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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

BRIEF OF MENTAL HEALTH ORGANIZATIONS AS AMICI
CURIAE IN SUPPORT OF PETITIONER
BIANKA M.

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INTRODUCTION

This case arises from an immigrant child's search for relief under federal law establishing Special Immigrant Juvenile Status ("SIJS"). Amici Curiae¹ write to emphasize the significant, non-immigration consequences the Court of Appeal's decision will have if not reversed. A sole custody order, like the one sought by Petitioner Bianka M. ("Bianka"), clears the way for immigrant children to receive critical mental health treatment in furtherance of Amici's goals.

The federal government provides an avenue to humanitarian relief for immigrant children who qualify for SIJS because of abuse, abandonment, or neglect by one or both parents. (*See* Opening Brief on the Merits ("Op. Br.") at 6–7.) The process of seeking SIJS has both federal and state law components. While discretion to grant or deny SIJS to a child "is reserved exclusively to the federal government through USCIS" (Op. Br. at 7), state courts play a pivotal role in the application process by making the underlying requisite SIJS findings.² California Code of Civil Procedure section 155 effectuates this policy by giving California courts both jurisdiction and the obligation to make SIJS findings when supported by the evidence. (*See* Op. Br. at 2, 8–9.) California family courts logically

¹ A full list of Amici is attached to this brief as Appendix A. Pursuant to California Rule of Court 8.200(c), no party or counsel for a party authored this brief, either in whole or in part. No person or entity made a monetary contribution to the preparation and submission of this brief.

² As discussed at length in the Opening Brief on the Merits, state courts must make the following SIJS findings before a child may petition the federal government for SIJS: "(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." (Op. Br. at 7–8 (citations omitted).)

would be imbued with the jurisdiction granted under section 155 because California family courts have “the exclusive jurisdictional basis for making a child custody determination[.]” (Fam. Code, § 3421, subd. (b); *see also* Op. Br. at 11–15 (providing a more detailed discussion of the necessity of involving family courts in the SIJS process).) Family courts may make an initial child custody determination if California is the child’s home state and the order is in the child’s best interest. (*See* Fam. Code, §§ 3011, 3021, subd. (f), 3022.) The family court’s primary concern in making a custody determination is the child’s health, safety, and welfare—including the child’s mental health. (*Id.*, § 3020, subd. (a).)

Amici write to emphasize the unnecessary barriers the Court of Appeal’s decision threatens to impose on immigrant children in need of, or receiving, mental health treatment.³ By setting up hurdles to a single parent’s ability to obtain a sole custody order, the court’s decision calls into question the authority of a single parent or guardian to authorize and decide treatment questions for the minor in consultation with mental health providers. Immigrant children who have been abused, abandoned, or neglected by a parent usually experience extreme trauma, which is complicated and exacerbated by the often arduous and dangerous journey to the United States and the perilous circumstances that forced them to flee

³ The Court of Appeal held that the lack of a controversy over custody demonstrated that Bianka’s “primary goal . . . was to obtain an order containing SIJ[S] findings,” and thus “not a bona fide custody proceeding[.]” (*Bianka M. v. Superior Court* (2016) 245 Cal.App.4th 406, 427–28, 433.) The appellate court further held that the family court had discretion to compel Bianka to join her father to the proceeding, despite the personal jurisdiction issues such a joinder would entail. (*Id.* at pp. 430–31.) The Court of Appeal acknowledged obtaining personal jurisdiction over Bianka’s alleged father would be difficult, but suggested entering into a stipulated judgment of paternity with him to address this difficulty. (*Id.* at p. 416.)

their home countries. Consequently, it is essential that mental health treatment be accessible and readily authorized.

The Court of Appeal's decision sets up a catch-22 for children like Bianka: she must show that she cannot reunify with one parent due to abuse, abandonment, or neglect to qualify for SIJS, but she must also join that demonstrably derelict parent to the proceedings in order to obtain the custody order. This requirement will frequently put the onus on the abused, neglected, or abandoned child to contact the parent from whom she is seeking to dissociate herself. The Court of Appeal's joinder requirement is unrealistic,⁴ probably futile, and will in some cases perpetuate the trauma the minor is trying to put behind her. The very purpose of SIJS—to protect abused, abandoned, and neglected children—is frustrated by requiring a child to contact and rely upon a parent who has harmed her. Impeding access to a sole custody order in this manner also means that the caring parent will have an obviously more difficult road to demonstrating the authority necessary to procure mental health services for the child without risk of disturbance or interruption by custody questions. The result will be to aggravate the impact that source of trauma has on the arc of these children's lives. A sole custody order effectively paves the way to ready access to critical mental health treatment for such children without forcing the child and her caring parent to locate and reengage with the abusive, abandoning, or neglectful parent. A sole custody order also benefits abused, neglected, and abandoned children by increasing their security and stability and reducing their anxiety—thereby improving their overall health and welfare.

⁴ The Amicus Curiae Respondent's Brief requested by the Court agrees that joinder of the absent parent is unnecessary. (*See* Respondent's Brief at 35–36.)

Amici have an interest in ensuring that all children, and especially immigrant children, can access vital mental health resources. If the Court of Appeal's holding stands, the trauma inflicted on these children will be exacerbated, and single, caring, and present parents will often be stripped of the ability to adequately address their children's mental health needs. The decision below not only denies vulnerable immigrant children an avenue to remain in the United States but also creates roadblocks for much-needed mental health services, with potentially lifelong consequences. A reversal of the Court of Appeal's decision best effectuates the policy behind the SIJS statute and California Code of Civil Procedure section 155 by safeguarding the mental health of abused, abandoned, and neglected children.

ARGUMENT

I. CHILDREN WHO EXPERIENCE ABUSE, ABANDONMENT, AND NEGLECT OFTEN SUFFER FROM SEVERE MENTAL HEALTH CONSEQUENCES

Social science literature demonstrates that mistreatment in the form of abuse, abandonment, or neglect often has devastating consequences for a child. In the short term, a child may experience trauma, behavioral and psychological problems, and even harmful changes in brain chemistry. But the adverse impact of abuse does not stop there. The effects of post-traumatic stress disorder ("PTSD") can haunt a mistreated child well into adulthood. And her mistreatment can set in motion a cycle of abuse impacting future relationships, mental health, and even the abused child's eventual children. A parent's legal authority to make treatment decisions, reinforced by a sole custody order, would help facilitate prompt treatment in order to avoid this cycle of abuse.

A. Abuse, Abandonment, and Neglect Inflict Immediate, Concrete Harms on a Child

Research shows that disrupted bonding and attachment with a primary caregiver may cause biochemical changes in a child's brain, impeding cognitive development. Children exposed to repeated, stressful events are highly likely to develop PTSD, which can result in a range of harmful symptoms. (Lawson, *Understanding and Treating Children Who Experience Interpersonal Maltreatment: Empirical Findings* (2009) 87 J. of Counseling & Development 204, 204.)

PTSD develops following an extreme stressor threatening one's physical integrity; "maltreatment is a particularly salient trauma for PTSD in youth." (Kearney et al., *Posttraumatic Stress Disorder in Maltreated Youth: A Review of Contemporary Research and Thought* (2010) 13 Clin. Child Fam. Psychol. Rev. 46, 50.) PTSD manifests through persistent and intrusive recollections of the stressful event such as through dreams or flashbacks, and intense distress when exposed to cues that remind the child of the event. (*Ibid.*) It can also cause the child to have trouble falling asleep or concentrating, as well as increased irritability, and feelings of hopelessness, defeat, and detachment from others. (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) pp. 271–72; see also Schore, *The Effects of Early Relational Trauma on Right Brain Development, Affect Regulation, and Infant Mental Health* (2001) 22 Infant Mental Health J. 201, 214.) PTSD often appears concurrently with other problems such as anxiety, depression, social withdrawal, and delinquent and aggressive behavior. (Kearney, *supra*, 13 Clin. Child Fam. Psychol. Rev. at p. 50.) Moreover, the timing of maltreatment in the earliest years of a child's life can profoundly magnify the harm.

Along with symptoms of PTSD, children who suffer from abuse, abandonment, and neglect frequently undergo behavioral changes—with slightly differing, but all harmful, consequences. Some researchers have observed that abused children tend toward aggression and anger under stress, while neglected children demonstrated significant developmental delays and helplessness when stressed. (Orlans & Levy, *Attachment, Trauma, and Healing: Understanding and Treating Attachment Disorder in Children, Families, and Adults* (2d ed. 2014) p. 109.) Severe childhood abuse is also strongly correlated with borderline personality disorder. (Lawson, *supra*, 87 J. of Counseling & Development at p. 205.) This disorder manifests in a pattern of unstable relationships, impulsivity, recurrent suicidal behavior, and displays of inappropriate anger or emotion. (American Psychiatric Association, *What Are Personality Disorders?* (Feb. 2016), <<https://www.psychiatry.org/patients-families/personality-disorders/what-are-personality-disorders>> [as of April 5, 2017].) Emotional neglect can leave children behaviorally disordered, depressed, apathetic, and slow to learn. (Orlans & Levy, *supra*, at p. 18.) Neglected children often have an impaired sense of empathy and poor impulse control, leading to aggression and even cruelty to animals or other children. (Perry, *Bonding and Attachment in Maltreated Children* (2013) p. 7, <https://childtrauma.org/wp-content/uploads/2013/11/Bonding_13.pdf> [as of April 5, 2017].)

Abandonment triggers psychological consequences by disrupting a child's sense of security during the critical formative years. Attachment theory posits that if children develop secure, healthy relationships with their caregivers, they develop an expectation that others will be trustworthy, that their needs will be met, and they are generally provided a secure and stable foundation for future development. (See Dallam, *A Model of The Retraumatization Process: A Meta-Synthesis of Childhood Sexual Abuse*

Survivors' Experiences in Healthcare (2010), Dissertation Presented to the Nursing and the Graduate Faculty of the Univ. of Kansas, p. 9.) When these security bonds are disrupted through loss, separation, threat of separation, violence, abuse, or neglect—termed “insecure attachment”—the disruption often leads to psychological problems, including depression, anger, and emotional detachment. (Pearlman & Courtois, *Clinical Applications of the Attachment Framework: Relational Treatment of Complex Trauma* (2005) 18 J. of Traumatic Stress 449, 451.) Children who experience a type of insecure attachment—such as neglected or abandoned children seeking SIJS relief—often fail to develop “self-regulation” abilities. (Orlans & Levy, *supra*, at p. 92.) In other words, they have an impaired ability to monitor and control their behaviors and emotions because their caregivers failed to provide the support and security they needed. (*Ibid.*)

In parallel with these sobering effects on a child’s behavior and psychology, abuse, abandonment, and neglect are linked to adverse physical changes in the child’s brain. Researchers opine that parenting “chisels” the brain—its physical structure and its function. (Belsky & de Haan, *Annual Research Review: Parenting and Children’s Brain Development: The End of the Beginning* (2011) 52 J. of Child Psychol. & Psych. 409, 418–19, 423–25). The vast majority of brain organization occurs in childhood, so early life experiences have a disproportionate impact on the developing brain. (Orlans & Levy, *supra*, at p. 120.) Sustained, elevated levels of stress, which can be caused by continuous abuse, may alter brain function by accelerating the loss of neurons or delaying the development of certain brain regions. (De Bellis et al., *Developmental Traumatology Part II: Brain Development in Biological Psychiatry* (May 1999) p. 1272.) These adverse effects on the brain may result in increased susceptibility to schizophrenia, language and intellectual

deficiencies, and poor school performance. (*Id.* at p. 1280.) Simply put, the damage may occur in early childhood but its effects are lasting.

The timing of maltreatment in the earliest years of a child's life can magnify the harm experienced. Only a few months of neglect in infancy can require years of mental health treatment to repair. (Perry, *supra*, at p. 4.) Children's particular vulnerability stems from their unavoidable reliance on adults—the same adults who may be inflicting the abuse—and because they lack coping skills developed later in life.

Because trauma in early childhood sets exposed children on a negative trajectory and places them at high risk of debilitating developmental effects, unobstructed access to mental health care is particularly crucial for these children. (See Moroz, *The Effects of Psychological Trauma on Children and Adolescents* (June 30, 2005), Report Prepared for the Vermont Agency of Human Services, pp. 7, 19.) Fortunately, early assessment and intervention during the initial post-trauma period can significantly reduce PTSD symptoms in youth. (See Wamser-Nanney et al., *Early Treatment Response in Children and Adolescents Receiving CBT for Trauma* (2016) 41 *J. of Pediatric Psychol.* 128, 128.) Providing effective, unhindered access to mental health treatment is a mission and goal of Amici. In accordance with this goal, permitting Bianka and other SIJS-eligible children to obtain a sole custody order and the requisite SIJS findings paves the way to obtain critical mental health services without risk of disruption.

B. The Negative Impact of Abuse, Abandonment, and Neglect Is Lasting: It Affects Future Relationships, Well-Being, and Opportunity

Childhood maltreatment often plagues the child into adolescence and even throughout life. (Larkin et al., *The Health and Social Consequences of Adverse Childhood Experiences (ACE) Across the Lifespan* in The

Adverse Childhood Experiences (ACE) Study (2012) p. 4.) Stress from abuse, abandonment, or neglect in infancy sets the stage for later childhood, adolescent, and adult stress disorders or PTSD. (See Schore, *supra*, 22 *Infant Mental Health J.* at p. 214.) Ready access to mental health services is critical to treatment and long-term quality of life for these children. (See Lawson, *supra*, 87 *J. of Counseling & Development* at p. 206.) Take the example of Dianna who immigrated from the Middle East with her mother to escape her abusive father. Dianna fled to the United States hoping to foster a bright future by attending college. She was forced to drop out, however, because of the debilitating symptoms of PTSD that she suffered, including flashbacks, nightmares, and a reduced ability to function. (Babel, *Escape from an Emotionally and Verbally Abusive Father*, *Psychology Today* (2012), <<https://www.psychologytoday.com/blog/somatic-psychology/201205/escape-emotionally-and-verbally-abusive-father>> [as of April 5, 2017].) By working with a psychotherapist and severing all contact with her abusive father, however, Dianna was able to move past the abuse and significantly reduce her PTSD symptoms. (*Ibid.*)

Trauma during childhood puts a child's ability to form strong, healthy relationships—even those formed many years later—at risk. Ongoing and recurring relationship problems are common where children have experienced severe interpersonal violence, neglect, or abuse. (Pearlman & Courtois, *supra*, 18 *J. of Traumatic Stress* at p. 449–50.) “This is particularly true for those harmed in their childhood by primary caregivers or attachment figures as well as for those whose lives involve ongoing traumatic exposure (e.g., war and genocide, refugee status, human trafficking and prostitution, etc.)”—that is, precisely those individuals who are likely to seek SIJS findings. (*Id.* at p. 449.) Chronically abused and traumatized individuals often form relationships with others who themselves have unresolved trauma, often reenacting relationships with

attachment figures from the past leading to additional harm and abandonment. (*Id.* at p. 450.) Moreover, prolonged separate and insecure attachment predisposes children to permanent changes in neurochemistry that result in high sensitivity to loss. (*See ibid.*)

Childhood abuse, abandonment, and neglect put an individual's long-term health at risk, impacting even the physical well-being of the child. Adults who experienced abuse and neglect as children "report considerably higher rates of virtually every type of psychopathology including depression, anxiety, drug and alcohol disorders, personality disorders, and generalized distress" across their lifetimes. (Armstrong & Kelley, *Early Trauma and Subsequent Antisocial Behavior in Adults* (2008), 8 Brief Treatment & Crisis Intervention 294, 295.) In fact, physically abused adolescents were seven times more likely to develop a major depressive disorder than children who were not abused. (*Id.* at pp. 295–96.) Women abused as children are even more likely to exhibit later physical symptoms such as cardiovascular and respiratory disease, gastrointestinal illnesses, cancer, and chronic fatigue syndrome. (Orlans & Levy, *supra*, at p. 114.)

Abused or neglected individuals also report higher levels of stress across a lifetime and higher rates of relationship disruption—namely, divorce and separation—than those who did not experience childhood mistreatment. (Armstrong & Kelley, *supra*, 8 Brief Treatment & Crisis Intervention at p. 295.)⁵ Finding a strong correlation between childhood abuse or neglect and a lifetime of impaired health, another study posited that stressful childhood events, such as abuse, cause children to turn to unhealthy (and addictive) coping behaviors like risky sexual activity,

⁵ Notably, the study also posits that psychological treatment interventions focusing on the underlying psychopathology, rather than its symptoms, could reduce the burdens of child trauma on society. (*Id.* at p. 294).