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.**	Case No. S233757

Second Appellate District, Division Three, Case No. B267454

AMICUS BRIEF OF ATTORNEY GENERAL XAVIER BECERRA IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

This case presents questions of substantial importance to the Attorney General and the State of California.[1] Congress created "Special Immigrant Juvenile" (SIJ) status for vulnerable children who have immigrated to the United States, and who cannot be reunified with a parent outside of this country because of abuse, neglect, or abandonment. A child who attains this status and receives an SIJ visa may then apply to obtain permanent residency. Thousands of children who potentially satisfy the SIJ criteria live in California. Many of them, including petitioner Bianka M., came to our country from Central American nations that suffer from crime, violence, and a lack of economic opportunity. The decision of the Court of Appeal below would make it exceedingly difficult for a substantial category of these children to seek an SIJ visa from the federal government—children like Bianka, who are living with one parent in California, and who allege that they have been abused, neglected, or abandoned by another parent who lives abroad. California has a *parens patriae* interest in protecting the welfare of these children and ensuring that they can pursue any substantial claim for remaining lawfully in the United States under the SIJ statute. That interest is heightened by recent events in which our immigrant population has become the target of fear-mongering and overt political attacks.

The Attorney General also has an interest in ensuring that California's laws are correctly interpreted and applied. In this case, the lower courts held that Bianka could not pursue a state-court order finding that she satisfies the SIJ criteria—a prerequisite to applying for an SIJ visa with the federal government—without first joining her alleged father and

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[1] This brief is filed pursuant to rule 8.520(f)(8) of the California Rules of Court.

establishing that the court has personal jurisdiction over him. The law does not support that joinder requirement. Moreover, existing law adequately protects the interests of foreign parents in this type of proceeding by requiring that they receive notice and an opportunity to be heard before the family court takes action. The Court of Appeal's analysis also stands in tension with Code of Civil Procedure section 155, which streamlines the state portion of the SIJ visa process by directing that the superior courts—including the "family court divisions"—"shall issue" an SIJ order when presented with evidence that a child satisfies the criteria.[2]

ARGUMENT

In recent years, thousands of children have immigrated to California from Mexico and Central America. Many of these children were abandoned, abused, or neglected by a parent in their country of origin, and are eligible for SIJ status (and permanent residency in the United States) based on that mistreatment. These children cannot pursue an SIJ visa from the federal government, however, without first obtaining an order from a state court finding that they satisfy the SIJ criteria. For children like petitioner Bianka M., living with one parent in California, who are not a party to any ongoing dependency or delinquency proceeding, the only way to secure such an order is by initiating a proceeding in the family court.

Bianka properly initiated a family court proceeding, asking the court to make a maternity determination regarding her mother, Gladys M.; to award Gladys sole legal and physical custody over her; and to issue an

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[2] The State agrees with Bianka, and the court-appointed amicus curiae, that a superior court may not deny a child's request for an SIJ order on the ground that the request was not made during a "bona fide" child welfare proceeding. (See PBOM 19-30; Brief of Amicus Curiae L. Rachel Lerman, pp. 17-21.) This brief does not offer further argument on that issue.

order finding that Bianka satisfies the criteria for SIJ status because she was abandoned by her alleged father, Jorge, who lives in Honduras. She served copies of her parentage petition and her request for SIJ and custody orders on Jorge. So far as the State is aware, Jorge has never claimed custody or visitation rights over Bianka, or disputed any of the allegations Bianka has made against him. Nevertheless, the family court insisted that Bianka's action could not proceed until she had joined Jorge as a party and established personal jurisdiction over him in California. The practical consequence of that decision, which the Court of Appeal affirmed, is to bar Bianka from pursuing an SIJ visa—unless the man whom she accuses of abandoning her decides to submit, voluntarily and affirmatively, to the personal jurisdiction of a California family court.

The rulings of the lower courts in this case may have been founded on an understandable desire to protect the rights of an absent party, but they are neither necessary for that purpose nor consistent with the law. Under the circumstances of this case, neither the Rules of Court, nor the Family Code, nor any other law required Bianka to join Jorge as a party to her parentage action, and the family court abused its discretion by requiring joinder of Jorge in the absence of any such requirement. Jorge's participation was not necessary to the just resolution of any of the issues Bianka sought to litigate, and the joinder order not only delayed but entirely frustrated the proceedings. Nor was joinder necessary to protect Jorge's interests. The law requires that natural, presumed, and alleged parents must receive notice and an opportunity to be heard before an action such as this moves forward, and the record reflects that Jorge received the required notice in this case. Nothing more was required to ensure fairness to all potentially concerned parties while allowing Bianka to proceed with an action that is necessary for her to establish her legal rights and protect her present and future welfare.

It critically important to Bianka—and to the State—that this Court swiftly resolve her writ proceeding. It has been nearly two years since Bianka filed her request for an SIJ order in the family court. Without that order, she is unable to pursue an SIJ visa with the federal government, which could allow her eventually to obtain lawful permanent residency in the United States. Meanwhile, members of Congress have introduced proposals to further restrict the availability of SIJ visas in the future.[3] And the federal government has apparently embarked on an expanded effort to apprehend and remove immigrants who are here without visas or other legal documentation.[4]

I. CALIFORNIA HAS A STRONG INTEREST IN ENSURING THAT CHILDREN LIKE BIANKA CAN PURSUE SIJ VISAS

Congress established SIJ status to protect a subset of immigrant children for whom removal would be especially dangerous. Thousands of children who are potentially eligible for SIJ status live in California, and this State has a *parens patriae* interest in protecting their health and well being. In service of that interest, our Legislature has adopted laws to facilitate and streamline the SIJ process. A substantial portion of SIJ-eligible children, including Bianka, live with one of their parents in California and can only obtain an SIJ order through a family court proceeding. For such children, the joinder requirement imposed by the

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[3] See Sen. No. 52, 115th Cong., 1st Sess. (2017), § 1; H.R. No. 495, 115th Cong., 1st Sess. (2017), § 3; H.R. No. 391, 115th Cong., 1st Sess. (2017), § 3.

[4] See, e.g., John Kelly, Sect. of Homeland Security, mem. regarding Implementing the President's Border Security and Immigration Enforcement Improvements Policies, Feb. 20, 2017, p. 3 <https://go.usa.gov/xXQQC> [as of Apr. 5, 2017] [directing the Commissioner of Customs and Border Patrol to "immediately begin the process of hiring 5,000 additional Border Patrol agents" to "detect, track, and apprehend" undocumented immigrants].

family court in this case would make it exceedingly difficult at best, and impossible at worst, to pursue an SIJ visa.

A. Congress Established SIJ Status to Protect Certain Immigrant Children for Whom Removal from the United States Would Be Particularly Dangerous

Congress created SIJ status to protect especially vulnerable children who cannot be reunited with one or more parent because of neglect, abandonment, or abuse, and whose best interests are not served by returning to their country of origin. (See *In re Israel O.* (2015) 233 Cal.App.4th 279, 283.) While removal can be traumatic for any child, it is particularly dangerous for this class of children. If removed to their country of origin, abused children may end up back in the custody of their abuser. (See, e.g., *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 345-346.) Abandoned and neglected children may be sent back to a country they know little about, without a parent to provide for and protect them. (See, e.g., *Israel O.*, *supra*, at p. 285.) Moreover, many SIJ-eligible children come from countries marred by crime, violence, and poverty. (See *post*, p. 20.) For those children, the consequences of returning to such a country can be deadly.[5]

Unlike most forms of relief from removal, the SIJ procedure requires children to navigate both state and federal legal systems. (See generally

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[5] Cf. Brodzinsky & Pilkington, *US Government Deporting Central American Migrants to Their Deaths*, The Guardian (Oct. 12, 2015) <https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america> [as of Apr. 5, 2017] [documenting the cases of three youths sent back to Honduras or Guatemala who were killed within four months of being removed]; De Leon, *Guatemalan Youth Slain 17 Days After Being Deported From U.S.*, Los Angeles Times (May 9, 2004) <http://articles.latimes.com/2004/may/09/news/adfg-deport9> [as of Apr. 5, 2017] [youth removed to Guatemala found dead within 17 days of his return].

Judicial Council of Cal., Memorandum (Sept. 30, 2016) ("Judicial Council Memorandum"), pp. 3-6 <http://www.courts.ca.gov/documents/jc-20141028-item1.pdf> [as of Apr. 5, 2017] [detailing SIJ application process].) While the federal government retains the authority to grant or deny an SIJ petition, state courts "play an important and indispensable role in the SIJ application process." (*Leslie H.*, *supra*, 224 Cal.App.4th at p. 348.) Congress has delegated certain tasks to state courts in light of their "institutional competence . . . as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests." (*Israel O.*, *supra*, 233 Cal.App.4th at p. 284.)

To begin the SIJ petition process, a child must obtain a state-court order finding that:

> (1) the child is "dependent" upon a juvenile court or has been "committed to, or placed under the custody of" a state entity or other individual or entity;
>
> (2) the child cannot be reunified with "1 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 [his] or [her] parent's previous country of nationality or country of last habitual residence."

(8 U.S.C. § 1101(a)(27)(J).) Children who live with one parent in the United States, such as Bianka, may establish that they cannot be reunified with "1 or both" parents by "showing an inability to reunify with *one* parent due to abuse, neglect, abandonment, or a similar basis under state law." (See *Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319, 332, original italics.)[6]

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[6] See also *Israel O.*, *supra*, 233 Cal.App.4th at pp. 290-291; *Marcelina M.-G. v. Israel S.* (N.Y. App. Div. 2013) 112 A.D.3d 100, 102; *In re Estate of Nina L. ex rel. Howerton* (Ill.App.Ct. 2015) 41 N.E.3d 930,

(continued...)

If (but only if) a state court enters an SIJ order, the child may file an SIJ petition with the United States Citizenship and Immigration Services (USCIS). (*Israel O.*, *supra*, 233 Cal.App.4th at p. 285.) USCIS then conducts its own inquiry into whether the child satisfies the SIJ criteria.[7] If the child meets these requirements, USCIS may grant the petition. (*Ibid.*) Approval of an SIJ petition does not guarantee approval of an application for adjustment of legal immigration status. The child must submit a separate application to USCIS, asking it to adjust his or her status to that of a lawful permanent resident. (8 U.S.C. § 1255.)[8] A lawful permanent resident may become a naturalized citizen after five years. (See *Israel O.*, *supra*, 233 Cal.App.4th at p. 283, citing 8 U.S.C. § 1427(a).)

Federal law caps the number of "special immigrant" visas that USCIS may issue at approximately 10,000 per year. (See Fragomen, et al., *The Basic Employment-Based Preference Structure*, 2 Immigr. Law & Business § 12:2 (2d ed. Apr. 2016 update) [citing 8 U.S.C. § 1153(b)(4)].) Federal law also limits the number of visas USCIS may grant to "natives of any

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938. But see *In re Erick M.* (2012) 284 Neb. 340. As of this writing, the most recent statement of the federal government agreed that a child is eligible for SIJ status if he or she is living in the United States with "the non-abusive custodial parent." (U.S. Citizenship and Immigration Services, Immigration Relief for Abused Children: Special Immigrant Juvenile Status <https://go.usa.gov/xXx6y> [as of Apr. 5, 2017].)

[7] See generally U.S. Citizenship and Immigration Services, Policy Manual, Volume 6, Part J, Chapter 4 - Adjudication <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter4.html> [as of Apr. 5, 2017].

[8] Children who are already in removal proceedings in immigration court submit their application to the immigration judge. (See 8 C.F.R. § 1245.2(a)(1)(i) [for individuals in removal proceedings, "the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status"].)

single foreign state . . . ." (See 8 U.S.C. § 1152(a)(2).) These provisions can create a backlog of children who meet the SIJ criteria, but whose status remains unadjusted. The possibility of a backlog underscores the importance, for children who want to obtain an SIJ visa, of obtaining the required state-court order quickly, in order to enter the queue for SIJ status as early as possible.

B. The Number of Immigrant Children Arriving in the United States and the Number of SIJ Petitions Filed Have Jumped in Recent Years

Beginning in late 2011 and early 2012, the United States witnessed a dramatic increase in the number of immigrant children arriving at its borders.[9] During 2011, the U.S. Border Patrol apprehended 16,067 unaccompanied minors.[10] That figure jumped to 24,481 unaccompanied minors in 2012, 38,833 in 2013, and 68,631 in 2014.[11] The Border Patrol apprehended 40,035 unaccompanied minors in 2015 and 59,757 in 2016.[12]

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[9] The data discussed in this section correspond to the fiscal year for the year stated.

[10] See U.S. Border Patrol, U.S. Border Patrol Fiscal Year 2011 Sector Profile, <https://go.usa.gov/xXx6p> [as of Apr. 5, 2017] ("2011 Sector Profile"). Immigrant children who arrive at the border may or may not be accompanied by an adult. Because federal law grants special protections to "unaccompanied alien children," (6 U.S.C. § 279), information about these two categories of minors is kept separately.

[11] See U.S. Border Patrol, U.S. Border Patrol Fiscal Year 2012 Sector Profile, <https://go.usa.gov/xXx6G> [as of Apr. 5, 2017]; United States Border Patrol, U.S. Border Patrol Fiscal Year 2013 Sector Profile, <https://go.usa.gov/xXx6A> [as of Apr. 5, 2017];]; U.S. Border Patrol, U.S. Border Patrol Fiscal Year 2014 Sector Profile, <https://go.usa.gov/xXx6s> [as of Apr. 5, 2017].

[12] See U.S. Border Patrol, U.S. Border Patrol Fiscal Year 2015 Sector Profile, <https://go.usa.gov/xXx6M> [as of Apr. 5, 2017]; U.S. Border Patrol, U.S. Border Patrol Fiscal Year 2016 Sector Profile, <https://go.usa.gov/xXx6e> [as of Apr. 5, 2017] ("2016 Sector Profile").

The number of accompanied minors apprehended by the Border Patrol also grew between 2011 and 2016.[13]

The vast majority of children who have arrived at the United States border since 2011 came here from El Salvador, Guatemala, Honduras, and Mexico. During 2016, for example, more than 98% of unaccompanied minors came from one of those four countries.[14] The most commonly identified reasons for this migration are crime, violence, and lack of educational and economic opportunity.[15] For example, the homicide rates in El Salvador, Honduras, and Guatemala are among the highest in the world.[16] Between 30% and 60% of the population of those three countries lives below the poverty line.[17]

As the number of immigrant children arriving in the United States has increased, so too have the numbers of SIJ petitions received and granted by USCIS.[18] In 2010, USCIS received 1,646 petitions and granted 1,590

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[13] Compare 2011 Sector Profile, *supra* [7,022 accompanied minors apprehended during 2011] with 2016 Sector Profile, *supra* [42,507 accompanied minors apprehended during 2016].

[14] See U.S. Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016 <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> [as of Apr. 5, 2017]; see also *ibid.* [reporting similar statistics for 2012-2014].

[15] See U.S. Government Accountability Office, Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras (Feb. 2015), p. 4, <http://www.gao.gov/assets/670/668749.pdf> [as of Apr. 5, 2017] ("Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras").

[16] *Id.* at p. 2.

[17] *Ibid.*

[18] See U.S. Citizenship and Immigration Services, Number of I-360 Petitions with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year and Case Status 2010-2016, <https://go.usa.gov/xXx6u> [as of Apr. 5,

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petitions; by 2014, those figures had grown to 5,776 petitions received and 4,606 petitions granted.[19] In 2015 and 2016, the number of petitions USCIS received (11,500 and 19,475, respectively) exceeded the total number of special immigrant visas available (around 10,000).[20] The rising number of petitions has created a backlog of children whose SIJ petitions have been granted but who cannot yet file an application for adjustment of status. During 2016, for example, USCIS stopped issuing SIJ visas to most immigrants from El Salvador, Guatemala, Honduras, or Mexico; applicants who did not have an approved SIJ petition by the cut-off date were required to apply for an adjustment of status in a future year.[21]

C. California Has a Strong Interest in Protecting the Ability of Immigrant Children to Apply for SIJ Status

California has a significant interest in ensuring that immigrant children who reside within its borders can fully and effectively pursue any valid claim for remaining in the United States that is available to them. Both this Court and the United States Supreme Court have recognized the State's "'*parens patriae* interest in preserving and promoting the welfare'" of all children who live in California. (*In re Sade C.* (1996) 13 Cal.4th 952,

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(...continued)
2017] ("USCIS Statistics"). Both accompanied and unaccompanied minors may apply for SIJ status. (See Judicial Council Memorandum, *supra*, p. 3, fn. 6.)

[19] USCIS Statistics, *supra*.

[20] *Ibid.*

[21] See U.S. Citizenship and Immigration Services, Employment-Based Fourth Preference (EB-4) Visa Limits Reached for Special Immigrants From El Salvador, Guatemala and Honduras <https://go.usa.gov/xXYba> [as of Apr. 5, 2017]; U.S. Citizenship and Immigration Services, Employment-Based Fourth Preference (EB-4) Visa Limits Reached for Special Immigrants From Mexico <https://go.usa.gov/xXYbC> [as of Apr. 5, 2017].

989, quoting *Santosky v. Kramer* (1982) 455 U.S. 745, 766.) California is currently home to a significant number of immigrant children who have recently entered the United States. Between October 2013 and February 2017, for example, 21,344 unaccompanied minors were released to sponsors in California—more than any other State.[22] Many of these children have a substantial claim that they satisfy the SIJ criteria. Protecting such children from the harmful consequences of improper removal is part of the State's "right" and "duty" to "protect children." (See *In re Phillip B.* (1979) 92 Cal.App.3d 796, 801.)

The State also has a strong interest in keeping families together when possible. A significant number of children who reach the United States unaccompanied are, like Bianka, released by the Border Patrol into the custody of a parent.[23] Many of these children satisfy the SIJ criteria. Allowing them to pursue permanent residency in the United States under the SIJ statute can help keep supportive family units intact, which promotes the "substantial state interests in family stability . . . ." (*In re Jesusa V.*

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[22] The federal agency responsible for the care and custody of unaccompanied minors (the Office of Refugee Resettlement) is required to release unaccompanied minors into the custody of qualified parents, guardians, relatives, or other "sponsors" during the pendency of removal proceedings. (See Office of Refugee Resettlement, Children Entering United States Unaccompanied, Section 2, <http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2> [as of Apr. 5, 2017].) Of the 164,909 unaccompanied minors released to sponsors between October 2013 and February 2017, 21,344—nearly 13% of the total—were released to sponsors in California. (Office of Refugee Resettlement, Unaccompanied Children Released to Sponsors by State <http://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors> [as of Apr. 5, 2017].)

[23] See, e.g., Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth* (2014) 46 Colum. Hum. Rts. L. Rev. 266, 277-278 [about 45 percent of unaccompanied minors were released to parents in 2011 and 2012].

(2004) 32 Cal.4th 588, 611.) Conferring legal status on these children also offers long-range financial benefits to both the child and the State. For example, several studies have concluded that immigrants who attain legal status earn significantly more than those who do not.[24] These increased earnings, in turn, improve the prospects that immigrants and their families will live a stable and successful life, while also boosting the State's economy and increasing tax revenues.[25]

Bianka's case provides a powerful example of the benefits of allowing eligible children to pursue SIJ visas. The family court found that Bianka lives happily with her mother in Los Angeles, where she is "thriving" in school. (2 AE 304; see also opn. p. 6.)[26] The court also found that it is not in Bianka's best interest to be sent back to Honduras, both because of the "overall violence" in that country and because there are no "available relatives to care for" Bianka there. (2 AE 311.) No interest would be served by removing Bianka from her secure and happy home with her mother, and her school where she is learning to become a productive member of our community, and sending her back to Honduras without first allowing her a fair opportunity to pursue permanent residency through the SIJ process.

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[24] See, e.g., Lynch & Oakford, The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants, Center for American Progress (Mar. 20, 2013), p. 4 <https://cdn.americanprogress.org/wp-content/uploads/2013/03/EconomicEffectsCitizenship-1.pdf> [as of Apr. 5, 2017].

[25] *Id.* at p. 2.

[26] "AE" refers to the Petitioner's Appendix of Exhibits.