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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, SECOND APPELLATE DISTRICT, DIVISION THREE · CASE NO. B267454

PETITION FOR REVIEW

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PETITION FOR REVIEW

ISSUES PRESENTED

In ruling on a child's request under Code of Civil Procedure section 155 for findings necessary to enable the child to petition the United States Citizenship and Immigration Services for classification as a Special Immigrant Juvenile:

1. Does a California court improperly usurp the authority of the federal government by denying the child's request based on a conclusion that the proceeding in which the request is made is not "*bona fide*"?

2. May a California family court deny the child's request on the ground that the parentage of the child's non-custodial alleged parent has not been adjudicated?

REASONS FOR GRANTING THE PETITION

The Court should grant review of the published decision of the Court of Appeal to resolve a conflict in the appellate courts and settle important questions of law regarding the respective roles of California's courts and the U.S. government in implementing legislation designed to protect abandoned, abused, and neglected children seeking immigration relief.

This petition squarely presents an issue that has vexed the superior courts of this State and has now opened a schism within the California Courts of Appeal: What is the proper role of the State's courts in effectuating the immigration policy behind the federal Special Immigrant Juvenile Status ("SIJS") framework (8 U.S.C. § 1101(a)(27)(J))? Prior to the decision below, the Courts of Appeal had repeatedly held that the role of California's courts was limited to the fact-finding procedure codified in section 155 of the Code of Civil Procedure ("section 155"). The State's courts were not permitted to decide whether a child should ultimately receive SIJS relief; that decision was reserved to the federal government.

In three prior decisions, different panels of the Court of Appeal rebuked superior courts for usurping the federal government's exclusive authority over immigration policy by refusing to make SIJS findings on the basis of immigration policy concerns or speculation about the motives of a child seeking SIJS relief. (See *Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319, 329 [Fourth Dist., Div. Three] ("*Eddie E. II*"); *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 351 [Fourth Dist., Div. Three] ("*Leslie H.*"); *In re Israel O.* (2015) 233 Cal.App.4th 279, 289 [First Dist., Div. Five] ("*Israel O.*").) The appellate courts explained that such reasoning transgressed the bright line dividing federal and state responsibilities within the SIJS framework. (See, e.g., *Leslie H.*, *supra*, 224 Cal.App.4th at p. 351 ["[T]he SIJ statute and accompanying regulations

'commit . . . specific and limited issues to state juvenile courts'" which "need not determine any other issues, such as what the motivation of the juvenile in making application for the required findings might be"].)

By contrast, the Court of Appeal's decision in *Bianka M.* not only allows but encourages California courts to inquire into the motives of a child seeking SIJS relief and to refuse to make SIJS findings if the court believes those motives are not "*bona fide*." (*Bianka M. v. Superior Court* (2016) 245 Cal.App.4th 406 ("*Bianka M.*"), at **7 ["It appears, therefore, Congress and the USCIS rely upon our state courts to issue orders containing the findings required to support an SIJ petition in the context of ongoing, bona fide proceedings"]; see also *id.* at **10 ["[T]he proceeding below was not a bona fide custody proceeding under the [Uniform Parentage Act]."].) Yet nothing in the current federal SIJS statute or state law expressly permits the State's courts to do this. The Court of Appeal erroneously inferred such authority from the legislative history of a previous version of the SIJS statute, a proposed (but never adopted) federal regulation, and an agency memorandum interpreting factors the *federal government* may consider in exercising its discretion to grant or deny SIJS relief. (*Id.* at **6.) These sources make clear that only the federal government (if anyone) may consider the *bona fides* of a child's request for SIJS relief. Nonetheless, the *Bianka M.* decision allows California courts to usurp this federal prerogative.

In addition, the Court of Appeal's opinion in *Bianka M.* creates a clear conflict with two recent unpublished appellate court decisions that rejected family courts' attempts to condition SIJS findings on an adjudication of parentage (paternity or maternity). In both decisions, the Court of Appeal held that adjudicating parentage was not a prerequisite to making SIJS findings that were supported by the evidence. (See Dkt. No.

10,[1] Request for Judicial Notice, Exhibit A, *Bryan S. v. Superior Court* (Feb. 24, 2015, B267454), unpublished [Second Dist., Div. Five] ("*Bryan S.*"); *id.*, Exhibit B, *Elder O. v. Superior Court* (Sept. 3, 2015, B266546), unpublished [Second Dist., Div. Eight] ("*Elder O.*"); see also B267454, Dkt. No. 14, Order Granting Request for Judicial Notice.)

Bianka M., by contrast, requires family courts to adjudicate parentage before making SIJS findings. (*Id.* at **1 ["By requesting these orders, Bianka necessitates consideration of [her alleged father's] parentage and parental rights."].) The problem is that a binding parentage determination – even by way of default – requires personal jurisdiction over the subject parent. (*Cty. of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1227, 1234; see also *Strathvale Holdings v. E.B.H* (2005) 126 Cal.App.4th 1241, 1250 [default parentage judgment void even if foreign defendant does not move to quash].) Personal jurisdiction, however, is something the State's courts cannot obtain compulsorily over a foreign citizen with no contacts to California. (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 294 ["[T]he Due Process Clause 'does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.'"], citation omitted; see also *Global Packaging, Inc. v. Superior Court* (2011) 196 Cal.App.4th 1623, 1630 [State court's "power ultimately ends at the state line."].) The requirement therefore is virtually impossible to fulfill for an entire class of children eligible for SIJS relief: those abandoned by *one* parent who continues to reside in a foreign country. (8 U.S.C. § 1101(a)(27)(J) [SIJS relief available to a child whose

[1] "Dkt. No." refers to sequential entries in the Court of Appeal docket for case number B267454.

reunification with *1 or both* parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," emphasis added].)

The *Bianka M.* decision will have an immediate, harmful impact as superior courts withhold evidence-backed SIJS findings because they conclude – like the Court of Appeal in *Bianka M.* – the proceedings in which children request the findings are not *bona fide*. This conclusion would have been improper under the rule laid down in previous Court of Appeal decisions. Indeed, "because there is no 'horizontal *stare decisis*' within the Court of Appeal," litigants presumably still could obtain writ relief in the Fourth Appellate District, Division Three, from which two of those prior decisions issued, if an Orange County family court failed to make SIJS findings for this reason. (*In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409, *as modified on denial of reh'g* (May 9, 2001) ["[I]ntermediate appellate court precedent that might otherwise be binding on a trial court [citation] is not absolutely binding on a different panel of the appellate court."].)

Similarly, family courts following *Bianka M.* will refuse to provide SIJS findings to children who cannot prove the parentage of an absent, non-custodial parent, even though two unpublished decisions by the Court of Appeal reached the opposite result. (See *Bryan S.*, *supra*, Dkt. No. 10, Exhibit A at p. 3 [family court could not "fail to exercise its discretion to make SIJS findings" on this basis]; *Elder O.*, *supra*, Dkt. No. 10, Exhibit B at p. 4 ["Section 155 does not require a paternity adjudication before a court can make SIJS findings, as long as a proper declaration or other evidence identifies the person the child claims to be his father."].)

In light of the stark differences between *Bianka M.* and the prior appellate court decisions, this Court should grant review. Absent review, children in substantively identical cases will face potentially divergent outcomes, raising the threat of forum shopping. Only by granting review

and resolving these conflicts can the Court secure uniformity and provide clear guidance to the State's courts, the immigration and family law bars, and litigants in SIJS cases.

STATEMENT OF THE CASE

I. Congress Created the SIJS Framework with a Clear Division of Authority Between the Federal Government and State Courts.

"Congress created [SIJS] classification to protect abused, neglected, and abandoned unaccompanied minors through a process that allows them to become permanent legal residents." (*In re Y.M.* (2012) 207 Cal.App.4th 892, 915, citation omitted; see also 8 U.S.C. § 1101(a)(27)(J) .) "[T]he purpose of SIJ status [is] to 'protect the applicant from further abuse or maltreatment by preventing him or her from being returned to a place where he or she is likely to suffer further abuse or neglect' [citation.]" (*Israel O.*, *supra*, 233 Cal.App.4th at p. 291, quoting *Marcelina M.-G. v. Israel S.* (N.Y. App. Div. 2013) 112 A.D.3d 100, 113 [973 N.Y.S.2d 714, 723-24].)

Under the federal SIJS framework, discretion to grant or deny SIJS relief to a child is reserved exclusively to the federal government through the U.S. Citizenship and Immigration Services ("USCIS"). (*Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622, 626 ("*Eddie E. I*") ["[T]he federal government has exclusive jurisdiction with respect to immigration . . . , including the final determination whether an alien child will be granted permanent status as an SIJ"], citations omitted.)

The role of state courts, by contrast, is to make three factual findings – SIJS findings – that USCIS uses to determine whether or not to exercise that discretion. (*Eddie E. I*, *supra*, 223 Cal.App.4th at pp. 626-627; see also *Leslie H.*, *supra*, 224 Cal.App.4th at p. 344.) After a state court makes SIJS findings, the child must include them with her SIJ petition to USCIS. (See

Israel O., supra, 233 Cal.App.4th at pp. 284-285, citing 8 U.S.C. § 1101(a)(27)(J)(iii); 8 C.F.R. § 204.11(d) (2014).)

Section 155 enumerates the three SIJS findings[2] and describes the procedure for requesting and issuing them. It states:

> If an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those findings, which may consist of, but is not limited to, a declaration by the child who is the subject of the petition, the court *shall* issue the order, which *shall* include all of the following [SIJS] findings. . . .

(Code Civ. Proc., § 155, subd. (b)(1), emphasis added.) Pursuant to section 155, therefore, a court with jurisdiction to make child custody determinations under California law "has the authority *and duty* to make [SIJS] findings" if the evidence before it supports those findings. (*B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 630, emphasis added.) Section 155 does not contain any other conditions on making SIJS findings.

II. The Court of Appeal Affirmed the Superior Court's Refusal to Make SIJS Findings on the Grounds that the Proceeding Below Was Not "*Bona Fide*" and a Parentage Determination Had Not Been – and Could Not Be – Made.

Petitioner Bianka M. is a 13-year old child whose father abandoned her before birth and has never provided for or communicated with her

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[2] The findings are that (1) the minor is "dependent" upon a juvenile court or "committed to, or placed under the custody of," a state entity or other court-appointed individual or entity; (2) the minor 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 minor's "best interest" to be "returned" to his or her country of origin. (8 U.S.C. § 1101(a)(27)(J); see also 8 C.F.R. § 204.11(c) (2014).)

since. (See Dkt. No. 3, Petitioner's Appendix of Exhibits, Vol. 1 ("1 AE") 2-3; 1 AE 9.) Bianka fled to the United States in 2013 to escape rampant violence in Honduras where she previously lived with her older sister. (1 AE 3; 1 AE 9-10.) After being detained by federal immigration authorities, Bianka was reunited with her mother, Gladys M., who had previously come to the U.S. to find a job that would allow her to provide for Bianka. (1 AE 3; 1 AE 9.)

In 2014, Bianka initiated a parentage action in Los Angeles County family court seeking to have her mother awarded sole legal and physical custody over her. (1 AE 11.) In that proceeding, Bianka asked the family court to make SIJS findings, which she supported with evidence including declarations and live testimony. (1 AE 1-5; 1 AE 8-10; 1 AE 105-06, 109; see also Dkt. No. 3, Petitioner's Appendix of Exhibits, Vol. 2 ("2 AE") 313-43.) This evidence was uncontradicted and was not subject to any adverse credibility finding. The family court found that Bianka's "situation in Honduras, both the overall violence of her 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 interests of [Bianka] to be returned to Honduras.**" (2 AE 311, emphasis in original.)

The family court nevertheless refused to make the requested custody and SIJS findings. (2 AE 311-12.) The family court believed it needed first to determine Bianka's alleged father's paternity, necessitating his joinder. (2 AE 308 ["Parentage determinations implicate the fundamental rights of a person"]; see also 2 AE 309 [Adjudication of alleged father's paternity required because "[o]nly a parent under SIJS can 'abandon' or 'neglect' his or her child."].) The family court concluded, however, that even if Bianka were to join her alleged father, it still could not make the custody order or SIJS findings she sought because it appeared her alleged father, who resides in Honduras, was not subject to personal jurisdiction.

(2 AE 305 ["Personal jurisdiction over [...] Child's alleged father is required for this Court to make the determinations sought by Child, and no evidence has been presented that this Court has personal jurisdiction over [him]."].) The family court thus denied Bianka's request "without prejudice to further application after [Bianka's alleged father] has been properly joined, personal jurisdiction issues have been resolved and a determination of parentage is made." (*Ibid.*) Bianka petitioned the Court of Appeal for writ relief.

The Court of Appeal issued a published decision denying Bianka's unopposed writ petition. It held that "the proceeding below was not a bona fide custody proceeding under the UPA" (*Bianka M., supra*, 245 Cal.App.4th 406, at **10), and that the family court "did not abuse its discretion by requiring Bianka to join [her alleged father] to the pending action" (*id.* at **2), because SIJS findings and the sole custody order that is prerequisite to such findings required a determination of his parentage. (*Id.* at **4 ["[A] request for sole legal and physical custody in a parentage action necessarily requires a court to consider the parentage of both parents."]; see also *id.* at **8 ["SIJ[S] findings at the pretrial stage" – before determining Bianka's alleged father's paternity – "was premature."].)

Bianka timely petitioned for rehearing pursuant to Government Code section 68081 because the Court of Appeal denied her writ petition on grounds not briefed or argued by the parties, including whether a State court as opposed to the federal government was the appropriate entity to determine whether a request for SIJS findings was "*bona fide.*" (Dkt. No. 28, Petition for Rehearing.) The Court of Appeal denied Bianka's petition for rehearing. (Dkt No. 29, Order Denying Petition for Rehearing.)

LEGAL ARGUMENT

I. Review is Required to Decide If California Courts Improperly Usurp The Authority Of The Federal Government By Denying A Child's Request for Special Immigrant Juvenile Status Findings Based On A Conclusion That The Proceeding Is Not "*Bona Fide*."

A. Prior to *Bianka M.*, California's Courts Recognized They Had No Role In Determining The Motivation or Worthiness of Children Seeking Special Immigrant Juvenile Status Findings.

Until the Court of Appeal's decision in this case, it was well established in California that "[i]t is not the state court's role to weed out [SIJS] applications based on a court's perception of the lack of good faith of a particular applicant." (*Eddie E. II*, *supra*, 234 Cal.App.4th at p. 329.) That task "falls to USCIS, which engages in a much broader inquiry than state courts." (*Ibid.*; see *Leslie H.*, *supra*, 224 Cal.App.4th at p. 351 [nothing in federal statute or regulations "'indicates that the Congress intended that state juvenile courts pre-screen potential SIJ applicants for possible abuse on behalf of the USCIS'"], quoting *In re Mario S.* (N.Y. Fam. Ct. 2012) 38 Misc.3d 444, 456 [954 N.Y.S.2d 843, 853] ("*Mario S.*").)

California courts also recognized that federal enactments concerning special immigrant juvenile status "commit[ ] to a juvenile court only the limited, fact-finding role of identifying abused, neglected, or abandoned alien children under its jurisdiction who cannot reunify with a parent or be safely returned to their home country." (*Leslie H.*, *supra*, 224 Cal.App.4th at p. 344.) State courts had no responsibility to "'determine any other issues, *such as what the motivation of the juvenile in making application for*

the required findings might be [citations] . . . and whether the USCIS, the federal administrative agency charged with enforcing the immigration laws, may or may not grant a particular application for adjustment of status as a [Special Immigrant Juvenile].'" (*Id.* at p. 351, emphasis added, quoting *Mario S.*, *supra*, 954 N.Y.S.2d at pp. 852-853.)

Accordingly, in *Israel O.*, the Court of Appeal rejected an interpretation of 8 U.S.C. section 1101(a)(27)(J) "to the extent that it appears to contemplate a state court role, through the SIJ statute, in effectuating federal immigration policy." (*Israel O.*, *supra*, 233 Cal.App.4th at p. 289.) Section 1101(a)(27)(J) requires an immigrant child seeking SIJS findings to prove that reunification with "[one] or both" parents is not viable due to abuse, neglect, or abandonment. (*Id.* at pp. 283-284.) The Nebraska Supreme Court had construed the "[one] or both" language to prohibit SIJS status if the child's return to *a* custodial parent remains feasible, based on the court's reasoning that "Congress intended that SIJ status be available to only those juveniles who are seeking relief from parental abuse, neglect, or abandonment, *not those seeking immigration advantage*." (*Id.* at p. 287, emphasis added, citing *In re Erick M.* (2012) 284 Neb. 340, 349 [820 N.W.2d 639, 647] ("*Erick M.*").)

In "depart[ing] from [*Erick M.*'s] view[,]" *Israel O.* reaffirmed the principle 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 who cannot reunify with a parent or be safely returned in their best interests to their home country.'" (*Israel O.*, *supra*, 233 Cal.App.4th at p. 287, quoting *Leslie H.*, *supra*, 224 Cal.App.4th at p. 351.)

Applying these principles, the Court of Appeal in *Eddie E. II* observed that the state courts are not responsible for implementing a 2009 USCIS memorandum that defines a "*bona fide*" SIJS request as one that

was "not 'sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.'" (*Eddie E. II*, *supra*, 234 Cal.App.4th at p. 329; see *id.* at p. 330 [it is "not the state court's role" to "assess whether the petition for SIJ status was brought for the right reasons"]; *id.* at p. 331 [it is "not the state court's role" to "determine whether the petitioner has applied for SIJ status primarily for the purpose of obtaining relief from abuse, neglect, or abandonment"]; *In re J.C.* (C068667, Feb. 6, 2015) 2015 WL 513399, *4 [Third Dist., nonpub. opn.] ("*In re J.C.*") ["The juvenile court, however, is not tasked with determining whether J.C. deserves SIJ status; SIJ status is a federal question for immigration authorities to decide"].)

B. By Authorizing California Courts to Determine Whether a Child's Request for SIJS Findings is "*Bona Fide*," *Bianka M.* Creates a Conflict with Prior Court of Appeal Decisions.

The Court of Appeal's decision in *Bianka M.* throws these previously unquestioned principles into doubt, creating conflict and confusion for litigants and California's courts. Despite recognizing that "'[a] state court's role in the SIJ process is not to determine worthy candidates for citizenship'" (*Bianka M.*, *supra*, 245 Cal.App.4th 406, at **6), the Court of Appeal directed California courts to do exactly that: "*As a practical matter*, however, our courts, as well as immigrant children seeking our assistance, should bear in mind the factors considered by the USCIS when it reviews a petition for SIJ status." (*Ibid.*, emphasis added.) Specifically, California courts, in adjudicating requests for SIJS findings, should "bear in mind" whether "the request for SIJ classification is bona fide" – *i.e.*, whether "the SIJ benefit was not 'sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent

residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.'" (*Id.* at **6, quoting H.R.Rep. No. 105–405, 1st Sess., p. 130 (Nov. 13, 1997).)

Emphasizing its break from prior California decisions limiting the role of state courts in the SIJS process, the Court of Appeal in *Bianka M.* concluded that state courts are expected "to issue orders containing the findings required to support an SIJ petition in the context of ongoing, bona fide proceedings relating to child welfare, rather than through specially constructed proceedings designed mainly for the purpose of issuing orders containing SIJ[S] findings." (*Bianka M.*, *supra*, 245 Cal.App.4th 406, at **7.) The Court of Appeal overlooked the fact that the proceedings it disparaged as "specially constructed" are precisely the ones prescribed by the Legislature in Code of Civil Procedure section 155. Indeed, the Court of Appeal went on to determine, for the first time on appeal, that the family court proceeding in this case "was not . . . bona fide." (*Id.* at **10; see Dkt. No. 28, Petition for Rehearing at pp. 9-11.)

In short, under *Bianka M.*, California courts would be in the business of screening immigrant children for worthiness to obtain SIJS status. By contrast, *Eddie E. II*, *supra*, 234 Cal.App.4th at page 329, *Leslie H.*, *supra,* 224 Cal.App.4th at page 351, *Israel O.*, *supra*, 233 Cal.App.4th at page 298, and *In re J.C.*, *supra*, 2015 WL 513399, at *4 hold that this is an impermissible intrusion on the federal government's exclusive jurisdiction over immigration. Review by this Court is warranted to resolve this conflict.

II. By Requiring California Family Courts to Condition the Issuance of SIJS Findings on a Parentage Determination, *Bianka M.* Creates a Conflict with Other Appellate Decisions.

In affirming a family court's refusal to make SIJS findings without first joining and determining the parentage of the absent parent – even

when the parent is not subject to personal jurisdiction [3] – the Court of Appeal in this case created a striking conflict with two previous unpublished appellate court decisions.

In *Bryan S.*, an immigrant child abandoned by his father asked the family court to award his mother sole custody and to make SIJS findings. (*Bryan S.*, *supra*, Dkt. No. 10, Exhibit A at pp. 1-2.) The family court refused both requests because the father had not been joined and his paternity had not been determined. (*Id.* at pp. 2-3.) The child petitioned for writ relief.

The Court of Appeal issued an injunction compelling the family court to make the requested custody order and SIJS findings. (*Id.* at p. 3.) It held that the "[family] court did not possess the judicial discretion to rule that the father is a necessary party in denying petitioner's request that mother be awarded sole custody, or to fail to exercise its discretion to make SIJS findings." (*Ibid.*; see also *id.* at p. 2 ["[T]he issue here is not father's parentage."].) It also specifically held that joinder of the child's non-custodial father was "not required by any . . . legal principle." (*Ibid.*)

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[3] Although the family court ruled that joinder of Bianka's alleged father was required under the mandatory joinder provision of the California Rules of Court, the Court of Appeal held the family court "did not abuse its discretion" by requiring joinder "under the permissive joinder provision of the California Rules of Court, rule 5.24." (*Bianka M.*, *supra*, 245 Cal.App.4th 406, at **11.) The Court of Appeal limited the reach of its joinder holding to cases in which "the identity and whereabouts of the child's absent parent are known." (*Id.* at **12; see *ibid.* ["In other circumstances, including situations in which the child's absent parent cannot be located or identified, joinder would be inappropriate."].) As a result, children seeking SIJS findings in family court based on abuse, neglect, or abandonment by an absent parent will be divided into two groups with potentially different outcomes based on a fact beyond their control – whether they know the identity and whereabouts of their absent parent.

In *Elder O.*, the family court also refused to make SIJS findings without first adjudicating paternity of the father who abandoned the child. (*Elder O.*, *supra*, Dkt. No. 10, Exhibit B at pp. 1, 3.) As in *Bryan S.*, the child petitioned for writ relief. The Court of Appeal issued an Order and Notice of Intention to Grant Peremptory Writ in the First Instance, stating that "[s]ection 155 does not require a paternity adjudication before a court can make SIJS findings, as long as a proper declaration or other evidence identifies the person the child claims to be his father." (*Id.* at pp. 4-5.)

In contrast to these recent decisions, *Bianka M. requires* family courts to adjudicate the parentage of the absent parent before making SIJS findings. (See, e.g., *Bianka M.*, *supra*, 245 Cal.App.4th 406, at **2 ["By requesting these orders [making custody award and SIJS findings], Bianka necessitates consideration of [her alleged father's] parentage and parental rights."].) Yet parentage determinations require personal jurisdiction over the absent parent, something a California court cannot obtain over an unwilling foreign resident. The Court of Appeal acknowledged that, in these cases, children abandoned, abused or neglected by a parent who resides in a foreign country cannot obtain SIJS findings. (*Id.* at **12 ["We recognize Bianka will not only need to join [her alleged father] to the action but must also establish a basis for personal jurisdiction over him, and we appreciate that process may prove difficult for Bianka and other similarly situated children seeking SIJ status."].) Under *Bianka M.*, such children's sole recourse would be to persuade "the nonresident parent [to] stipulate[] to parentage." (*Ibid.* [noting parentage stipulation "constitutes a general appearance, and establishes personal jurisdiction, in the lawsuit."]; see also *id.* at **3 ["If obtaining personal jurisdiction over [her alleged father] is problematic, Bianka may attempt to obtain the relief she seeks by entering into a stipulated judgment of paternity with [him]"].) This means, ironically, that children victimized by abandonment, abuse or neglect

cannot obtain relief without appealing to the benevolence of the very person responsible for victimizing them.

This Court should grant review to resolve the conflict between these appellate decisions and ensure California courts correctly apply laws that directly affect the health and safety of numerous abandoned, neglected, and abused immigrant children throughout our State.

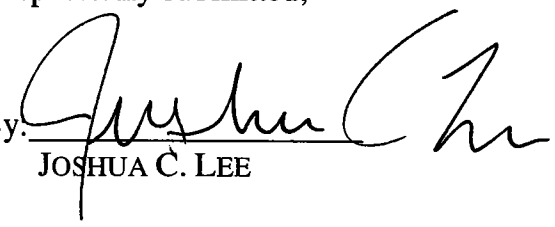
CONCLUSION

For the foregoing reasons, Petitioner Bianka M. respectfully requests that the Court grant review and decide the merits of the petition.

Dated: April 11, 2016

Respectfully submitted,

IRELL & MANELLA, LLP

By: 
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CERTIFICATE OF WORD COUNT

(CAL. RULES OF COURT, RULE 8.204(C)(1))

I hereby certify that pursuant to California Rules of Court, Rule 8.204(c)(1), the attached brief contains 4,593 words, as counted by the Word 2010 word-processing program used to generate the brief.

Dated: April 11, 2016

By: _____
JOSHUA C. LEE