463 U.S. 248, 260.) Only by demonstrating a full commitment to the

responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' does an alleged father's 'interest in personal contact with his child acquire substantial protection under the due process clause.' (*Id.*, citations omitted.)" (RB 13-14.)

Under Section 3010, both the mother and presumed father, but not the natural father, "are *entitled* to custody of their minor children." (*In re Baby Girl M.* (1984) 37 Cal.3d 65,71-72 [superseded on other grounds by statute], emphasis supplied.)[3] Bianka's father is one such natural father, thus lacking in an automatic right to custody. As we discuss below, he received all the process to which he was due. The trial court and the appellate court should not have invested him with greater rights by the stroke of their pens.

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[3] Section 3010, subdivision (a) states:

"The mother of an unemancipated minor child and the father, if presumed to be the father under section 7611, are equally entitled to the custody of the child."

B. No Personal Jurisdiction Is Necessary To Make an Initial Custody Decision.

The Court of Appeal in *Bianka M.* held that:

"The [trial] court was understandably reluctant to permit the action to proceed in that fashion, particularly where Jorge was named as a respondent in the dismissed action, Gladys (the petitioner in the dismissed action) personally served him, Jorge never responded but was not defaulted, and no evidence was presented that Jorge was unwilling to enter into a stipulation concerning parentage or custody. Simply put, an uncontested action under the UPA between a child and one parent is not an appropriate means by which to adjudicate both parents' custody rights. Further, in an action under the UPA, it would be inappropriate for a court to find that Bianka's father abandoned her without first determining paternity." (*Bianka M., supra,* 245 Cal.App.4th at p. 427.)

The Court of Appeal was incorrect that Bianka's action under the UPA is not an appropriate forum to adjudicate custody

rights because Bianka's father was not present. As Bianka's briefs demonstrate, he was given all the notice that was required to be given to him and he did not *need* to be present. (Section 7666.)[4]

The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") provides a California court "the exclusive jurisdictional basis for making a child custody determination." (Section 3421, subd. (b).) Under the UCCJEA physical presence is not mandatory before a custody decision can be made. All that is required is that the requirements of Section 3421 are met.[5]

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[4] Section 7666 provides in full as follows:

> "(a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the biological father or a possible biological father in accordance with the Code of Civil Procedure for the service of process in a civil action in this state at least 10 days before the date of the proceeding, except that publication or posting of the notice of the proceeding is not required, and service on the parent or guardian of a biological father or possible biological father who is a minor is not required unless the minor has previously provided written authorization to serve his or her parent or guardian. Proof of giving the notice shall be filed with the court before the petition is heard."

[5] Section 3421 states:

> "Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody
>
> (continued...)

"Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." (Section 3421, subd. (c); *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 493 [The requirements of due process of law are met in a child custody proceeding when, as here, with a

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[5](...continued)
determination only if any of the following are true:
(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.
(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:
(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.
(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).
(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.
(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination."

court with subject matter jurisdiction over the dispute, the out-of-state parent is given notice and an opportunity to be heard. Personal jurisdiction over the parents is not required to make a binding custody determination, and a custody decision made in conformity with due process requirements is entitled to recognition by other states.].)

The National Conference of Commissioners on Uniform State Laws clearly stated in 1997 in passing the UCCJA (the predecessor to the UCCJEA) that:

> "Subsections (b) and (c) clearly state the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the State is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the State does not confer jurisdiction to make a custody determination." (National Conference of Commissioners on Uniform State Laws, Comment to

Section 201, Uniform Child Custody Jurisdiction and Enforcement Act (1997) at 26, available at http://www.uniformlaws.org/Acts.aspx)

In short, it was not necessary for Bianka's alleged father to appear in person or to have minimum contacts with the state of California in order for the court to make the custody ruling. See also *In re Marriage of Torres* (1998) 62 Cal.App.4th 1367, 1379–80 [The more relaxed notice requirements of the UCCJA contribute to the UCCJA's stated objective of "[d]iscourag[ing] continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child."].

C. Alleged Parents Are Entitled Merely to Notice, Which Bianka Gave To Her Father.

Bianka need only have provided notice of the proceeding to any alleged, natural, or presumed parent and an opportunity to

be heard, in accordance with California law. (Section 7635.)[6] Bianka accomplished this notice. As Bianka argued in her merits brief, notice to a parent residing in Honduras, like Bianka's alleged father, may be accomplished "by personal delivery of a copy of the summons and of the complaint" (Civil Code, sections 413.10, 415.10), at least 10 days before the proceeding. (Sections 3408, subd. (a), 7635, subd. (b), 7666, subd. (a).) Assuming these criteria are met, the court may "during the pendency of a proceeding or at any time thereafter, make an order for the custody of a child during minority that seems necessary or proper." (Section 3022.)

The case law and statutes clearly provide that no personal jurisdiction over Bianka's father and no joinder of him were

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[6] Section 7635, subd. (b) states:

> "(b) The natural parent, each person presumed to be a parent under Section 7611, and each man alleged to be the natural father, may be made parties and shall be given notice of the action in the manner prescribed in Section 7666 and an opportunity to be heard. Appointment of a guardian ad litem shall not be required for a minor who is a parent of the child who is the subject of the petition to establish parental relationship, unless the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case."

necessary. Bianka gave her alleged father adequate notice. Nothing else was required.

D. The Appellate Decision Ignores the Best Interests of Bianka.

The SIJS findings are that: (1) the child is "dependent" upon a juvenile court or "committed to, or placed under the custody of" the State or other court- appointed individual or entity; (2) the child cannot be reunified with one or both parents "due to abuse, neglect, abandonment, or a similar basis found under State law," and (3) it is not in the child's "best interest" to be "returned" to her country of origin. (*Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 349, citing 8 U.S.C. section 1101(a)(27)(J); see also Code Civ. Proc., section 155, subd. (b)(1).)

The trial court found "both the overall level of violence in [Bianka's] city and the lack of available relatives to care for her, is untenable, and supports a finding that **it would not be in the best interest[]of [Bianka] to be returned**" to Honduras,

satisfying the third SIJS finding. (OB 14-15, emphasis in original.)

While the *Bianka M.* decision thus gives "lip service" to the requirement that family courts look to Bianka's best interests, it then failed to consider those interests because her father was not present.[7] Specifically, the court held that:

> "[I]n the context of a custody proceeding, a court properly considers a wide range of factors bearing on a child's best interests, including in this case Jorge's paternity and presumed father status, if any, as well as his ability and desire to have a relationship with Bianka, if any. (See §§ 3020, subd. (b) [noting the importance of frequent and continuing contact between a child and both parents], 3010 [noting a

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[7] The appellate court noted:

> "Federal law imposes requirements on state dependency plans and recognizes 'the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, **and a child's best interests.**' [Citations.]' (*In re Y.M., supra,* 207 Cal.App.4th at p. 908, 144 Cal.Rptr.3d 54.)" (*Bianka M., supra*, 245 Cal.App.4th at p. 421, emphasis supplied.)

> child's natural mother and father, if the father is a presumed father under § 7611, are equally entitled to custody of their child].) Although the declarations from Bianka and Gladys indicate Jorge has not fostered a relationship with Bianka and has no interest in doing so in the future, it was within the court's discretion to attempt to give Jorge a meaningful opportunity to refute those allegations before making the orders requested by Bianka in this case." (*Bianka M. v. Superior Court*, *supra*, 245 Cal.App.4th at pp. 429-430.)

Nowhere does the appellate decision directly address what ought to happen in Bianka's best interests, even though the benchmark of custody law in California is consideration of the best interests of the child. "Family Code section 3011 lists specific factors, 'among others,' that the trial court must consider in determining the 'best interest' of the child in a proceeding to determine custody and visitation: '(a) **The health, safety, and welfare of the child. [¶] (b) Any history of abuse by one parent against the child or against the other parent .... [¶]**

(c) The nature and amount of contact with both parents." (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31–32, emphasis supplied.)

Nowhere does the *Bianka M.* opinion explain how the trial court's failure to make the requested SIJS findings could possibly be in Bianka's best interest. Her alleged father never accepted his parentage duties. He never sought a relationship with Bianka. He received adequate notice of the proceedings but did nothing. Bianka, in contrast, came to this country for a secure life and found it. The trial court's failure to the requested findings, and the appellate court's approval, stand the best interest requirement on its head.

E. The Holding in *Bianka M.* Puts SIJS Applicants Like Bianka in an Impossible Position, and the Solution of the Answering Brief Should be Rejected.

Although it "appreciate[d] that [the] process may prove difficult for Bianka and other similarly situated children seeking

SIJ status," the Court of Appeal offered no viable solution to the dilemma its holding created. (*Bianka M.*, *supra*, 245 Cal.App.4th at pp. 429-430.) Without personal jurisdiction over her alleged father, a default judgment adjudicating his paternity is void. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1234.)

Thus, Bianka is left in truly inequitable and untenable situation. She was abandoned by someone who wanted her dead before she was born (her father attacked her pregnant mother with a machete), yet now he is supposed to be joined as an indispensable party to Bianka's request to be reposed in her mother's safe care and custody. (AE 332-342; AE 23 ¶ 4.)

The absurdity of the situation is underscored by the appellate court's comments that "a state court's role in the SIJ process is not to determine worthy candidates for citizenship, but simply to identify abused, neglected, or abandoned alien children under its jurisdiction [like Bianka] who cannot reunify with a parent or be safely returned in their best interests to their home country." (*Bianka M., supra,* 245 Cal.App.4th at p. 421, citing *Leslie H., supra,* 224 Cal.App.4th at p. 351, 168 Cal.Rptr.3d 729.)

Yet in the face of undisputed evidence that Bianka's merely alleged father abandoned and neglected her, the appellate court nonetheless was concerned about his *visitation rights,* a true *reductio ad absurdum* since her father was entitled to *no* parentage rights.[8]

By requiring joinder, the Court of Appeal opinion thus places the burden on children like Bianka to protect their parents' hypothetical parental rights, instead of letting those parents assert them. This holding puts far too great a burden on the victim and gives far too much power to the victimizer.

The solution of the responding *amicus* to its due process concern over the service afforded to the father – namely, requiring translation of the "operative documents" into Spanish

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[8] The appellate court reasoned:

> "[A]lthough Bianka's petition takes no position on visitation, as a practical matter she would have to oppose any visitation rights for Jorge, as visitation is incompatible with the requested SIJ finding that reunification is not viable. Substantial geographic separation, which will often (if not always) be present in cases in which SIJ findings are requested, further exacerbates the effect of a sole custody order in this case. In our view, the court was reasonably concerned about making such an order in a nonadversarial proceeding to which the noncustodial parent is not a party, as is the case here." (*Bianka M. v. Superior Court,* 245 Cal.App.4th at p. 430.)

– should be rejected as violating the law and not fully briefed (points discussed in Bianka's Reply Brief). From these *amici's* perspectives it should be rejected on the independent ground that translation creates an unduly expensive and unworkable barrier to redress of grievances in the family court system for SIJS applicants – indeed for all of the Center's clients where one parent speaks another language.

In California, 19.4 percent of our population report that they do not speak English as their primary language and have a limited ability to read, write, speak, or understand English. In Los Angeles County, that percentage is 26.2 percent. (October, 2015 US Census Bureau data, http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html)

Requiring Bianka at her cost to translate "operative documents" (whichever those are) into Spanish would be cost prohibitive and, therefore, represents a chill on her right to seek redress from the family courts, *i.e.,* the necessary prerequisites to SIJS status. Depending on what documents are deemed "relevant" or "operative," translation could involve thousands of

words and many hundreds of dollars. The Guide to Translation of Legal Materials states:

> "Financial Considerations – While high prices do not necessarily guarantee high quality, keep in mind the adage, 'You get what you pay for.' The party seeking the translation should expect to negotiate various costs associated with the translated product [including]: [1] minimum charge (average between $50- $100) [2] per word charge: (for Spanish the average is $.10 to $.25 per word); for Languages other than Spanish the average is $.27 to $.30 per word); [3] per hour depending on market rates (average $40-$50 per hour) editing reviewing/proofreading formatting." http://www.ncsc.org/education-and-careers/state-interpreter-certification/~/media/files/pdf/education%20and%20careers/state%20interpreter%20certification/guide%20t

o%20translation%20practices%206-14-11.ashx (Page 8, footnote omitted.)[9]

The California Judicial Council cautions that:

> "Consideration of Translation Costs Translation work consists of a great deal more than the standard 'per word' charge (or 'per hour' depending on the translation provider), which itself can vary widely between translators and languages to be translated. In addition to charges per word of original text or per hour of work, other common costs to expect as part of a translation contract (or to ensure are included in the quoted 'per word' or 'per hour' charge) include:
>
> • Editing, including tailoring language to readers; ensuring smoothness of text; checking syntax and idioms, style, spelling, typography, and punctuation; and copyediting and proofreading for consistency.

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[9] The approximate word counts for just a handful of the parentage forms are as follows:

FL-001: 1,093 words; FL-311: 806 words; FL-341: 873 words; FL-341(c): 535 words; FL-341(d): 956 words; FL-250: 529 words; FL-195: 1,361 words; FL-191: 2,185 words; and FL-105 UCCJEA: 680 words.

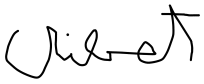
• Reviewing, which ensures that the translated text accurately reflects the original text, meets the readability criteria appropriate for the text in question, and is culturally competent. The reviewer must compare the source text with the translation, making corrections and editorial improvements where necessary. • Proofreading, which is the final check for any typographical, spelling, or other errors. It does not address the accuracy of the translation, which should already be complete and accurate. • Formatting, which results in uniformity in the presentation, organization and arrangement of the document, as well as its layout and style. Formatting may also include the redesign of a document so that a bilingual format can be followed, as opposed to the more standard monolingual format." Judicial Council of California July 2016 http://www.courts.ca.gov/documents/lap-Translation-Protocol.pdf (Pages 10-11.)

In addition to being cost prohibitive, translation is unwarranted by California Rule of Court 5.130, effective July 1, 2016, which prescribes the procedures to request the judicial findings needed as a basis for filing a federal petition for classification as a Special Immigrant Juvenile. As Bianka notes in her RB, Rule 5.130 was adopted *after* Bianka served her alleged father with notice of her parentage action and request for SIJS findings. (*Cf.* 1 AE 116.) Had it applied, it would have required Bianka to serve a copy of her request for order and appropriate supporting documents in accordance with Code of Civil Procedure section 413.10 *et seq*. Bianka complied with those requirements, none of which mandate translation into Spanish, by personally serving her request for order and other documents on her alleged father more than 10 days in advance of the hearing. While Rule 5.130 would have required service of the English language version of form FL-356, it would not have required Bianka to serve the Spanish language version. (Rule 5.130(b)(2).)

CONCLUSION

Accordingly, the Harriett Buhai Center for Family Law and the Association for Certified Family Law Specialists respectfully request an Order reversing and remanding the matter to the trial court with instructions to make the SIJS findings and custody order that Bianka requested.

Date: April 6, 2017



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CERTIFICATION OF WORD COUNT

[Cal. Rules of Court, Rule 8.204(c)(1)]

I, Claudia Ribet, declare:

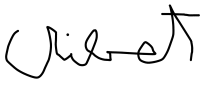
1. I am an attorney at law duly licensed to practice law before all the Courts of the State of California, and that I am the appellate counsel for proposed *amici* Harriett Buhai Center for Family Law and the Association for Certified Family Law Specialists.

2. The Application for Leave To File an *Amicus* Brief and Proposed Amicus Brief was generated by computer which shows that the text of the document contains approximately 7,128 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of April, 2017, at Los Angeles, California.

Date: April 6, 2017



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PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is: 1875 Century Park East, Suite 2200, Los Angeles, CA 90067; my e-mail address is christineh@ribetsilver.com.

On April 6, 2017, I served or caused to be served a true and correct copy of the foregoing document described as - **APPLICATION ON BEHALF OF THE HARRIETT BUHAI CENTER FOR FAMILY LAW AND THE ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER'S BRIEF** -- to the interested parties/party in this action, as follows:

[Continue on following page]

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[Continue on following page]

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Executed on April 6th , 2017, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Christine Huynh

Christine Huynh