S233757

CRC 8.25(b)



# IN THE

# SUPREME COURT OF CALIFORNIA

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**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**

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# REPLY BRIEF ON THE MERITS

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ATTORNEYS FOR PETITIONER, BIANKA M.

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# REPLY BRIEF ON THE MERITS

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## INTRODUCTION

After Petitioner ("Bianka") filed her Opening Brief on the Merits ("OB"), this Court asked *amicus curiae* L. Rachel Lerman to address certain aspects of the Court of Appeal's decision in *Bianka M. v. Superior Court* ("*Bianka M.*") (2016) 245 Cal.App.4th 406. To distinguish it from other potential *amicus* submissions, Bianka will refer to Ms. Lerman's brief as the "Respondent's Brief" (cited as "RB.")

Bianka disagrees with Respondent's Brief's conclusion that the content of the notice she provided to her alleged father was "probably deficient." (RB 23.) Respondent's Brief gives two reasons for its conclusion: (1) Bianka's alleged father is entitled to, but did not receive, notice of the specific factual findings Bianka sought from the Family Court

(RB 25); and (2) Bianka did not translate the documents served on her alleged father into his native language, in this case Spanish. (RB 25-26.) There are three problems with this reasoning:

First, as a factual matter, Bianka *did* provide her alleged father with notice of the specific factual findings she sought from the Family Court, a fact reflected in the record on appeal. (See Section I.A below.)

Second, existing law did not require Bianka to provide notice of specific factual findings (although she did so) or to translate documents served on her non-party alleged father. (See Section II below.)

Third, *Bianka M.* merely observed that the documents Bianka served on her alleged father had not been translated; the suggestion that such translation could be required has potentially far-reaching policy implications that neither Respondent's Brief nor *Bianka M.* confronts and no one ever briefed. Such a requirement should not be imposed on Bianka in this case. (See Section III below.)

Each of these issues is discussed below in turn.

## LEGAL DISCUSSION

Bianka brought a maternity action to establish her mother Glady's maternity. (1 AE 11-12.) In the course of that proceeding, Bianka filed a request for order placing her in her mother's sole custody and making the three predicate factual findings necessary for Bianka to apply for federal Special Immigrant Juvenile Status ("SIJS"). (1 AE 105-118.) 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. § 1101(a)(27)(J); see also Code Civ. Proc., § 155, subd. (b)(1).)

Bianka satisfied each of the prerequisites to obtain the custody order she sought, which in turn would "[l]egally commit[] [her] to, or place[] [her] under the custody of ... an individual or entity appointed by the court," satisfying the first SIJS finding. ((OB 13-14.) She presented uncontroverted and legally sufficient evidence that her alleged father abandoned her before birth, satisfying the second SIJS finding. (OB 14.) And the Family Court itself found "both the overall level of violence in 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 interest[]of [Bianka] to be returned**" to Honduras, satisfying the third SIJS finding. (OB 14-15, emphasis in original.) But the Family Court refused to place Bianka in her mother's custody or make SIJS findings unless Bianka first joined her alleged father as a party to the proceeding and established the Family Court's personal jurisdiction over him. (OB 4.)

As Bianka's Opening Brief explains, the Family Court's ruling rests on faulty assumptions about the need for personal jurisdiction to make a custody order, and the due process to which an alleged father is entitled. (OB 12-13.) "Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." (OB 12, citing Fam. Code, § 3421, subd. (c).) And due process entitles alleged fathers to notice of a proceeding and an opportunity to be heard, nothing more. (OB 12-13, citing Fam. Code, § 7635.)

*Bianka M.* agrees that Bianka did what the law required of her to obtain the custody order and SIJS findings she sought. (*E.g.*, *Bianka M.*, *supra*, 245 Cal.App.4th at p. 428 ["We [] agree, as a general matter, Bianka was not required to name [her alleged father] as a respondent in her action to establish a parental relationship with Gladys."]; *ibid.* ["The requirements

of due process of law are met in a child custody proceeding when... the out-of-state parent is given notice and an opportunity to be heard."]; *id.* at p. 418 ["Bianka filed another proof of service, this time representing that [her sister] personally served [her alleged father] with copies of the petition, the RFO and the supporting documents."]

*Bianka M.* nevertheless upholds the Family Court's decision as "not an abuse of discretion" (*id.* at p. 434), carving out an exception under the law for "uncontested" proceedings in which a child seeks a finding "abandonment, abuse or neglect" by an absent parent. (*Id.* at pp. 427, 434.) *Bianka M.* expresses concern that such a finding is fundamentally unfair unless the parent actually shows up to contest it or stipulates that the finding can be made in his absence.[1] (*Id.* at pp. 427 ["[A]n uncontested action under the UPA between a child and one parent is not an appropriate means by which to adjudicate both parents' custody rights."], 430-431 ["If obtaining personal jurisdiction ... is problematic, Bianka may attempt to obtain the relief she seeks by entering into a stipulated judgment of paternity with her [alleged] father."].)

## I. The Conclusion that Bianka Failed to Provide Notice to Her Alleged Father of Specific Factual Findings is Incorrect.

On the basis of this concern with her alleged father's due process, *Bianka M.* mandates notice of the specific factual findings Bianka sought from the Family Court as a prerequisite to making those findings. (*Id.* at p.

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[1] This concern leads *Bianka M.* down a path of hypothetical scenarios, unconnected to Bianka's case, to issue holdings regarding the procedural safeguards those situations require. (*E.g.*, *id.* at p. 435 ["[W]e hold that in a default proceeding under the UPA, a court may only issue an order containing SIJ findings regarding parental abuse, neglect, abandonment or other similar actions if those factual allegations were contained in the original petition...."].)

435.) Respondent's Brief adopts *Bianka M.*'s conclusion that Bianka's alleged father "did not receive specific notice that 'Bianka seeks an order specifically finding that [he] abandoned her and/or committed acts of domestic violence against Gladys.'" (RB 23, citing *Bianka M.*, *supra*, 245 Cal.App.4th at p. 435.) The basis for the conclusion is that the documents served on Bianka's alleged father purportedly "did not set forth all of the requested SIJ findings." (*Ibid.*) That is incorrect.

### A. Bianka Did Provide Notice of the Specific Factual Findings She Sought in the Family Court.

On May 28, 2015, 47 days in advance of the hearing on Bianka's request for order, Bianka effected personal service on her alleged father of a copy of her parentage petition, request for order, and a number of other documents. (See Petitioner's Appendix of Exhibits, Vol. 1 ("1 AE") 125.) The request for order (1 AE 105), was accompanied by a proposed order that specified each of the factual findings Bianka sought in support of her SIJS petition ("SIJS findings"). (1 AE 110-12.) The documents Bianka served on her alleged father also contained declarations that she and Gladys filed in the Family Court. (1 AE 1-10.) Gladys's declaration explicitly states that Bianka's alleged father beat Gladys with a machete when she was pregnant with Bianka. (1 AE 2-3 ¶ 4.)

*Bianka M.* acknowledges that "Bianka's parentage petition," which was among the documents served on her alleged father, "indicates she is seeking a sole custody order as well as an order containing SIJ findings." (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 435.) But the decision suggests this was nevertheless insufficient because the "petition does not indicate Bianka seeks an order specifically finding that Jorge abandoned her and/or committed acts of domestic violence against Gladys." (*Ibid.*)

That Bianka's parentage petition did not set forth specific SIJS findings is a *non-sequitur*. The petition is to establish Gladys's maternity;

it is only indirectly related to Bianka's request for SIJS findings in that it initiated one of the types of proceeding in which Bianka could make a request for a custody order, which is a predicate to the first SIJS finding. (Code Civ. Proc., § 155, subd. (b)(1)(A)(ii).) Yet, what the Family Court denied was Bianka's request for order itself, depriving her of a *pendente lite* custody determination and SIJS findings. (2 AE 302, 312.) That was the ruling Bianka asked the Court of Appeal to reverse in her writ petition. The Family Court had not yet made the final determination Bianka sought by her parentage petition—that Gladys is her mother—although it found Glady's "testimony and declaration is sufficient to establish that she is [Bianka's] mother." (2 AE 301.) The parentage petition itself, therefore, was not at issue before the Court of Appeal.

In any event, as noted above, Bianka *did* serve her alleged father with a copy of a proposed order on her request for order, which sets out, in full, the precise findings that *Bianka M.* believed were absent, as well as a copy of her mother Gladys's declaration, describing the domestic violence she suffered. (1 AE 2-3 ¶ 4, 110-112.) In addition to the foregoing personally-served documents, Bianka's counsel in the Family Court action called Bianka's alleged father and, in Spanish, informed him of the upcoming hearing and the specific relief Bianka sought. Bianka's counsel filed a Declaration of Due Diligence attesting, under oath, to the fact and content of the conversation with Bianka's alleged father. (1 AE 115-18.)

Although *Bianka M.* concluded that an account of what Bianka's alleged father said during this call was "inadmissible hearsay" that could not be used to establish that he had no interest in custody of Bianka, it did not deny the declaration's admissibility to prove Bianka's alleged father received specific notice of the findings she requested. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 429 fn.10.) And, as discussed in Bianka's Opening Brief, this "hearsay" holding gets the burden of proving an interest in

custody of a child backward; Bianka's alleged father bears the burden of demonstrating an interest in her custody by affirmatively accepting *responsibility* for Bianka. (OB 42-43.) He has never done this.

As a factual matter, Respondent's Brief and *Bianka M.* are mistaken about the content of the notice Bianka provided to her alleged father. Even if the law required notice of the specific factual findings Bianka sought, the notice she gave to her alleged father satisfied that requirement. As explained in Section II below, however, notice of specific factual findings is *not* required, and neither is translation into Spanish or other languages.

### B. *Bianka M.'s* Gratuitous Holding Regarding Notice in Default Proceedings is Inapplicable to Bianka's Case.

Using the notice Bianka provided to her alleged father as an example, *Bianka M.* holds that "in a default proceeding under the UPA [Uniform Parentage Act], a court may only issue an order containing SIJ[S] findings regarding parental abuse, neglect, abandonment or other similar actions if those factual allegations were contained in the original petition or in a request for order served together with the summons and a copy of the petition." (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 435.)

Bianka's writ proceeding arose, not out of a default judgment, but out of the Family Court's denial of her pretrial request for custody orders and SIJS findings. *Bianka M.*'s two-page discussion of "Due process in default proceedings" amounts to a purely advisory opinion. (*Id.* at pp. 434-436.) So, too, is *Bianka M.*'s discussion of the notice required in proceedings governed by the Hague Convention.[2] (*Id.* at p. 436.) Bianka's

[2] Also known as the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, effective 10 February 1969. (United States Treaties and Other International Agreements, Vol. 20, Part I, 1969, pp. 361-373.)

alleged father lives in Honduras, which is not a signatory to the Hague Convention, and there is no allegation or evidence that Gladys abducted Bianka. (*Ibid.*)

*Bianka M.* need never have reached these issues at all. Because it did, this Court should make clear that due process does not obligate Bianka to conform to whatever notice may be required in default proceedings and/or those governed by the Hague Convention.

## II. The Law Applicable to Bianka's Parentage Action Did Not Require Her to Provide Notice of Specific SIJS Findings or to Translate Documents Served on Her Non-Party Alleged Father.

### A. Notice of Specific SIJS Findings is Not Required.

A request for SIJS findings in state court proceedings is governed by section 155 of the California Code of Civil Procedure ("section 155.") (Code Civ. Proc. § 155.) Section 155 sets forth the three SIJS findings a child must obtain in order to petition for SIJS. (*Id.* § 155, subd. (b)(1).) *Bianka M.* and Respondent's Brief focus on the second of these findings, that "reunification of the child with one or both of the child's parents was determined not to be viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law." (*Id.* § 155, subd. (b)(1)(B).)

Although *Bianka M.* acknowledges that "Bianka's petition does not expressly seek to terminate [her alleged father's] parental rights," it nevertheless insists, contrary to the law, that "the order she seeks [making SIJS findings] would have a similar effect." (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 430.) Respondent's Brief also acknowledges that Bianka "does not expressly seek termination of [her alleged father's] parental rights (if any)," and that "it is not clear that SIJ[S] findings result in termination of parental rights in any event,..." (RB 25.) And Respondent's Brief agrees that the Uniform Child Custody Jurisdiction and Enforcement Act

("UCCJEA") "does not indicate whether an absent parent must be put on notice when a party seeks findings of abandonment or abuse...." (RB 24.)

Nevertheless, Respondent's Brief, like *Bianka M.*, erroneously concludes that Bianka's action should be treated like "dependency proceedings," in which a probation officer or social worker affirmatively seeks "to remove a child from parental custody or terminate the rights of a parent," and require all of the same notice. (RB 24-26.) *Bianka M.* reflects the Court of Appeal's overreaching and unnecessary holding that *if* Bianka's alleged father were determined to be her biological father, and *if* he then decided to seek custody of Bianka, the finding that he had abandoned her and beaten her mother could jeopardize his chances. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 436.) *Bianka M.* therefore insists Bianka provide her alleged father with more, and more specific, notice alerting him to specific findings being made and what the Court of Appeal believes are the possible consequences of those findings. (*Id.* at p. 435.)

Respondent's Brief follows similar logic. Reasoning by analogy to dependency proceedings that "*could* result in the termination of parental rights," it concludes that Bianka should be required to give her alleged father notice of the specific SIJS findings she seeks. (RB 24 (emphasis added), citing Welf. & Inst. Code § 316.2.)

Both *Bianka M.* and Respondent's Brief overlook the same crucial fact: 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.)

Even if it were possible for SIJS findings to divest a parent of parental rights like custody or visitation (it is not), the undisputed evidence shows that Bianka's alleged father has not done what is necessary to attain those rights in the first place. It would be superfluous to require Bianka to give him notice of the risk of losing parental rights he does not have. And as discussed below, SIJS findings pose no such risk.

A SIJS finding is not an order stripping rights from Bianka's alleged father and imposes no punishment or obligation on him; it is a determination of fact identifying Bianka as a child eligible for SIJS relief. (OB 43, citing *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 351.) What matters for SIJS purposes is that Bianka was abandoned, *i.e.*, she is in the class of children to whom Congress intended to provide relief.

### B. Translation of Notice and Related Documents is Not Required.

Although *Bianka M.* observes that "[t]here is no indication in the record these legal documents [the request for order and others personally served on Bianka's alleged father] were translated from English into Spanish," it says nothing further on the subject. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 418.) Respondent's Brief acknowledges *Bianka M.*'s silence on the subject of translation, but suggests this Court could require Bianka to serve her alleged father "with copies of the relevant

documents,[3] including the requested SIJ status findings, translated into Spanish." (RB 26.) The Court should decline to do so.

**i. Bianka's Notice Complied with Applicable Law and Due Process.**

Sections 7635 and 7666 of the Family Code, together with section 413.10 of the Code of Civil Procedure, supply the notice requirements applicable to Bianka's parentage action. Section 7635 obligates Bianka to provide notice of the proceeding and an opportunity to be heard in accordance with California law. (Fam. Code § 7635.) Notice to a foreign resident, like Bianka's alleged father, may be accomplished "by personal delivery of a copy of the summons and of the complaint" (Civ. Code, §§ 413.10, 415.10), at least 10 days before the proceeding. (Fam. Code, §§ 3408, subd. (a), 7635, subd. (b), 7666, subd.(a).) That is what Bianka did: on May 28, 2015, 47 days in advance of the hearing on her request for order, Bianka effected personal service on her alleged father of the request, summons, parentage petition, proposed order, supporting declarations, and several other documents. (1 AE 125.)

Nothing in the Family Code or Code of Civil Procedure required Bianka to serve translated copies of these filings. (Fam. C. § 3408(a) ["Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process [ ... ]" and "in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective"]; Cal. Code Civ. Proc. §§ 413.10 [governing means of service on persons outside the U.S.], 415.10 [permitting personal service], 415.40 [permitting

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[3] Respondent's Brief does not specify which of the hundreds of pages of documents Bianka served on her alleged father are the "relevant documents."

service by mail].) And although *Bianka M.* noted that the Hague Convention imposes translation requirements, it also agreed that treaty is inapplicable to Bianka's case because Honduras, where her alleged father lives, is not a signatory. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 436.)

Respondent's Brief bases its suggestion that Spanish translation be required on California Rules of Court, rule 5.667(b) ("Rule 5.667"). (RB 25-26.) This suggested extension of the law is unwarranted. On its face, Rule 5.667(b) applies only to social workers in dependency proceedings under Welfare & Institutions Code § 300, *i.e.*, proceedings to make a child a ward of the court. As discussed above, the analogy to dependency proceedings is inapposite. (See Section II.A, *supra*.) Bianka is not a social worker. And requiring such a government employee with county resources to translate a document cannot be equated to imposing the same requirement on indigent child litigants who do not speak English fluently (or at all) and depend on *pro bono* counsel.

The current rule applicable to proceedings like Bianka's in which SIJS findings are requested is Rule 5.130 of the California Rules of Court. (Cal. Rules of Court, rule 5.130 ("Rule 5.130").) Among other things, Rule 5.130 governs notice of requests for SIJS findings. (Rule 5.130(c).) In particular, the rule requires notice of the hearing to be served with a copy of the request for SIJS findings, and all supporting papers, in the appropriate manner specified in rule 5.92(a)(6)(A)-(C)[4] on alleged parents (among others). (*Id.*) The Judicial Council also adopted forms FL-356 (Confidential Request for Special Immigrant Juvenile Findings) and FL-358 (Confidential Response to Request for Special Immigrant Juvenile Findings) to facilitate the required notice and any response or objection.

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[4] Rule 5.92 was amended on July 1, 2016, contemporaneously with the adoption of Rule 5.130, and there is no longer a subsection (a)(6).

Yet, while Spanish language versions both forms, FL-356S and FL-358S, respectively, are available, Rule 5.130 does not mandate their use.

The Judicial Counsel of California adopted the rule on July 1, 2016, *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.* As already discussed, however, 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. And 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).)

The notice Bianka provided also comported with the requirements of due process. Where, as here, the Hague Convention does not apply, due process does not automatically require translation of legal documents. This Court addressed the issue in *Guerrero v. Carleson*, (1973) 9 Cal.3d 808. In *Guerrero*, mono-lingual Spanish-speaking welfare recipients argued that due process prohibited welfare authorities from reducing or eliminating their benefits without first providing notice *in Spanish* of their intention to do so. (*Id.* at p. 809.) The Court disagreed, holding that, "although in appropriate cases the use of Spanish in these and similar notices would be desirable and should be encouraged, *it does not rise to the level of a constitutional imperative*." (*Ibid*, emphasis added.)

In *Guerrero*, the Court's decision was influenced, in part, by the fact that the Spanish-speaking plaintiffs were living in an English-speaking country. (*Id.* at p. 812.) The Court found it "reasonable to assume that in contemporary urban society the non-English speaking individual has access

to a variety of such sources of language assistance." (*Id.* at p. 813.) Because Bianka's alleged father lives, and must be served, in Spanish-speaking Honduras, that assumption does not clearly apply. Nevertheless, due process does not necessarily require translation of all (or any) documents served in order for notice to be effective.

On this point, the Court of Appeal's decision in *Julen v. Larson* (1972) 25 Cal.App.3d 325 is instructive. In *Julen*, a Swiss businessman sued two Americans in Swiss court obtaining a judgment he then tried to enforce in a California trial court. (*Id.* at pp. 326-327.) The trial court threw out the complaint on summary judgment on the ground that notice of the Swiss lawsuit had been deficient, depriving the Swiss court of jurisdiction over the Americans. (*Id.* at p. 327.) The notice had only been provided in German, which neither defendant spoke. (*Ibid.*)

While the Court of Appeal agreed a "defendant should be informed in the language of the jurisdiction in which he is served," it "emphasize[d] that no great amount of formality is required for effective notice." (*Id.* at p. 328.) *Informal* notice that a legal action of a specific nature is pending at a particular time and place is sufficient. (*Id.*; See *also Shoei Kako Co. v. Superior Court* (1973) 33 Cal.App.3d 808, 823.) Bianka provided such notice to her alleged father, by telephone, in Spanish, on two separate occasions. (1 AE 101-102 (notice of guardian ad litem hearing, custody order), 116-117 (notice of hearing on custody, SIJS findings request.)

Bianka's attorneys submitted a sworn declaration attesting that they called Bianka's alleged father and expressly informed him, in Spanish, that a "hearing on his daughter Bianka's Request for Order had been set for July 14, 2015 at 8:30AM in Department 87" at "111 North Hill Street, Los Angeles, CA 90012" and that "the hearing was to address Bianka's request that the Court grant her mother sole legal custody and make findings of fact necessary for Special Immigrant Juvenile Status." (1 AE 116 ¶ 2.)

Bianka's alleged father thus received notice, in the language of the jurisdiction where he was served, of the specific nature of the action, and the time and place where it was pending. He received the due process to which he was entitled.

## III. Considerations of Fairness and Public Policy Weigh Against Retroactively Requiring Translation of Documents Bianka Served on her Alleged Father.

The informal telephonic notice Bianka provided to her alleged father, in Spanish, already comports with the basic due process criteria set forth in *Julen*, *supra*, 25 Cal.App.3d at 328. Mandating translation of documents as well would be gratuitous, at least with respect to notice.

The suggestion that Bianka be made to serve her alleged father with "copies of the relevant documents... translated into Spanish" (RB 26), raises important, competing concerns about access to justice. On the one hand, this Court has recognized that English language limitations present serious obstacles to full, meaningful, fair, and equal access to justice. (See Joint Working Group for California's Language Access Plan, Strategic Plan for Language Access in the California Courts (2015) ("Strategic Language Plan"), p. 5, *available at* http://bit.ly/2mfDTIb.) And the Chief Justice has made addressing this obstacle one of the Court's highest priorities. (*Ibid.*)

On the other hand, the time and expense involve in translating just the documents Bianka served on her alleged father would be substantial. Requiring such translation, and its attendant delay and expense, in every case where SIJS findings are requested would severely tax the limited means of frequently indigent immigrant litigants and the *pro bono* resources available to assist them, potentially reducing access to justice. It would undermine one of the Judicial Council's primary goals, namely "provision of language access, *at no cost to court users*." (Strategic Language Plan, p. 11, emphasis added.)

Respondent's Brief provides no guiding principal to help the Court balance these and other competing concerns including, *e.g.*, identifying the documents sufficiently "relevant" to merit translation, whether translation must be certified, and whether all languages, even exceptionally rare ones, must be translated to satisfy due process. A resolution of these concerns for SIJS cases generally is likewise beyond the scope of Bianka's petition.

In Bianka's specific case, however, it would be unreasonable to retroactively impose a translation requirement. Despite the "general rule that judicial decisions are given retroactive effect," this Court has "long recognized the potential for allowing narrow exceptions ... when considerations of fairness and public policy are so compelling in a particular case that, on balance, they outweigh the considerations that underlie the basic rule." (*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 509.) Such an exception is warranted here.

In reliance on existing law, Bianka has repeatedly given notice to her alleged father beyond that called for by the letter of the law. The notice she provided conforms not only to the basic requirements set forth in *Julen*, but even those called for by *Bianka M.* and recommended by Respondent's Brief, including specific notice of the SIJS findings Bianka seeks as well as informal notice, in Spanish, of the nature, time, date and location of the proceedings in which she sought those findings. In each case, Bianka's alleged father responded with silence or inaction or both. Forgoing further notice poses little risk of prejudice to Bianka's alleged father; *Bianka M.* agreed that silence and inaction was "the most likely outcome" of forcing Bianka to serve him again. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 416.)

In contrast, while her case has been pending, federal policy toward undocumented immigrants, like Bianka, has dramatically altered course. As *Bianka M.* notes, Bianka remains in removal proceedings, which have

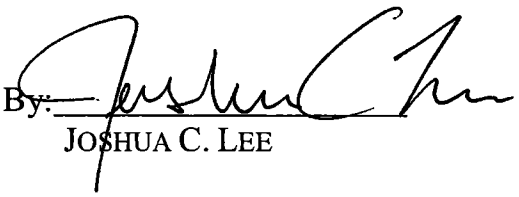
only "been administratively closed." (*Id.* at p. 419.) Because "administrative closure does not finally resolve a case, but rather temporarily removes it from the immigration court's calendar... Bianka's removal proceeding may be reactivated at any time." (*Ibid.*) The delay entailed in translating and re-serving hundreds of pages of documents poses a grave and growing risk to Bianka of deportation before she can obtain relief she would otherwise likely receive, foreclosing removal. In these circumstances, *prospective* application of any new requirement to translate documents is appropriate.

## CONCLUSION

For all of the foregoing reasons, Bianka respectfully requests that this Court reverse the Court of Appeal's decision in *Bianka M.* and remand with directions to order the Family Court to make the SIJS findings and custody order Bianka requested.

Dated: March 7, 2017

Respectfully submitted,



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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 4,961 words, as counted by the Word 2010 word-processing program used to generate the brief.

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