

No. S233757

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BIANKA M.,
Petitioner,

v.

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

Respondent;
GLADYS M.,

Real Party in Interest.

SUPREME COURT
FILED

APR 19 2017

Jorge Navarrete Clerk

Deputy

After a Published Decision by the Court of Appeal, Second Appellate
District, Division Three, Case No. B267454

From the Superior Court, County of Los Angeles, Case No. BF052072,
The Honorable Holly J. Fujie, Judge Presiding

**APPLICATION OF FAMILY VIOLENCE APPELLATE PROJECT
AND UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW
DOMESTIC VIOLENCE CLINIC, ET AL., FOR PERMISSION TO
FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF IN
SUPPORT OF PETITIONER**

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the University of California, Irvine School Of Law Domestic
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for *Amici Curiae* Family Violence Appellate Project and the University of California, Irvine School Of Law Domestic Violence Clinic, *et al.*, certify that there are no interested entities or persons that must be listed in this certificate under Cal. R. Ct. 8.208.

Dated: April 10, 2017

Respectfully submitted.



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**APPLICATION OF FAMILY VIOLENCE APPELLATE PROJECT
AND UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW
DOMESTIC VIOLENCE CLINIC, *ET AL.*, FOR PERMISSION TO
FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONER**

To the Honorable Tani Cantil-Sakauye, Chief Justice:

Family Violence Appellate Project (“FVAP”), the University of California, Irvine School of Law Domestic Violence Clinic (“UCI Clinic”), Alternatives to Violence, the California Women’s Law Center (“CWLC”), Domestic Violence Legal Empowerment and Appeals Project (“DV LEAP”), Professor Wendy M. Seiden, the Legal Aid Society of Orange County and Community Legal Services in Southeast Los Angeles, the Los Angeles Center for Law and Justice (“LACLJ”), and the San Diego Volunteer Lawyer Program, Inc. (“SDVLP”) respectfully seek leave to file the accompanying brief as *amici curiae* in support of the petitioner.¹ *Amici* are nonprofit organizations and individuals who collectively work with thousands of domestic violence survivors each year in California and nationwide, including immigrants and undocumented children seeking Special Immigrant Juvenile (“SIJ”) status. *Amici* are committed to ensuring the safety and well-being of domestic violence survivors and their children.

FVAP is a nonprofit organization dedicated to working through the appellate legal system to ensure the safety and well-being of domestic violence survivors and their children. FVAP provides legal assistance to domestic violence survivors at the appellate level through direct

¹ No party or counsel for a party in this matter authored the proposed *amicus* brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of this brief, other than the *amici curiae* and its members. (See Cal. Rules of Court, rule 8.520(f)(4).)

representation, collaborates with pro bono attorneys, offers training and advocates for domestic violence survivors on important legal issues. FVAP's work contributes to a growing body of case law that provides the safeguards necessary for survivors of domestic violence and their children to obtain relief from abuse through the California courts. Having spent five years representing low-income survivors of domestic violence in high-impact litigation, FVAP has unique expertise that will assist this Court in understanding how the Court's decision will affect one of the State's most vulnerable populations.

The UCI Clinic provides transformative legal representation to abuse survivors and their children while educating law students to become client-centered, culturally competent, ethical, and effective attorneys. The UCI Clinic's holistic representation extends to civil, criminal, and immigration interventions in abuse.

Alternatives to Violence offers services to victims of domestic violence and child abuse in Tehama County. It hopes to spread awareness and end the cycle of violence for the future of the community.

CWLC is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women.

DV LEAP provides a stronger voice for justice by helping overturn unjust trial outcomes, advancing legal protections for victims and their children through expert appellate advocacy, training lawyers, psychologists, and judges on the best practices, and spearheading domestic violence litigation in the United States Supreme Court. DV LEAP also works to ensure that federal and state courts understand the realities of domestic violence and the law when deciding cases with significant implications for domestic violence litigants.

Professor Seiden is a Clinical Professor of Law at Chapman University Fowler School of Law and Assistant Director of the Bette & Wylie Aitken Family Protection Clinic. Professor Seiden has worked in the field of family violence for 25 years. She spent 12 years representing children of all ages in child welfare and high-conflict custody cases before going to teach full-time. Professor Seiden currently teaches the Protection Order Section of the Bette & Wylie Aitken Family Protection Clinic.

The mission of Legal Aid Society of Orange County and Community Legal Services in Southeast Los Angeles County is to provide civil legal services to low-income individuals and to promote equal access to the justice system through advocacy, legal counseling, innovative self-help services, in-depth legal representation, economic development, and community education.

Founded in 1973, LACLJ has provided legal advocacy to low-income and primarily immigrant and Latino populations in Los Angeles for more than 40 years. Over time, LACLJ has evolved to focus on providing direct services on behalf of domestic violence survivors, including those who are teens and young adults. In 2003, the agency launched the only teen-centered legal services program in Los Angeles for teenage and young adults struggling with abuse and difficult co-parenting matters. LACLJ also provides free legal representation to low-income families in high-conflict custody disputes, a large percentage of which involve domestic violence. In 2013, LACLJ formalized a program of providing immigration services to victims of interpersonal violence and unaccompanied minors.

SDVLP was established in 1983 as a private, not for profit, charitable law firm which provides pro bono legal assistance to indigent residents of San Diego County. One of SDVLP's priority areas of service is legal assistance to victims of domestic violence.

The *amici* and their clients have a strong interest in a correct and

informed resolution of this case. Specifically, this Court's decision will broadly affect the ability of abused, neglected, and abandoned children to obtain the SIJ status findings necessary for them to obtain relief from domestic abuse. As the accompanying brief explains, the Court of Appeal's decision rested on the mistaken premise that SIJ status findings and a custody order required a parentage determination for—and thus jurisdiction over—an absent parent who abandoned the child after abusing the proposed custodial parent. California law plainly permits the entry of custody orders without determining the parentage of an abuser. The Court of Appeal's ruling places children of abusive parents in the untenable and dangerous position of having to solicit cooperation from their abusive parent in order to establish entitlement to protection against being released back into that abusive parent's care. This contradicts fundamental principles of California family and domestic violence law, which make the *child's* interests paramount and which require courts to mitigate (rather than enhance) the abuser's power over victims of domestic violence and child abuse.

CONCLUSION

The application for permission should be granted and the accompanying brief of *amici curiae* filed.

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INTRODUCTION

Bianka M. is where she is today because of domestic violence and abusive paternal neglect. Bianka was abandoned before she was born by a father who beat her pregnant mother with a machete, and taunted her mother when she begged him for food for herself and her unborn daughter. (See Ct. App. Opn. at pp. 5–6; Opening Brief on the Merits (“OBM”) at pp. 9, 37–38.) To the extent Bianka avoided direct physical abuse from her father—her “alleged father” under California law (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449 fn. 15)—it was only because he would have nothing to do with her, averring that he would rather see her die than provide milk money for her. (See OBM 9, 37.)

In resolving this matter, the Court should take into account the domestic violence that underlies this case, and the statutory protections for victims of abuse that the decision below largely disregards and thoroughly undermines. Bianka is far from alone in her predicament. Congress created Special Immigrant Juvenile (“SIJ”) status to protect the thousands of abandoned, abused, and neglected undocumented children who have fled to the United States. The California Legislature likewise has repeatedly enacted protections for abused children (and the children of abused parents), explicitly providing for custody orders without requiring the presence of an abuser, let alone one outside the territorial jurisdiction of the court.

The decision below turns those legislative policies on their head by forcing abused or abandoned children seeking SIJ status to beg their abusive parents to stipulate to parentage or consent to personal jurisdiction before the children can obtain relief. That alone is enough reason to reverse the decision below. If not reversed by this Court, however, the decision could impair an even broader range of custody proceedings under other statutes as well, including the Domestic Violence Prevention Act

("DVPA"), codified at Family Code section 6200, et seq., and the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at Family Code section 3400, et seq., both of which include special protections for domestic violence survivors and their children. If the parentage of the abusive parent must be adjudicated before custody can be awarded to the abused parent, countless survivors of domestic violence will be unable to obtain custody over their children, and thus will find it difficult or impossible to leave their abusers. That will result in further abuse, and, in some cases, death.

For example, temporary restraining orders under the DVPA and accompanying custody orders are typically granted in emergency situations to the abused parent who has established a parent-child relationship, regardless of whether the parentage of the *abuser* can be established. Requiring a parentage determination of both parents before a custody order could be entered would slow the process significantly, putting the health, safety, and welfare of domestic violence victims and their children at risk. Even if parentage determinations for both parents were not required for temporary custody orders, requiring a parentage determination of the abuser before granting permanent custody to the abused parent would have two significant harmful effects: not only would it give abusers the power to delay custody proceedings by refusing to participate in or to stipulate to parentage, but it would also offer abusers more opportunities to perpetuate the abuse. The problem is especially acute where, as here, the abusive parent lives outside the jurisdiction of the California courts and cannot be compelled to appear.

That is not an idle concern. Domestic violence survivors often flee with their children across state lines and national borders to escape abuse. The Court of Appeal's decision places them, and countless other victims, at the mercy of their abusers. After escaping abusive relationships, domestic

violence survivors and their children would be forced to plead with abusive parents for stipulations of paternity or consent to personal jurisdiction in order to obtain custody. Domestic violence survivors often struggle to leave abusive relationships. Even after victims leave, perpetrators of domestic violence often use custody proceedings to control and abuse their former partners. The Court of Appeal's decision merely gives abusers more lasting power over their victims.

Faced with the prospect of having to importune their abusers to obtain custody over their children, victims may be forced to leave the safety of California to return to the state or country of the abusive parent to determine custody, putting victims in proximity to their abuser and potentially jeopardizing their immigration status. That added burden may deter other victims from leaving abusive relationships, placing themselves and their children in grave danger.

These significant and deleterious practical consequences underscore the fundamental error of the decisions below. It makes no sense for a California court to decline to enter SIJ findings and a custody order over a child who is plainly within its jurisdiction merely because the alleged father who abandoned her is not, especially when he has been afforded the proper due process requirements of notice and an opportunity to be heard. Certainly no legal principle compels a court addressing custody to give short shrift to a minor within its jurisdiction merely because one alleged parent—and an abusive one at that—is beyond its jurisdictional reach. As we explain below, statutes addressing domestic violence allow custody orders in exactly those circumstances. An absent parent can always assert his parental rights later.

Children seeking relief through SIJ status are likely to have already suffered significant physical, emotional, and psychological harms as survivors of abuse, neglect, or abandonment, and the rule articulated below,

if allowed to stand, would further exacerbate those problems. The decision of the Court of Appeal failed to strike a proper balance between the rights of child and adult survivors and their abusers, and favors non-residents over California residents. That decision should be reversed.

BACKGROUND STATEMENT: ASPECTS OF DOMESTIC VIOLENCE ESPECIALLY PERTINENT TO THIS CASE

Some context on the characteristics, prevalence, and effects of domestic violence may illuminate the practical impact of the Court of Appeal's decision. California state and federal courts have recognized the harmful effects of domestic violence. (See *Hernandez v. Ashcroft* (9th Cir. 2003) 345 F.3d 824, 836–38; *Noergaard v. Noergaard* (2015) 197 Cal.App.4th 76, 84–85.) Yet domestic violence is a widespread, international issue. The World Health Organization considers domestic violence a global threat to public health and women's human rights.² Approximately one in three women have experienced domestic violence in the United States and worldwide.³ It is “one of the most common causes of injury in women,” and it is “estimated that half of women who experience

² World Health Organization, *Violence Against Women: Intimate Partner and Sexual Violence Against Women Fact Sheet*, (Updated November 2016) <<http://www.who.int/mediacentre/factsheets/fs239/en/>> [as of April 3, 2017].

³ *Ibid.*; Breiding et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey*, United States, 2011 (Surveillance Summaries, Sept. 5 2014), <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e> [as of April 3, 2017]; see also National Center for Injury Prevention & Control, Centers for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey (2010)*, p. 2 <https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf> [as of April 3, 2017] [nationally, more than 1 in 3 women, and 1 in 4 men experience domestic violence in their lifetimes].

[domestic violence] are physically harmed.”⁴ Domestic violence also affects children. Perpetrators of domestic abuse commonly perpetrate both child abuse and intimate partner violence; these types of abuse occur together 60 to 75 percent of the time.⁵ Many domestic violence victims are trapped in cycles of violence by a very real fear of death or serious harm to themselves or their children if they try to leave their abuser.⁶ In fact, as many as 38 percent of murders of women are committed by a male intimate partner.⁷

A. The Abuse Bianka’s Mother Endured During Pregnancy Reflects A Common And Dangerous Pattern

Similarly, the domestic violence alleged here is not isolated. Bianka’s father abandoned her before she was born after viciously abusing her mother during pregnancy. That pattern is distressingly common. Domestic violence often begins or intensifies during pregnancy or immediately following the birth of a child.⁸ Nearly one-third of domestic

⁴ Wong & Mellor, *Intimate Partner Violence and Women’s Health and Wellbeing: Impacts, Risk Factors and Responses* (2014) 46(2) Contemporary Nurse 170, 171.

⁵ Osofsky, *The Impact of Violence on Children* (Winter 1999) 9 The Future of Children: Domestic Violence and Children 33, 34 <<http://hbftpartnership.com/documents/uploadResources/ImpactViolenceChildren-Osofsky1999.PDF>> [as of April 3, 2017]; Appel & Holden, *The Co-occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*, (Dec. 1998) 12:4 Journal of Family Psychology, 578, 578–99.

⁶ United Nations High Commissioner for Refugees, *Women on the Run, First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, (Oct. 2015) at p. 27, <<http://www.unhcr.org/5630f24c6.html>> [as of April 3, 2017].

⁷ World Health Organization, *supra*, at p. 1.

⁸ Camp, *Coercing Pregnancy* (2015) 21 Wm. & Mary J. Women & L. 275, 291 <<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1402&context=wmjow>> [as of April 3, 2017]; see also Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, (2014) 67