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IN THE SUPREME COURT OF CALIFORNIA

GUARDIANSHIP OF S.H.R.

S.H.R.,
Petitioner and Appellant,

v.

JESUS RIVAS et al.,
Real Parties in Interest.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE
CASE NO. B308440

PETITION FOR REVIEW

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PETITION FOR REVIEW

ISSUES PRESENTED

1. The Legislature has given superior courts jurisdiction to make predicate findings that allow undocumented children to apply to the federal government for "special immigrant juvenile" (SIJ) status, which, in turn, provides a pathway to permanent residency. When a petitioner asks a superior court to make SIJ findings, the Legislature has directed that "[i]f . . . there is evidence to support those findings, . . . the court shall issue the order." (Code Civ. Proc., § 155, subd. (b)(1) (§ 155).) Did the Court of Appeal err in expressly disagreeing with *O.C. v. Superior Court* (2019) 44 Cal.App.5th 76, 83 (*O.C.*), which said the statute means that, "if substantial evidence supports the requested SIJ findings, the issuance of the findings is mandatory"?

2. Did the superior court err in ruling it could not make the SIJ finding that "reunification of the child with . . . the child's parents was . . . not . . . viable because of . . . neglect" (§ 155, subd. (b)(1)(B)) where the court considered the neglect—in this case, forced labor of a minor, starting at 10 years old, to support himself and his family—to be due to the family's poverty?

3. Did petitioner make a sufficient showing of entitlement to SIJ findings under section 155?

INTRODUCTION

Every year, thousands of vulnerable undocumented children petition California's superior courts for findings allowing them to seek "special immigrant juvenile" status from the federal government, a status that creates a pathway to permanent residency. Federal law requires a *state* court to first make factual findings that "reunification with 1 or both of the [child's] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law" (8 U.S.C. § 1101(a)(27)(J)(i)) and that "it would not be in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or country of last habitual residence" (8 U.S.C. § 1101(a)(27)(J)(ii)). (See *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1012–1013 (*Bianka M.*).)

The Court of Appeal affirmed the denial of the SIJ-findings petition of the child in this case, S.H.R. (Saul).[1] The published decision raises issues of importance for all immigrant children seeking SIJ findings in California.

The first issue for review, and one about which the Court of Appeal's opinion creates an open conflict, is a fundamental one: What standard has California's Legislature provided for courts to review SIJ-findings petitions? Code of Civil Procedure section 155, subdivision (b)(1), states that, "[i]f . . . there is evidence to

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[1] Although Saul arrived in California as a 16 year old, he is now 19. For SIJ purposes, Saul is a child because both federal and California law consider SIJ applicants under 21 to be children. (8 U.S.C. § 1101(b)(1); Prob. Code, § 1510.1, subd. (d).)

support [SIJ] findings, . . . the court shall issue the order" making the findings.

In *O.C.*, *supra*, 44 Cal.App.5th at p. 83, one Court of Appeal said the statutory language means, "if substantial evidence supports the requested SIJ findings, the issuance of the findings is mandatory." The Court of Appeal here, on the other hand, expressly disagreed with *O.C.* (typed opn. 12–13), holding that the child has the burden of proof "by a preponderance of the evidence" and that, on appeal from the denial of a SIJ petition, the child must show an "entitle[ment] to the requested findings as a matter of law" (typed opn. 15).

As we explain, the *O.C.* interpretation more accurately reflects the Legislature's intent. Regardless, the evidentiary standard is a threshold issue affecting all SIJ petitions in California and leaving the law on the issue unsettled, as it is now, is not an acceptable option.

Another important issue—one that has not been addressed in any published appellate case—was framed by the superior court: it said Saul's petition for SIJ findings "only raises one issue for the Court to decide. Does the poverty of the family, which resulted in Saul being required to leaving [*sic*] school and begin working at an early age, qualify as 'neglect' or 'abuse' under California Code of Civil Procedure, Section 155." (AA 162 ["AA" page references are to the writ petition exhibits filed in the Court of Appeal that the court allowed to be refiled as the appellant's appendix].) It then concluded that " 'poverty alone' is not a basis for judicial, neglect-based intrusion." (AA 168.)

Although this issue has not been discussed in a published opinion, it is of sufficient importance and widespread effect to justify the court's resolution. The lower courts' actions in the present case provide a good vehicle for this court to resolve a pure issue of law.

Adoption of the "poverty alone" rule to disregard neglect when SIJ findings are sought is improper. The rule comes from matters in which termination of parental rights may be sought and is based on the principle that the state should not remove children from their homes based on conditions of poverty, but should take steps to assist the family. However, SIJ findings do not terminate any parental rights, and the superior court here, when asked to make SIJ findings, had no authority to order assistance in California, let alone in a foreign country.

Neglect of a child is always a basis for action, whether a family is rich or poor. When asked to make SIJ findings, the court's necessary action is " 'simply to identify' " the neglected children so that they can apply to the federal government for SIJ status. (*Bianka M.*, *supra*, 5 Cal.5th at p. 1025.)

The superior court further erred in refusing to find it would not be in Saul's best interest to be returned to his home country of El Salvador. Saul's parents did not provide him with financial support, instead relying on his contributions, including forcing him to do dangerous agricultural work starting when he was 10 and then to quit school in the ninth grade. Saul also faced repeated serious threats of deadly violence if he did not join a gang or pay a "gang tax."

In addressing the "best interest[s]" issue, the superior court acknowledged that "the United States offers Saul greater benefits than those available in El Salvador" and that "there are hardships [Saul] will face in his native country (alleged gang issues)," but the court offered the assurance that "El Salvador also produces doctors, lawyers, and other professionals who have been able to avoid these pitfalls." (AA 170.) Simply because substantial—indeed, life-threatening—obstacles might be overcome does not mean that requiring Saul to confront those obstacles is in Saul's best interest, nor does it mean that those who were able to succeed faced the same individual impediments to progress as did Saul.

Review is needed to resolve an acknowledged conflict among published opinions, settle an important issue regarding the "poverty alone" rule, and determine that Saul is entitled to the SIJ findings he has been seeking.

STATEMENT OF THE CASE

A. After years of lack of support, a prematurely terminated education, and threats of gang violence, 16-year-old Saul travels to the United States from El Salvador.

In August 2018, when he was 16 years old, Saul arrived in the United States—undocumented—from El Salvador, his home country. (AA 20, 56.) For over five months, he lived in a Texas shelter operated by the federal Office of Refugee Resettlement (AA 20), a shelter described as a "former Walmart that has been converted into a shelter for approximately 1,500 boys ages 10 to 17." (Romo & Rose, *Administration Cuts Education And Legal*

Services For Unaccompanied Minors (June 5, 2019) NPR <https://www.npr.org/2019/06/05/730082911/administration-cuts-education-and-legal-services-for-unaccompanied-minors> [as of Oct. 1, 2021].)

After his release from the shelter in January 2019, Saul lived in Palmdale with Jesus Rivas, who is the husband of a cousin of Saul's mother. (AA 20, 56.) In the declaration supporting his December 2019 petition for SIJ findings, Saul said, "I feel happy and cared for under my cousin Jesus' care. He ensures that I have shelter, food, and that I continue my education." (AA 59.) Rivas has also provided Saul with health care. (AA 56.) Saul added, "I want to remain in [Rivas's] care and graduate from high school. My only responsibility for the first time is focusing on my education." (AA 59.)

As intimated by his "for the first time" statement, Saul's security with Rivas contrasts with his prior life in El Salvador. Saul explained in his declaration:

- In El Salvador, he lived with his parents, a grandfather, and five siblings. (AA 56.)

- Saul's parents did not support him financially. Instead, they relied on him and his two older sisters to provide necessities for him and his family. (AA 56.) When he worked in the fields as a young boy, Saul said, "My grandfather would give me money for my labor which I would use to buy things I needed such as food, clothes, and shoes." (*Ibid.*) Later, he said, "I used half of the money I made at the car wash to buy food for my parents, grandfather, and younger siblings." (AA 58.)

- Saul's field work started when he was just 10 years old, and lasted until he was 15. Under the hot sun for six to seven hours every day, he collected fruits and vegetables. Saul said the work left him "completely exhausted." (AA 56.)

- Saul was threatened with gang violence three different times, beginning when he was a ninth grader. (AA 57.) He described in detail those incidents, during which, he said, "gang members threatened to kill me and my family if I refused to join their gang." (*Ibid.*) He added, "I was really afraid and felt like my parents could not protect me." (AA 58.) Although Saul's father reported the first two incidents (which occurred a few weeks apart) to the police, the police did nothing, and his parents did nothing to follow up. (AA 57.) Saul said, "The police cannot protect me either." (AA 58.)

- Because of the gang threats, Saul said, "My parents made me stop going to school and start working. This meant I would not be able to graduate from high school, as much as I wanted to." (AA 57; see AA 58 ["I could not go to school in El Salvador and I was forced to work"].)

- Saul began working at a car wash. (AA 57.) But the threats continued at his job, where a gang member told him he "would disappear" if he did not pay a "gang tax." (AA 58.)

- At this point, Saul said, "I lived in constant fear that the gang members would return to my work and kidnap or kill me. The gang members have killed many young people in my

neighborhood. I know of three different people who were killed by gang members." (AA 58.)

- Saul told his parents he wanted to leave El Salvador, "because [he] did not feel safe," but they said it was too dangerous to go and "insisted [he] stay." (AA 58.)

- Saul "did not want to risk losing [his] life," so, to "protect [him]self," he saved money and, without telling his parents, he left El Salvador in June 2018. (AA 58.)

B. The superior court denies Saul's petition for Special Juvenile Immigrant findings and the Court of Appeal affirms in a published opinion.

In September 2019, Saul petitioned the superior court to appoint Rivas as his guardian. (AA 11–13.) Saul's parents both consented to the guardianship, as did Rivas. (AA 27, 70; see also AA 67–69 [consents by grandfather, grandmother, and two sisters].)

Saul filed his petition for SIJ findings in December. (AA 52.) It included a declaration stating the facts set forth above. (AA 56–60.)

At a hearing, the court first said it would deny the petition for SIJ findings but then acceded to the request by Saul's attorney for additional briefing. (AA 89–90.)

During the hearing, the court said its negative view of the SIJ petition was based on Saul and his family's indigent circumstances in El Salvador: "Where they lived, their poverty breeds two things: a need for family members, including

children, to help, and in those kind[s] of environments can lead to violence. But being poor or living in [an] impoverished country is not a basis to grant a SIJS [findings] petition. . . . [P]overty in and of itself is not a basis for the granting of a SIJS [findings] petition." (AA 87.)

After Saul filed his supplemental brief (AA 102), the court denied his petition for SIJ findings (AA 162, 170). It also denied the guardianship petition as moot (AA 170), even though it had earlier granted the guardianship petition and appointed Rivas as Saul's guardian (AA 92, 96, 99–101).

In its statement of decision, the court said the SIJ petition "only raises one issue for the Court to decide. Does the poverty of the family, which resulted in Saul being required to leaving [*sic*] school and begin working at an early age, qualify as 'neglect' or 'abuse' under California Code of Civil Procedure, Section 155." (AA 162.) It later concluded, " 'poverty alone' " is not a basis for judicial, neglect-based intrusion: '[I]ndigency, by itself, does not make one an unfit parent.' " (AA 168.)

The court also declined to find that it would not be in Saul's best interest to be returned to El Salvador. In doing so, the court acknowledged that "the United States offers Saul greater benefits than those available in El Salvador" and that "there are hardships [Saul] will face in his native country (alleged gang issues)," but the court offered the assurance that "El Salvador also produces doctors, lawyers, and other professionals who have

been able to avoid these pitfalls." (AA 170.)[2]

Saul filed both a writ petition and a notice of appeal, because the appealability of the superior court's order was unclear.[3] The Court of Appeal affirmed in a published opinion. (Appens. A and B.)

LEGAL ARGUMENT

I. The Court of Appeal's opinion creates a consequential conflict about the evidentiary standard for superior courts in ruling on petitions for Special Immigrant Juvenile findings.

A. Which evidentiary standard applies is a crucial threshold issue that affects all petitions for SIJ findings.

Two of the most frequent reasons that this court grants review are "[w]hen necessary to secure uniformity of decision" and "to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) This case qualifies under both categories. The Court of Appeal decision expressly disagrees with another published appellate opinion about an issue that is critical to

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[2] The Court of Appeal's opinion does not discuss these aspects of the superior court's statement of decision. (See typed opn. 12, fn. 8.) Saul called the omissions to the appellate court's attention in a rehearing petition, to no avail.

[3] After recognizing appellate opinions have differed on the matter, the Court of Appeal held the order is appealable. (Typed opn. 9–10.) We agree, which is why we do not raise that procedural question as a separate issue for review. However, in addition to resolving the issues presented, this court can use the present case to settle the appealability question.

thousands of children seeking the protection of California courts and the federal government.

Federal law protects vulnerable undocumented immigrants[4] who are under 21 years old by providing a procedure for them to attain SIJ status that creates a pathway to make them permanent United States residents. (8 U.S.C. § 1101(a)(27)(J), (b)(1); 8 U.S.C. § 1232(d)(6); 8 C.F.R. § 204.11(c)(1) (2021); see *Bianka M.*, *supra*, 5 Cal.5th at pp. 1012–1013.) Although federal officials determine whether a child should be granted SIJ status, state courts play an indispensable role in the process.

Before the federal government can approve SIJ status, a state court must first, as relevant here, "place[ ] [the child] under the custody of . . . an individual" appointed by the court (8 U.S.C. § 1101(a)(27)(J)(i)) and make two findings: (1) "reunification with 1 or both of the [child's] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law" (*ibid.*), and (2) "it would not be in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or country of last habitual residence"

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[4] This court has "use[d] the term 'undocumented immigrant' to refer to a non-United States citizen who is in the United States but who lacks the immigration status required by federal law to be lawfully present in this country and who has not been admitted on a temporary basis as a nonimmigrant." (*In re Garcia* (2014) 58 Cal.4th 440, 446, fn. 1; see also Stats. 2021, ch. 296, § 1 [The Legislature has acted to "remove the dehumanizing term 'alien' from all California code sections"].)

(§ 1101(a)(27)(J)(ii)). (See *Bianka M.*, *supra*, 5 Cal.5th at p. 1013.)

California's Legislature has acted to facilitate the state's courts in meeting their SIJ responsibilities. Section 155, subdivision (a)(1), gives superior courts jurisdiction to make the "judicial determinations" and the "factual findings necessary to enable a child to petition the United States Citizenship and Immigration Services for classification as a special immigrant juvenile." (See *Bianka M.*, *supra*, 5 Cal.5th at p. 1013.)

The Legislature has also directed that, in ruling on a petition for SIJ findings, "[*i*]*f . . . there is evidence to support those findings*, which may consist solely of, but is not limited to, a declaration by the child who is the subject of the petition, *the court shall issue the order*" making the findings. (§ 155, subd. (b)(1), emphases added.) The Court of Appeal opinion in this case creates a conflict regarding how to interpret that statutory language.

The Fourth District, Division Three previously stated, "if substantial evidence supports the requested SIJ findings, the issuance of the findings is mandatory." (*O.C.*, *supra*, 44 Cal.App.5th at p. 83.)

The Court of Appeal in this case, however, expressly disagreed with, and declined to follow, *O.C.* (typed opn. 12–13), asserting that "nothing in the statute's text or its legislative history" supports *O.C.*'s statement (typed opn. 13). Instead, the court concluded that a petitioner for SIJ findings had the burden "to prove by a preponderance of the evidence" the facts

supporting those findings. (Typed opn. 15.) The court also held that, because of this preponderance standard, on appeal from an adverse superior court ruling, the petitioner must show an "entitle[ment] to the requested findings as a matter of law." (*Ibid*.)

The effect in this case of the different standards is dramatic. For example, consider the court's treatment of just some of Saul's evidence of neglect—starting as a 10 year old, he was put to work harvesting in hot fields for many hours a day, work that left him "completely exhausted." (AA 56.)

The appellate opinion found the evidence insufficient to establish "neglect as a matter of law" because, "[e]ven if a court could reasonably infer parental neglect . . . , the court could also reasonably infer that, because his parents were impoverished, allowing [Saul] to earn money by helping his grandfather in the fields during summers was, under the circumstances, a reasonable parental decision." (Typed opn. 17–18.)

The result would be the opposite under *O.C.* Putting aside that parental poverty should not allow a court to ignore the neglect of a child (another important issue for review, discussed *post*), disregarding a reasonable inference of neglect is incompatible with the "substantial evidence" standard stated by the *O.C.* court. A reasonable inference *is* substantial evidence. (See, e.g., *In re R.T.* (2017) 3 Cal.5th 622, 633 (*In re R.T.*) [to see if substantial evidence supports findings, " 'we draw all reasonable inferences from the evidence' "].)

The difference in outcomes between a court following *O.C.* and one following the present opinion is likely to be replicated in many California proceedings for SIJ findings. Thus, this court's intervention is necessary to resolve the conflict about how superior courts should review SIJ-findings petitions and also, by extension, how appellate courts should review denials of those petitions. Indeed, frequent disparate results are very likely unless this court steps in.

B. The *O.C.* court's "substantial evidence" interpretation is the proper reading of the Legislature's intent.

1. The statutory language supports a "substantial evidence" standard.

The *O.C.* court's is the better interpretation of what the Legislature intended when it enacted section 155. (See *Smith v. LoanMe, Inc.* (2021) 11 Cal.5th 183, 190 (*Smith*) [" ' " ' "[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose" ' " ' "].)

Section 155's plain language itself is a strong indicator that *O.C.*'s holding was right. (See *Smith*, *supra*, 11 Cal.5th at p. 190 [" ' " ' "We first examine the statutory language, giving it a plain and commonsense meaning" ' " ' "].) The statute provides that "the court *shall* issue the order" making SIJ findings "[*i*]*f* . . . *there is evidence* to support those findings." (Emphases added.)

"Ordinarily, the term 'shall' is interpreted as mandatory and not permissive." (*People v. Standish* (2006) 38 Cal.4th 858, 869.) Although regarding a different issue, this court in *Bianka M.* highlighted the compulsory language of section 155, saying

the statute "has made clear that a superior court 'shall' issue an order containing SIJ findings if there is evidence to support them." (*Bianka M.*, *supra*, 5 Cal.5th at p. 1025; see *id*. at p. 1013 ["The statute further provides that superior courts 'shall issue the order' if 'there is evidence to support [SIJ] findings' "]; see also Legis. Counsel's Dig., Sen. Bill No. 873, Stats. 2014, ch. 685 (2013–2014 Reg. Sess.) [bill enacting section 155 "would *require* the superior court to make an order containing the necessary findings . . . if there is evidence to support those findings" (emphasis added)].) All indications are that the Legislature intended "shall" to have its ordinary, mandatory meaning.

If there is a mandatory duty to make SIJ findings, the duty is triggered "[i]f . . . there is evidence to support those findings." Literally, this could mean the existence of *any* evidence. That might be too broad an interpretation; for example, a child simply stating, "I was neglected," without substantiation, might alone be insufficient. But using "[i]f . . . there is evidence" indicates the Legislature's intention to require only a minimum amount of legally significant evidence, setting a bar that is lower than the preponderance standard applicable in other contexts. At the same time, the statutory phrase "evidence to support" indicates that the petitioner must provide *substantial* evidence, not just vague or conclusory assertions.

2. Context and legislative history support a "substantial evidence" standard.

There is good reason to believe the Legislature intended a substantial evidence standard rather than a preponderance

standard. It has repeatedly removed obstacles undocumented children might face in seeking the findings necessary to apply for SIJ status.

Of particular relevance in the present case is the rule the Legislature enacted—and later strengthened—to reduce the evidentiary burden in SIJ-findings proceedings. When originally enacted, section 155, subdivision (b)(1), provided that the evidence to support findings "may consist of, but is not limited to, a declaration by the child who is the subject of the petition." (Stats. 2014, ch. 685, § 1.) In 2016, the Legislature amended the statute to its present phrasing that the evidence can "consist *solely* of, but is not limited to," the child's declaration. (Emphasis added; see Stats. 2016, ch. 25, § 1.)

The Legislature has also given broad jurisdiction to the superior courts—not just the courts' juvenile divisions—to make SIJ findings, and to do so "at any point in a proceeding." (§ 155, subd. (a)(1), (2).) It has made it off limits for a court to consider or comment on a child's motivations in seeking SIJ findings. (§ 155, subd. (b)(2); see *Bianka M.*, *supra*, 5 Cal.5th at p. 1024.) It has additionally acted to ensure that children between 18 and 21 years old can have a guardian appointed, a necessary prerequisite to SIJ status. (Prob. Code, § 1510.1; see Stats. 2015, ch. 694, § 1 [legislative findings].)

A committee report said language in the 2016 bill "clarifies . . . [¶] . . . [¶] [t]hat *it is in the best interest of the child for a superior court to issue the SIJS factual findings if requested and supported by evidence*." (Sen. Rules Com., Off. of Sen. Floor

Analyses, 3d reading analysis of Assem. Bill No. 1603 (2015–2016 Reg. Sess.) as amended June 13, 2016, p. 6, emphasis added.) It also related that section 155 had been enacted two years earlier "*to strengthen protections for immigrant children* by making it clear that all California courts have jurisdiction to make Special Immigrant Juvenile Status (SIJS) findings." (*Ibid.*, emphasis added.)

Given the Legislature's history of, at every turn, easing the path of undocumented children who are requesting SIJ findings, section 155, subdivision (b)(1), should be given its plain and commonsense meaning of requiring no more than substantial evidence to mandate those findings.

3. The Court of Appeal's interpretation is flawed.

The Court of Appeal here held a substantial evidence standard of review "is inconsistent with the trial court's factfinding task under section 155" because a determination that there is substantial evidence "is not a factual finding at all." (Typed opn. 13–14.) This court should disagree.

A superior court's conclusion about whether a child's evidence is substantial *is* a factual finding. The court is evaluating the quality of the evidence. "Substantial evidence is not any evidence—it must be reasonable in nature, credible, and of solid value." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 51.) An assessment of the reasonableness, credibility, and value of evidence is an inherently factual determination. An example of the absence of fact finding would

be if the Legislature required every petition be granted regardless of the supporting evidence, or lack thereof.

In section 155, the Legislature has not eliminated superior court factfinding, but it has established a standard for the court to use to review evidence that is weighted in favor of the child seeking SIJ findings. There is nothing unique about legislatively weighted factfinding. (See, e.g., Gov. Code, § 830.6 [public entity's design immunity established if, among other things, "the trial or appellate court determines that there is any substantial evidence" of the design's reasonableness]; Stats. 2021, ch. 721, § 1 [amending Penal Code section 1385 to provide, "the court shall consider and afford great weight to evidence offered by the defendant to prove" various mitigating circumstances in deciding whether to dismiss an enhancement].)

The Court of Appeal also said "a substantial evidence standard would not satisfy the federal requirement that the state court actually find the required facts." (Typed opn. 14.) This is wrong and, in any event, is not a proper reason for disagreeing with *O.C.*

First, again, a determination that a child's evidence is substantial *is* an actual finding of the required facts. Second, Congress has delegated to the individual states the task of making the necessary findings and must have known that different states could employ different standards for making the findings. (See U.S. Citizenship and Immigration Services, Dept. of Homeland Security, USCIS Policy Manual (2021) Eligibility Requirements, vol. 6, pt. J, ch. 2,

https://www.uscis.gov/book/export/html/68600 [as of Oct. 4, 2021] (USCIS Policy Manual) ["USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations"].) Finally, if the standard the Legislature adopted does not satisfy federal requirements, it is for the Legislature, not the courts to revise the standard.

One jurisdiction's appellate court said that "Congress to some extent has put its proverbial thumb on the scale favoring SIJS status." (*B.R.L.F. v. Sarceno Zuniga* (D.C. 2019) 200 A.3d 770, 776.) California's Legislature has similarly favored children applying for SIJ findings, including providing a substantial evidence standard of review.

II. Whether poverty can preclude SIJ findings is an important issue meriting this court's attention.

The superior court framed the legal question in the present case this way: Saul's petition for SIJ findings "only raises one issue for the Court to decide. Does the poverty of the family, which resulted in Saul being required to leaving [*sic*] school and begin working at an early age, qualify as 'neglect' or 'abuse' under California Code of Civil Procedure, Section 155." (AA 162.) The court then concluded the law is "clear that 'poverty alone' is not a basis for judicial, neglect-based intrusion: '[I]ndigency, by itself, does not make one an unfit parent.' " (AA 168.)

The Court of Appeal did not expressly rule on the propriety of the superior court's approach to this issue, but its opinion is congruent. The opinion says the superior court could "reasonably

infer that, *because his parents were impoverished*, allowing [Saul] to earn money by helping his grandfather in the fields during summers was, under the circumstances, a reasonable parental decision that enabled the family to provide for [Saul] without interfering with his education." (Typed opinion 17–18, emphasis added.)

The applicability of the "poverty alone" rule to petitions for SIJ findings has yet to be decided in a published opinion.[5] The superior court cited decisions arising in a different context—the termination of parental rights. (AA 168, citing *In re G.S.R.* (2008) 159 Cal.App.4th 1202 (*G.S.R.*) and *David B. v. Superior Court* (2004) 123 Cal.App.4th 768.)

Although not addressed in a published SIJ opinion, the applicability of the "poverty alone" rule is a recurring issue.

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[5] The Court of Appeal offered this rationale for not addressing our argument that the superior court's reliance on the "poverty alone" rule was error: "We review the court's order, . . ., not its reasoning, and may affirm the order if it is correct on any theory of applicable law." (Typed opn. 12, fn. 8.) It also states Saul could prevail on appeal only if the evidence " ' "compels a finding in [his] favor . . . as a matter of law." ' " (Typed opn. 11.) The use of a deferential standard of appellate review regardless of a legally faulty basis for the factfinder's decision is fundamentally wrong and contrary to well-settled principles. (See, e.g., *Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 386 [" '[a] discretionary order that is based on the application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion, and is subject to reversal even though there may be substantial evidence to support that order' "]; *Dyer v. Department of Motor Vehicles* (2008) 163 Cal.App.4th 161, 174 ["Where the trial court decides the case by employing an incorrect legal analysis, reversal is required regardless of whether substantial evidence supports the judgment"].)

Indeed, the superior court copied its conclusion about the "poverty alone" rule directly from an unpublished SIJ opinion. (Compare AA 168 with *Guardianship of Melgar* (Nov. 25, 2019, B293130) 2019 WL 6270520, p. *4 [nonpub. opn.].)

The issue is also an important one. Importing the "poverty alone" rule from parental-rights-termination cases into SIJ-findings proceedings like the present one will disadvantage many children like Saul. And it is wrong to do so, for two reasons: the rule's rationale does not fit the purpose of SIJ findings and an order making SIJ findings does not terminate parental rights.

The basis for the "poverty alone" rule is that, "where family bonds are strained by the incidents of poverty, the [social services] department must take steps to assist the family, not simply remove the child and leave the parent on their own to resolve their condition and recover their children." (*In re S.S.* (2020) 55 Cal.App.5th 355, 374; see *ibid.* [" ' "The legislative scheme contemplates immediate and intensive support services to reunify a family where a dependency disposition removes a child from parental custody" ' "].) Thus, "California courts have repeatedly found social services must actively seek to assist a parent suffering from poverty in obtaining adequate housing and that trial courts may not terminate reunification services or parental rights if they have failed to do so." (*Ibid.*)

In a SIJ petition proceeding such as this one, however, no social services department is involved at all, and a superior court has no authority to order family support services, especially services to be provided in another country. Thus, the "poverty

alone" rule, which is a salutary one in parental-rights-termination cases because it supports the policy of reunification where possible, offers no benefits and can cause only harm to children like Saul who seek SIJ findings in their guardianship proceedings.

Nor should parental rights or fault be of concern in making SIJ findings. The proper focus is the effect on the child.

Parents have substantial due process rights "[b]efore the state may sever [their] rights in [their] natural child." (*G.S.R.*, *supra*, 159 Cal.App.4th at p. 1210.) Those rights do not always require a finding of parental fault, however. (See *In re R.T.*, *supra*, 3 Cal.5th 622 [statute authorizes dependency jurisdiction without finding a parent at fault for failure or inability to supervise or protect child]; *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1128 ["a finding of parental unfitness . . . is not an invariable constitutional requirement when parental rights are terminated"].)

In any event, a petition for SIJ findings does not involve the termination of parental rights.

The United States Citizenship and Immigration Service says that termination of parental rights is not necessary to establish the non-viability of reunification in SIJ cases. (USCIS Policy Manual, *supra*, vol. 6, pt. J, ch. 2, § C.2.) And case law similarly explains that SIJ findings are divorced from proceedings to terminate parental rights.

In *Bianka M.*, this court found unconvincing lower court concerns that SIJ findings would be equivalent to a parentage

determination. The court explained, "Bianka has . . . simply asked the court to make a finding of fact: that reunification with her alleged father is not viable because of abandonment. *Standing alone, that factual finding carries with it no necessary implications about [her father's] parental rights or responsibilities* beyond what his nonparticipation in the litigation has already demonstrated." (*Bianka M.*, *supra*, 5 Cal.5th at pp. 1021–1022, emphasis added.) The court added that "[a]ny decision issued in [the father's] absence could not bind him in any event." (*Id.* at p. 1022.)

Courts in other states have specifically held that parental-rights-termination rules are too strict for SIJ cases. Their reasoning is compelling.

The Nevada Supreme Court remanded a case to a trial court that had used too exacting a standard in refusing to make SIJ findings. (*Lopez v. Serbellon Portillo* (Nev. 2020) 469 P.3d 181 (*Lopez*).) The court "caution[ed] [trial] courts to remember that because SIJ findings do not result in the termination of parental rights, the consideration of whether a parent has abandoned a child such that reunification is not viable is broader than the consideration of whether a parent's abandonment of a child warrants termination of the parent's parental rights." (*Id.* at pp. 184–185.)

Nevada's Supreme Court is not alone in so holding. (*Romero v. Perez* (Md. 2019) 205 A.3d 903, 912–914 (*Romero*) [SIJ "proceedings do *not* involve any termination of parental rights; they merely entail judicial fact finding about the viability of a

forced reunification between a parent and a child"]; *Kitoko v. Salomao* (Vt. 2019) 215 A.3d 698, 708 (*Kitoko*) ["the requested finding would not amount to a termination of father's parental rights"]; *J.U. v. J.C.P.C.* (D.C. 2018) 176 A.3d 136, 141, 142 [finding "the trial court applied too demanding a standard of both 'viability' and 'abandonment' " in SIJ case where "the concept of abandonment is being considered not to deprive a parent of custody or to terminate parental rights but rather to assess the impact of the history of the parent's past conduct on the viability . . . of a forced reunification"].)

Because SIJ findings themselves do not terminate parental rights, the focus should be on the harm suffered by the child. Whether or not neglect was intentional, its impact on the child is the same. (Cf. *Jackson v. Pasadena City School District* (1963) 59 Cal.2d 876, 881 ["The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause"], superseded by Cal. Const., art. I, § 7, subd. (a).)

According to the superior court here, and to courts employing like reasoning, circumstances that would otherwise constitute parental neglect do not allow for a SIJ finding of neglect if the child's family is poor. (See AA 168 [parents' requiring Saul to "leave school and start working" is not neglect because, "in actuality, each of these complaints arises from the same root cause—namely, their poverty"].) That should not be the law.

If reunification is not viable because a child has been neglected or abandoned by his or her parents, the underlying circumstances—whether they be ignorance, poverty, parental malice, or something else—should be of no concern. As this court has said, " '[a] state court's role in the SIJ process is . . . simply to identify abused, neglected, or abandoned alien children under its jurisdiction.' " (*Bianka M.*, *supra*, 5 Cal.5th at p. 1025.) The superior court's charge is to evaluate a child's adverse conditions, not to prosecute his or her parents.

III. This court should rule that Saul is entitled to SIJ findings.

If this court grants review, it should also decide whether section 155 requires the superior court to make the SIJ findings Saul has requested. The record in the case provides a good vehicle for this court to model how such a resolution should be made.

Illustrating how to properly apply section 155 would provide valuable guidance to the superior courts. There is a paucity of California case law determining what evidence establishes that "reunification of the child with one or both of the child's parents [is] not . . . viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law" and that "it is not in the best interest of the child to be returned to the child's, or his or her parent's, previous country of nationality or country of last habitual residence." (§ 155, subd. (b)(1)(B), (C).) Also, a decision remanding this matter to the lower courts for further substantive proceedings could compromise Saul's ability

to apply to the federal government for SIJ status because his application must be made before he turns 21.

In merits briefing, we will explain in more detail why Saul's evidence entitles him to SIJ findings. That conclusion will be straightforward once this court applies the correct legal standard. We provide a summary now.

The evidence should be viewed as Maryland's high court did in *Romero*, *supra*, 205 A.3d 903: "the terms 'abuse,' 'neglect,' and 'abandonment' should be interpreted broadly when evaluating whether the totality of the circumstances indicates that the minor's reunification with a parent is not viable, i.e., workable or practical, due to prior mistreatment." (*Id*. at pp. 914–915.) The court further explained, "[i]n applying this standard, [trial] courts should consider factors such as (1) the lifelong history of the child's relationship with the parent (i.e., is there credible evidence of past mistreatment); (2) the effects that forced reunification might have on the child (i.e., would it impact the child's health, education, or welfare); and (3) the realistic facts on the ground in the child's home country (i.e., would the child be exposed to danger or harm." (*Id*. at p. 915; accord, *Lopez*, *supra*, 469 P.3d at pp. 184–185; *Kitoko*, *supra*, 215 A.3d at pp. 708–709.)

Beginning when he was a small child, Saul's parents did not financially support him. Rather, it was the other way around. From the time he started working in the fields at age 10, Saul used his earnings to buy food and clothes for himself and

food for his family members. (AA 56, 58.) This lack of support is a classic indicator of neglect and abandonment.

Saul's parents forced him to leave school in the ninth grade to work. (AA 57–58.) California's Compulsory Education Law provides, with exceptions not relevant here, "Each person between the ages of 6 and 18 years . . . is subject to compulsory full-time education." (Ed. Code, § 48200; see *In re James D.* (1987) 43 Cal.3d 903, 915 ["Courts have long recognized the importance of education to both the individual and to society," and compulsory education laws are "a legitimate means of achieving that objective"].) Parents who do not comply with the law are "guilty of an infraction." (Ed. Code, § 48293, subd. (a).)

Saul was forced into dangerous manual labor beginning when he was a 10 year old. He worked full days in the hot fields, leaving him "completely exhausted." (AA 56.)

All of this history demonstrates that forced reunification is not viable.

The Court of Appeal said there is no evidence that Saul, "*as an adult*, would need the level of support for a child or that he would be unable to contribute to the family's income." (Typed opn. 24, emphasis added.) Similarly, the superior court based its ruling in part on the fact that Saul "is no longer a minor." (AA 169.) This disregards federal and state law on an issue of substantial importance to many petitioners for SIJ findings.

According to Congress, for SIJ purposes, Saul is a child until he turns 21. (8 U.S.C. § 1101(b)(1).) The Legislature has recognized this. (Prob. Code, § 1510.1, subd. (d); Stats. 2015,

ch. 694, § 1(a)(2).) It has also specifically declared that "many unaccompanied immigrant youth between 18 and 21 years of age face circumstances identical to those faced by their younger counterparts." (*Id.*, § 1(a)(5).) Thus, evidence of Saul's circumstances before he left El Salvador as a 16 year old remains important and cannot be ignored.

The evidence also established that returning to El Salvador would not be in Saul's best interest. (See 8 U.S.C. § 1101(a)(27)(J)(ii); § 155, subd. (b)(1)(C)). Indeed, the superior court's refusal to so find is inexplicable.

In El Salvador, Saul faced—and would again face on returning—life-threatening gang violence. (AA 57–58.) Even the superior court acknowledged it is "probably true" that "it would be safer for [Saul] in the United States." (AA 88.)

Saul's petition for SIJ findings further demonstrated that his education would suffer if he were to be deported. In El Salvador, he was forced to quit school, and, he said, "This meant I would not be able to graduate from high school, as much as I wanted to." (AA 57; see AA 58 ["I could not go to school in El Salvador and I was forced to work"].) In California, however, Saul said that his guardian "ensures that . . . I continue my education" and "[m]y only responsibility for the first time is focusing on my education." (AA 59; see *ibid.* [Saul wants to "graduate from high school" in California].)

Additionally, unlike in El Salvador, where his parents did not financially support him, Saul said that his guardian was providing him with shelter, food, and health care. (AA 56, 59.)

Despite all this, and even while allowing that "the United States offers Saul greater benefits than those available in El Salvador" (AA 170), the superior court declined to find that a return to El Salvador was not in Saul's best interest.

The court downplayed the serious threats to Saul's life, calling them "*alleged* gang *issues*" and "alleged *requests* to join the gangs (which he resisted)." (AA 170, emphases added.) The superior court also said, "while there are hardships [Saul] will face in his native country (alleged gang issues), El Salvador also produces doctors, lawyers, and other professionals who have been able to avoid these pitfalls." (*Ibid*.)

The court failed to give Saul's affidavit proper deference as the Legislature requires by dismissively referring to his statements regarding threats as allegations. In addition, although the trial court might be correct that "doctors, lawyers, and other professionals . . . have been able to avoid these pitfalls," it failed to give weight to the evidence that Saul had already been detrimentally affected by those pitfalls, thus rendering him a candidate for SIJ relief.

In any event, the court did not—and cannot—explain how facing those "hardships" and "pitfalls," even with a possibility of overcoming them, is in Saul's best interests when Saul's evidence showed he would not have to face them at all in California.

CONCLUSION

For the reasons explained above, this court should grant review and reverse the Court of Appeal's judgment.

October 12, 2021

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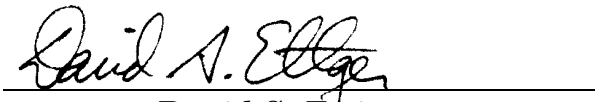
By: 
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S.H.R.

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 7,469 words as counted by the program used to generate the petition.

Dated: October 12, 2021

David S. Ettinger

Appendix A

Unmodified Opinion • Case No. B308440
Second Appellate District, Division One
Filed September 2, 2021

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Guardianship of S.H.R. _____ S.H.R., Petitioner and Appellant, v. JESUS RIVAS et al., Objectors and Respondents.	B308440 (Los Angeles County Super. Ct. No. 19AVPB00310)

APPEAL from orders of the Superior Court of Los Angeles County, Scott J. Nord, Judge Pro Tempore. Affirmed.

Horvitz & Levy, Jason R. Litt, David S. Ettinger, Anna J. Goodman; Immigrant Defenders Law Center, Bhairavi Asher and Abigail Ward Lloyd for Petitioner and Appellant.

Akin Gump Strauss Hauer & Feld, Rex S. Heinke, Jessica M. Weisel, and Joshua D. Tate for Public Counsel as Amicus Curiae on behalf of Petitioner and Appellant.

No appearance for Objectors and Respondents.

S.H.R. filed petitions in the superior court for the appointment of a guardian of his person (the guardianship petition; Prob. Code, § 1510.1) and for judicial findings that would enable him to petition the United States Citizenship and Immigration Services (USCIS) to classify him as a special immigrant juvenile (SIJ) under federal immigration law (the SIJ petition; Code Civ. Proc.,[1] § 155). The court denied the SIJ petition and denied the guardianship petition as moot.

As we explain below, S.H.R. had the burden of proving by a preponderance of the evidence the facts supporting SIJ status. Because the trial court found his evidence did not support the requested findings, S.H.R. has the burden on appeal of showing that he is entitled to the SIJ findings as a matter of law. For the reasons discussed below, he has not met his burden. We therefore affirm the order denying the SIJ petition. Because the denial of the SIJ petition rendered the guardianship petition moot, we also affirm the order denying that petition.

SPECIAL IMMIGRANT JUVENILE STATUS

In the Immigration Act of 1990 and subsequent amendments, Congress established the SIJ classification of immigrants and a path "to protect abused, neglected, and abandoned unaccompanied minors through a process that allows them to become permanent legal residents." (*In re Y.M.* (2012) 207 Cal.App.4th 892, 915; see 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4), 1255(a) & (h); *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1012–1013.) The USCIS may consent to grant

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[1] Subsequent unspecified statutory references are to the Code of Civil Procedure.

SIJ status to an unmarried immigrant under 21 years of age if the immigrant is in the custody of an individual appointed by a state court with jurisdiction to determine the custody and care of juveniles, and that court makes two findings: (1) reunification with one or both of the immigrant's parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under [s]tate law"; and (2) it is not in the immigrant's best interest to return to his or her home country or the home country of his or her parents. (8 U.S.C. § 1101(a)(27)(J) & (b)(1); see 8 C.F.R. § 204.11(a) (2021); *Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622, 627–628.)

In 2014, the California Legislature enacted section 155 (Stats. 2014, ch. 685, § 1, pp. 4485–4486), which confers jurisdiction on every California superior court—including its juvenile, probate, and family court divisions—to make the findings necessary to petition the USCIS for SIJ status. (§ 155, subd. (a); *Bianka M.*, *supra*, 5 Cal.5th at p. 1013.) The statute further provides that "[i]f an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status . . . , and there is evidence to support those findings, which may consist solely of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order." (§ 155, subd. (b)(1).)

The following year, the Legislature enacted Probate Code section 1510.1, which grants courts the power to "appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding [SIJ] status." (Prob. Code, § 1510.1, subd. (a); Stats. 2015, ch. 694, § 3, p. 5330.) The appointment of a guardian

under this statute may satisfy the requirement under the SIJ law that the immigrant be "placed under the custody of . . . an individual . . . appointed by a [s]tate or juvenile court." (8 U.S.C.A. § 1101(a)(27)(J)(i); *J.L. v. Cissna* (N.D.Cal. 2019) 374 F.Supp.3d 855, 867; *Matter of A-O-C-*, USCIS Adopted Decision 2019-03 (AAO, Oct. 11, 2019) 2019 WL 5260453, pp. *4–*5.)[2]

FACTUAL AND PROCEDURAL SUMMARY

S.H.R. was born in El Salvador in December 2001. He left El Salvador in June 2018 and arrived in the United States in August 2018. In January 2019, he moved in with his maternal cousin's husband, Jesus Rivas, in Palmdale.

In September 2019, S.H.R.—then 18 years old—filed a petition in the superior court for appointment of Rivas as guardian of his person (the guardianship petition). S.H.R. stated in the petition that Rivas has been caring for him "since he arrived [in] the United States" and has provided him with "shelter, food, and other vital necessities." The guardianship, he asserted, "will promote stability for [him] as he adjusts to life in

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[2] The appointment of a guardian under Probate Code section 1510.1 and the judicial findings described in section 155 do not guarantee USCIS's consent to SIJ status. (See *Reyes v. Cissna* (4th Cir. 2018) 737 Fed.Appx. 140, 146 [USCIS may withhold its consent to SIJ status if the petitioner's state court request for SIJ findings was not "bona fide"]; *Matter of E-A-L-O-*, USCIS Adopted Decision 2019-04 (AAO, Oct. 11, 2019) 2019 WL 5260455, pp. *8–*9; *id.* at p. *9 [USCIS need not consent to SIJ status where petitioner failed to show that he sought the state court finding "for any reason other than to enable him to file his petition for SIJ classification"].)

the United States." Rivas consented to be S.H.R.'s guardian and S.H.R.'s parents consented to Rivas's appointment as guardian.

On December 3, 2019, S.H.R. filed a petition for special immigrant juvenile findings (the SIJ petition) in the superior court. The SIJ petition states that reunification with S.H.R.'s "parents is not viable under California law because of . . . [¶] . . . [¶] neglect [and] [¶] abandonment," and that it is not in his best interest to be returned to El Salvador.

S.H.R. supported the petition with his declaration setting forth the following facts.

Prior to coming to the United States, S.H.R. lived in El Salvador with his parents, two younger brothers, a younger sister, and his maternal grandfather. His two older sisters had left for the United States a few months before him and are living in San Francisco. His mother and grandfather do not work, and his father had been unable to find work for "a couple of years." The family depends mostly on S.H.R. and his older sisters for money.

Beginning at the age of 10 and continuing until he was 15, S.H.R. helped his grandfather by "working in the fields" during the summer, collecting fruit and vegetables "under the sun for six to seven hours every day." After work, he "would be completely exhausted." He used the money his grandfather paid him to buy necessities, such as food, clothing, and shoes.

One day, when S.H.R. was in ninth grade, two gang members approached him outside of school. They told him he needed to join the gang, but S.H.R. refused. The men told S.H.R. that if he did not join the gang, they would kill him or his family. This made S.H.R. "very afraid," and he told his parents about the incident. His father reported the incident to the police. S.H.R.

did not hear from the police again and his parents did not follow up with them.

A few weeks later, the two gang members met S.H.R. after school again and threatened to kill him and his family if he refused to join their gang. He reported the incident to his parents, who informed the police. As with the first incident, the police did nothing and his parents did not follow up. S.H.R. believes that the "police are afraid of the gang members, who will go after them or their family members if they investigate the incidents."

S.H.R. feared that gang members would wait for him again after school. His parents then "made [him] stop going to school and start working." This meant that he would not graduate from high school.

S.H.R. began working at a car wash every day from 8:00 a.m. to 6:00 p.m. He used half the money he earned "to buy food for [his] parents, grandfather, and younger siblings," and saved the rest.

After a few months of working at the car wash, a gang member approached S.H.R. and asked him to pay a "gang tax." The man threatened that S.H.R. would "disappear" if he did not cooperate.

S.H.R. was afraid of the gang member and told his parents he wanted to leave the country. His parents told him "it would be too dangerous for [him] to go" and "insisted [he] stay." He felt that his parents could not protect him, yet would not let him leave.

S.H.R. knew of three people in his neighborhood who had been killed by gang members and he "lived in constant fear that

the gang members would return to [his] work and kidnap or kill [him]."

S.H.R. saved money to pay for a trip to the United States and, in June 2018, he left El Salvador without telling his parents.

S.H.R. is afraid that if he returned to El Salvador, the "gang members will come after [him] again with threats of violence, or even kill [him]," and his "parents are not able to protect [him]."

At a hearing held on June 25, 2020, the court indicated that the SIJ petition provided no basis for granting the petition. The court, however, granted S.H.R.'s request to submit a brief and granted the guardianship petition.

S.H.R. thereafter submitted a brief in which he argued that his "parents neglected him under California law when they failed to provide for his support resulting in harm to [his] health and welfare." In particular, his "parents consented to him spending his summers working in the fields when he was ten years old, doing difficult, exhausting work." His parents also "forced him to stop attending school and to instead spend his childhood days working tirelessly," including "working full-time at a car wash."[3]

S.H.R. also submitted proposed SIJ findings that include the finding, among others, that his "parents neglected and abandoned him by failing to provide him with adequate care and

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[3] S.H.R. attached to his supplemental brief a purported psychological evaluation of S.H.R. The document is not authenticated and it was neither offered nor admitted into evidence at the hearing. Nor does it appear from our record that the probate court considered it. Because it was not authenticated or introduced into evidence, we do not consider it.

protection" and that he "was forced to work starting from a young age using dangerous equipment."[4]

On August 25, 2020, the probate court denied the SIJ petition. In its statement of decision, the court explained that "nothing in [S.H.R.'s] petition or declaration supports any finding that he was abandoned in any respect under California law" (capitalization omitted), and the conduct of S.H.R.'s parents did not "meet the definition of 'neglect' under California law." The court further stated that "[t]he [p]etition does not state, and no evidence is provided, which suggests that[,] should [S.H.R.] be returned to El Salvador[,] reunification with one or both parents[,] absent a finding of other factors[,] is not possible or viable." Moreover, the facts S.H.R. alleged "dealt with issues that arose while he was a minor. However, he is no longer a minor. As such, the [c]ourt cannot conclude that those issues will continue to exist."

Based on the denial of the SIJ petition, the court denied the guardianship petition as moot.

S.H.R. filed a notice of appeal from the probate court's August 25, 2020 order, as well as a petition in this court for writ of mandate or prohibition. We granted his request to treat his writ petition as his opening brief on appeal and the exhibits accompanying the writ petition as his appellant's appendix. No respondent's brief has been filed.

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[4] S.H.R. submitted his proposed findings on Judicial Council form No. FL-357/GC-224/JV-357 [rev. July 1. 2016].

We granted a request by Public Counsel to file an amicus brief in support of S.H.R.[5]

DISCUSSION

A. *Appealability*

At least one appellate court has reviewed the denial of a petition for SIJ findings as an appealable order. (*In re Israel O.* (2015) 233 Cal.App.4th 279, 283.) Other courts have done so through writ proceedings. (*Bianka M., supra,* 5 Cal.5th at p. 1015; *O.C. v. Superior Court* (2019) 44 Cal.App.5th 76, 82 (*O.C.*); *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 343 (*Leslie H.*).) The cases do not discuss whether an appeal or a writ petition is the proper vehicle to obtain appellate review of an order denying a petition for SIJ findings. We hold that the order is appealable.

"A reviewing court has jurisdiction over a direct appeal only when there is (1) an appealable order or (2) an appealable judgment." (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) "A judgment is the final determination of the

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[5] Amicus Public Counsel filed in this case a request for judicial notice of three documents: A declaration filed by certain California legislators filed in another California appellate court proceeding; a declaration filed by a social worker in a federal district court; and so-called "compliance reports" filed by USCIS in a federal district court. The documents are offered for the truth of statements made therein. Therefore, although the first was filed in a state court and the other two were filed in federal courts (Evid. Code, § 452, subd. (d)), we deny the request for judicial notice by separate order. (See *Bennett v. Regents of University of California* (2005) 133 Cal.App.4th 347, 358, fn. 7; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564–1565, 1568.)

rights of the parties." (*Id.* at p. 697.) An order by the superior court may constitute an appealable judgment if it disposes of all causes of action pending in the case. (See *ibid.*) "As a general test," an order is final and appealable when "no issue is left for future consideration except the fact of compliance or noncompliance with the terms" of the order. (*Id.* at p. 698.)

Here, S.H.R. filed his SIJ petition pursuant to section 155 for the purpose of obtaining the findings authorized by that section. The court's order denying the requested findings completely disposes of the matter before it and leaves no further issues to be resolved. (See *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 755 [holding that a probate court's order denying a request to set aside community property transfers was appealable as a final judgment because it had "all the earmarks of a final judgment," leaving nothing further for judicial consideration].) Thus, the court's order denying the SIJ petition is the equivalent of a final, appealable judgment and we therefore consider S.H.R.'s appeal from the order.[6] In doing so, we recognize that review by writ petition also may be appropriate under the circumstances of a given case. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 91, p. 153 [even if a judgment or order is appealable, review by writ may be available where the remedy by appeal is inadequate].)

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[6] We will deny the writ petition in *S.H.R. v. Superior Court* (case No. B308307) as moot by separate order.

B. *The Order Denying the SIJ Petition*

1. *Burden of proof and standard of review*

As the party requesting SIJ findings, S.H.R. had the burden of proof in the trial court. (Evid. Code, § 500; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861 [generally, "the 'party desiring relief' bears the burden of proof"].) Because section 155 does not specify a burden of proof, the burden is "proof by a preponderance of the evidence." (Evid. Code, § 115.)[7]

Here, the trial court concluded that S.H.R. had not met his burden of proving the facts necessary to make the SIJ findings under section 155, including the finding that his reunification with one or both parents is not viable "because of abuse, neglect, abandonment, or a similar basis pursuant to California law." (§ 155, subds. (a)(2) & (b)(1)(B).) The court therefore rejected S.H.R.'s request to make this finding, and denied S.H.R.'s petition.

When an appellant challenges a trial court's factual findings on appeal, our review will ordinarily be governed by the substantial evidence standard of review. (See generally Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2020) ¶¶ 8:43 to 8:44.) When, as here, however, "the party who had the burden of proof in the [trial] court contends the court erred in making findings against [him], 'the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the

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[7] Evidence Code 115 provides: "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."

appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." ' " (*Estate of Herzog* (2019) 33 Cal.App.5th 894, 904; quoting, *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527–1528; accord, *Patricia A. Murray Dental Corp. v. Dentsply Internat., Inc.* (2018) 19 Cal.App.5th 258, 270.)[8]

S.H.R. views the role of the trial court under section 155 and, consequently, our standard of reviewing the court's ruling, differently. According to him, the "role of the superior court" in evaluating a SIJ petition under section 155 is "to determine . . . whether there is evidence that *could* support a ruling in favor of the petitioner." For this assertion, S.H.R. relies on a statement in *O.C.*, *supra*, 44 Cal.App.5th 76, that, "if substantial evidence supports the requested SIJ findings, the issuance of the findings is mandatory." (*Id.* at p. 83.) We disagree.

The *O.C.* court had no occasion to consider either the petitioner's burden of proof in the trial court or the trial court's standards for evaluating the petitioner's evidence. Indeed, the petitioner's evidence played no part in the court's analysis. The statement from the opinion that S.H.R. relies upon—"if substantial evidence supports the requested SIJ findings, the issuance of the findings is mandatory"—is therefore dicta. (*O.C.*,

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[8] S.H.R. and amicus devote much of their briefs to challenging the trial court's reasoning and its reliance on cases addressing the termination of parental rights under juvenile dependency law. We review the court's order, however, not its reasoning, and may affirm the order if it is correct on any theory of applicable law. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18–19.)

supra, 44 Cal.App.5th at p. 83.) For the following reasons, we decline to follow it.

For the quoted statement, the *O.C.* court relied solely on subdivision (b)(1) of section 155, set forth above, which makes no reference to "substantial" evidence. The court's statement is otherwise made without analysis or citation to authority. (*O.C.*, *supra*, 44 Cal.App.5th at p. 83.) Indeed, there is nothing in the statute's text or its legislative history to support the statement, and it has not been followed in any other published decision.[9]

The *O.C.* court's reference to "substantial evidence" also suggests a standard that is inconsistent with the trial court's factfinding task under section 155. Under that section, the court must determine whether the petitioner has proved particular facts, such as parental maltreatment of the petitioner and the nonviability of reunification. (See *J.L. v. Cissna*, *supra*, 374 F.Supp.3d at p. 866 [the reunification finding under section 155 "is inherently factual"].) "The substantial evidence test," however, "does not ask what proposed facts are more likely than not to be the true facts" (*Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1017); rather, it is aimed at

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[9] S.H.R. also relies on the Supreme Court's statement in *Bianka M.* that, under section 155, subdivision (b)(1), "a superior court 'shall' issue an order containing SIJ findings if there is evidence to support them." (*Bianka M.*, *supra*, 5 Cal.5th at p. 1025.) The *Bianka M.* court, however, was concerned with the question whether the trial court could consider evidence of the petitioner's motivation in seeking SIJ findings, and concluded that such evidence is irrelevant. (*Ibid.*; see § 155, subd. (b)(2).) The court did not address the petitioner's burden of proof or suggest that that burden was less than proof by a preponderance of evidence.

determining a legal issue: Whether there is substantial evidence to support factual findings. (See *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1515 [the existence or nonexistence of substantial evidence is a question of law].) Thus, a determination by the trial court that the petitioner has produced substantial evidence that could support a finding under section 155 is not a factual finding at all. Because section 155 requires factual findings, we reject the *O.C.* court's "substantial evidence" standard at the trial court level.

Furthermore, a substantial evidence standard would not satisfy the federal requirement that the state court actually find the required facts. (See *Osorio-Martinez v. Att, Gen. U.S. of America* (3d Cir. 2018) 893 F.3d 153, 169 [SIJ eligibility "requires the state court to find" that reunification " 'is not viable due to abuse, neglect, abandonment, or a similar basis found under State law' "].) The SIJ petitioner must thus present "evidence of a judicial determination that the juvenile *was subjected to*" parental maltreatment, not a determination that the juvenile could have been subjected to maltreatment. (*Matter of E-A-L-O-*, USCIS Adopted Decision 2019-04, *supra*, 2019 WL 5260455, p.*6, italics added; see *Reyes v. Cissna*, *supra*, 737 Fed.Appx. at p. 146; *id*. at p. 144 [affirming summary judgment against SIJ applicant where the state court failed to make " '*specific factual findings regarding* the basis for finding abuse, neglect, or abandonment' "].) Because section 155 was enacted to aid juveniles in obtaining SIJ status under federal law, we reject a construction of the statute that would not support the federal standard for SIJ status.

For the foregoing reasons, we reject S.H.R.'s argument that he needed merely to produce "substantial evidence" that could

support the required findings, and hold that he was required to prove by a preponderance of the evidence the existence of the facts specified in section 155. Under these circumstances, where the court considered the evidence and concluded that S.H.R. had failed to prove the existence of such facts, we review the court's ruling denying the requested findings to determine whether S.H.R. is entitled to the requested findings as a matter of law.

2. *S.H.R.'s failure to prove parental abandonment or neglect*

S.H.R. and amicus rely on S.H.R.'s declaration evidence in arguing that his parents abandoned and neglected him because: (1) between the ages of 10 and 15, he was required to perform exhausting agricultural field work during the summers under difficult conditions; (2) gang members threatened him and his family and, because of these threats, his parents required that he discontinue his high school education and work at a car wash; and (3) his parents did not provide him with financial support.

We may quickly dispose of the argument that S.H.R.'s parents abandoned him. According to S.H.R., he lived with both of his parents from his birth until he left El Salvador in June 2018. Although he stated that his mother does not work and his father had "not been able to find work for a couple of years," he does not state that his parents had ever left him without provision for his care or supervision. (See Fam. Code, § 3402, subd. (a).) Nor is there any evidence that either parent ever deserted or intended to abandon S.H.R. (Fam. Code, § 7822, subd. (b); see *In re Guardianship of Rutherford* (1961) 188 Cal.App.2d 202, 206 [abandonment requires " ' "an actual desertion, accompanied with an intention to entirely sever, so far as it is possible to do so, the parental relation and throw

off all obligations growing out of the same" ' "].) Indeed, when S.H.R. raised the subject of leaving the country, his parents insisted that S.H.R. stay with them. Ultimately, S.H.R. disregarded his parents' advice and left home "without telling them." His separation from his parents was thus the fulfillment of his intention and action, not the result of abandonment by his parents.

We also conclude that S.H.R. has failed to satisfy his burden on appeal of showing that, as a matter of law, his parents committed neglect against him. Neglect is not defined in section 155. S.H.R. and amicus point to several definitions of neglect under California law. For purposes of the Child Abuse and Neglect Reporting Act, neglect is defined as "the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare." (Pen. Code, § 11165.2.) The same law distinguishes " '[s]evere neglect' " and " '[g]eneral neglect,' " and defines the latter as "negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred." (*Id.*, subd. (b).)

Under a law enacted for protection of the elderly, neglect is defined to include "[t]he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." (Welf. & Inst. Code, § 15610.57, subd. (a)(1).)

Although the statutes describing the circumstances supporting juvenile dependency jurisdiction do not define neglect, our Supreme Court has interpreted the term in that context

as having its "commonly understood" meaning of a " 'failure or inability . . . to adequately supervise or protect' " the parent's child. (*In re R.T.* (2017) 3 Cal.5th 622, 629; see also *In re Ethan C.* (2012) 54 Cal.4th 610, 627–628.)

S.H.R. contends that his parents committed neglect because, between the ages of 10 and 15, he "spent [his] entire summers working in the fields helping [his] grandfather" for six to seven hours every day "under the hot weather."[10] As S.H.R. asserts, such work may be prohibited under California law. (See Lab. Code, § 1290.)[11] Nevertheless, a violation of that prohibition does not necessarily constitute neglect by the child's parents under the foregoing definitions. S.H.R. was apparently working with his parents' consent under the auspices of his grandfather and for the purpose of helping his parents provide for his family. Even if a court could reasonably infer parental neglect from such evidence, the court could also reasonably infer that, because his parents were impoverished, allowing S.H.R. to earn money by helping his grandfather in the fields during

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[10] S.H.R. asserts in his brief on appeal that during his time as a child farmworker, he used a machete, suffered sunburn, dehydration, and exhaustion, was exposed to pesticides, snakes, scorpions, and harmful insects, and worked without running water or toilet facilities. These facts, however, are not found in S.H.R.'s declaration and are apparently based on statements in an inadmissible "psychological evaluation," which we do not consider. (See fn. 3, *ante*.)

[11] Although a child is permitted to work on a farm owned, operated, and controlled by the child's parent (Lab. Code, § 1394, subd. (a)), it does not appear from the record that S.H.R.'s parents owned, operated, or controlled the farm on which S.H.R. was "helping [his] grandfather."

summers was, under the circumstances, a reasonable parental decision that enabled the family to provide for S.H.R. without interfering with his education. The evidence of S.H.R.'s childhood summer work does not, therefore, establish parental neglect under any of the foregoing definitions of neglect as a matter of law.

We reach a similar conclusion as to S.H.R.'s argument regarding his parents' decision to remove him from school in light of the gang threats against him and his family. Although, under California law, parents of children between the ages of 6 and 18 are generally required to send their children to public school (Ed. Code, § 48200), whether a decision to pull the child from school constitutes neglect must take into consideration the circumstances surrounding that decision. Here, S.H.R.'s declaration implies that his parents took him out of high school because of repeated threats by gang members against S.H.R.'s life. The threats were made at or near the school and, despite S.H.R.'s father's reports of the incidents to police, it appeared that the police were unwilling or unable to prevent the gangs from carrying out their threats. Under these circumstances, keeping S.H.R. from school, where he would face substantial risk of being killed, appears to have been the most reasonable and prudent action to take. Rather than neglect, the decision reflects the parents' commitment to protect S.H.R. from "harm or threatened harm to the child's health or welfare." (Pen. Code, § 11165.2.) At a minimum, the parents' actions do not constitute neglect as a matter of law.

S.H.R. also argues that his parents left him "unprotected from multiple credible threats of gang violence." The threats themselves cannot reasonably be viewed as constituting parental

neglect. S.H.R. suggests, however, that his parents should have done something more than report the threats to the police. Other than "follow[ing] up" with the police, however, S.H.R. does not indicate what more his parents could have done to protect him from gangs; and failing to follow up with police does not constitute neglect. Indeed, S.H.R. apparently believes that any follow-up would have been futile because, he asserts, the police are afraid to investigate complaints about gang members.

Lastly, S.H.R. argues that his parents "did not financially support" him. He points to his statements that his mother does not work, his father had "not been able to find work for a couple of years," and his "family depends mostly on [his] older sisters and [himself] to provide money." His parents' lack of employment or their partial dependence on others, however, does not, without more, constitute neglect toward S.H.R. as a matter of law. A parent can provide for a child indirectly as well as through the parent's employment income. Indeed, even an incarcerated parent may avoid a finding of neglect if the parent can arrange for the child's care while the parent is in prison. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.) Although S.H.R. states that his family depended in part on his siblings and himself, he does not state that his parents failed to provide him with food, shelter, clothing, or medical care.[12]

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[12] Although SIJ status may be based on a finding that reunification is not viable because of parental "abuse," as well as "neglect, abandonment, or a similar basis," S.H.R. based his petition solely on grounds of neglect and abandonment. We do not, therefore, consider other possible grounds.

3. *S.H.R.'s failure to show that reunification was not viable*

Even if S.H.R. had established that his parents were guilty of neglect towards him, he was further required to show that reunification with one or both of his parents is not viable because of such neglect. (§ 155.) The trial court determined he had not made that showing. Whether we review the court's ruling under the test we applied above to the court's neglect and abandonment findings or, as S.H.R. argues, under a de novo standard, we reach the same conclusion as the trial court.

Reunification involves the child's return to the parents' custody and care. (*In re K.L.* (2012) 210 Cal.App.4th 632, 642; see *In re Welfare of D.A.M.* (Minn.Ct.App. Dec. 12, 2012, No. A12-0427) 2012 WL 6097225, p. *5 [" 'reunification' " under the SIJ law "appears to mean returning the child to successfully live with his or her parent"].) The meaning of "not viable" under the SIJ law is unsettled. Some courts and the USCIS have interpreted the phrase as requiring the petitioner to prove that reunification with his or her parents cannot occur, or is not possible. (See, e.g., *O.C.*, *supra*, 44 Cal.App.5th at pp. 82–83; *Leslie H.*, *supra*, 224 Cal.App.4th at p. 351; *In re Erick M.* (Neb. 2012) 820 N.W.2d 639, 645; *D-Y-S-C-*, USCIS Adopted Decision 2019-02 (AAO, Oct. 11, 2019) 2019 WL 5260454, p. *2; USCIS, Policy Manual (2021) Immigrants, vol. 6, pt. J, ch. 2, § A, pp. 408-409.) Some courts, however, have interpreted the phrase as requiring proof only that reunification is not practicable or workable. (See, e.g., *Lopez v. Serbellon Portillo* (Nev. 2020) 469 P.3d 181, 184; see also *J.U. v. J.C.P.C.* (D.C. 2018) 176 A.3d 136, 140 (*J.U.*) [viability connotes "common-sense practical workability"]; accord, *Kitoko v. Salomao* (Vt. 2019) 215 A.3d 698,

708; *Romero v. Perez* (Md.Ct.App. 2019) 205 A.3d 903, 914–915.) For purposes of our analysis, we will assume that S.H.R. was required to meet the less demanding, practical or workable standard. This standard "calls for a realistic look at the facts on the ground in the country of origin and a consideration of the entire history of the relationship between the minor and the parent in the foreign country." (*J.U.*, *supra*, 176 A.3d at p. 140.) The finding of nonviability must be made as of the present time. (*Perez v. Cuccinelli* (4th Cir. 2020) 949 F.3d 865, 874.)

The phrases, "due to" in the federal statute (8 U.S.C. § 1101(a)(27)(J)(i)) and "because of" in section 155 (§ 155, subd. (b)(1)(B)) indicate a causal connection between the parents' maltreatment and the nonviability—or practical unworkability—of reunification. (See *Leslie H.*, *supra*, 224 Cal.App.4th at p. 349 [" 'a court must find that reunification is not possible because of abuse, neglect, or abandonment' "].)

The link between the parents' maltreatment and the nonviability of reunification was addressed in *J.U.*, *supra*, 176 A.3d 136, a case S.H.R. relies on. In that case, the minor petitioning for SIJ status, grew up in El Salvador apart from his father, who "was a non-supportive and distant figure." (*Id.* at p. 142.) Although the father regularly visited the paternal grandparents' house where the child lived, he "never fed him, gave him clothes, took him to school, cared for him when he was sick, or showed him any affection. . . . The father never invited [the minor] to live with him even after discovering that [the child] had nowhere to live in El Salvador, nor did the father ever provide any financial support or assume any significant parental responsibility for making necessary day-to-day decisions regarding [the child]. All financial support came from his mother

and grandfather." (*Ibid.*, fn. omitted.) Although "the father recognized [the minor] as his son, he never helped the mother to financially care for him or helped to take care of him, and . . . the father does not have a parent-child relationship with [the minor] as he has never participated in his life or shown him love. Once [the minor] entered the United States and took up residence with his mother, [the child] . . . never had any contact with his father." (*Ibid.*) The District of Columbia Court of Appeals held that reunification was not viable due to the father's abandonment of the child. It explained that "sending a seventeen-year-old boy back to the care of a father who has never fulfilled any day-to-day role in the support, care, and supervision during the boy's lifetime cannot be a 'reunification' that is 'viable,' that is, 'practicable[,] workable.' " (*Id.* at p. 143; see also *Leslie H.*, *supra*, 224 Cal.App.4th at p. 352 [reunification with parents was not viable due to "mother's lifelong abuse" of child and "father's abandonment"].)

In contrast to *J.U.*, even if we assume that S.H.R.'s parents neglected him under our state law standards, S.H.R. presented no evidence in this case to support a finding that reunification with his parents is not presently viable "because of" such neglect. (§ 155, subd. (b)(1)(B).) The fact that S.H.R.'s parents required S.H.R. to work in agricultural fields during summers as a child until the age of 15 to help support the family does not imply that reunification is presently not viable.[13] There is nothing in

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[13] Arguably, S.H.R. and his parents cannot "reunify" because reunification has meaning only in the context of parents and their minor children (see *In re K.L.*, *supra*, 210 Cal.App.4th at p. 642), and the 19-year-old S.H.R. is, generally, not a minor

S.H.R.'s declaration to suggest that if he returned to the home of his parents that his childhood experience working in the fields renders reunification with his parents unworkable. There is no evidence, for example, to suggest that he left his parents in 2018 because his parents made him work in the fields several years earlier or that his parents would attempt to compel him to resume such work upon his return home. Indeed, the fact that he stopped working in the fields when he was 15 years old and subsequently worked at a car wash indicates that his parents would not insist that he work as a farm laborer again.

Nor does S.H.R.'s parents' decision to pull him from high school to protect him from gang violence suggest that reunification with his parents is not presently viable. It appears that S.H.R.'s parents made the decision to remove him from school not to harm him in any way, but rather to protect him from harm. Even if S.H.R. disagrees with the decision, it appears from his declaration that he understands his parents' protective intentions. Thus, even if the parents' decision constituted neglect at that time, the decision would not render reunification with his parents unworkable now.

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under the law of either California or El Salvador. (See Fam. Code, § 3901, subd. (a)(1); Código Civil [Civil Code], art. 26 (El Sal.); but see Prob. Code, § 1510.1, subd. (d) [for purposes of SIJ-related guardianship petition, "minor" includes an unmarried person 18 years of age or older and younger than 21 years of age].) If this argument is accepted, reunification is not viable as a matter of law not because of any maltreatment by the parents, but because S.H.R. is not a minor. We will assume arguendo that S.H.R.'s age is not per se an impediment to reunification for purposes of the SIJ law. (See *R.F.M. v. Nielsen* (S.D.N.Y. 2019) 365 F.Supp.3d 350, 380.)

The alleged failure to provide S.H.R. with financial support while he lived in El Salvador, even if it constituted neglect, does not prove that reunification is not currently viable. Although S.H.R.'s declaration states that his parents are unemployed and depend "mostly" on others for money, he does not indicate that his parents' financial situation renders reunification unworkable as a matter of law. He does not suggest that he left his parents because of a failure to support him and there is nothing in his declaration to indicate that he, as an adult, would need the level of support for a child or that he would be unable to contribute to the family's income.

It is evident from S.H.R.'s declaration that he does not desire to return to El Salvador because he is fearful of violence against him from gangs in that country, not because of any parental neglect or a purported inability to reunify with his parents. Although S.H.R.'s fear of gangs may be well-founded, that alone–absent evidence of parental neglect, abuse or abandonment—is not among the grounds for finding reunification with his parents is not viable for purposes of the SIJ law. (See 8 U.S.C. § 1101(a)(27)(J)(i); *In re Jeison P.-C.* (N.Y.App.Div. 2015) 132 A.D.3d 876, 877 [SIJ petitioner failed to establish that reunification was not viable where he left his impoverished parents in Guatemala to escape gang violence and pursue education].)

Because S.H.R. failed to show that reunification with one or both parents is not viable due to the asserted grounds of abandonment or neglect, the court did not err in denying his SIJ petition.

C. *The Order Denying the Guardianship Petition*

Amicus Public Counsel contends that the court erred in concluding that S.H.R.'s guardianship petition was rendered moot by the court's denial of the SIJ petition. We disagree.

Probate Code section 1510.1, subdivision (a) provides: "With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of [s]ection 155 of the Code of Civil Procedure." In a statement accompanying the enactment of the statute, the Legislature declared its "intent . . . to give the probate court jurisdiction to appoint a guardian for a person between 18 and 21 years of age in connection with a special immigrant juvenile status petition" and "to provide an avenue for a person between 18 and 21 years of age to have a guardian of the person appointed beyond 18 years of age in conjunction with a request for the findings necessary to enable the person to petition the [USCIS] for classification as a special immigrant juvenile." (Stats. 2015, ch. 694, § 1(b), p. 5329.) It thus appears from the statute's plain language and the Legislature's expressed intent that the statute grants superior courts jurisdiction to appoint a guardian for unmarried individuals who are at least 18 years old and less than 21 years old when the guardianship is sought "in connection with" a SIJ petition. (Prob. Code, § 1510.1, subd. (a)(1).) The requirement of a "connection with" a SIJ petition indicates that the court's jurisdiction is limited; the statute does not grant courts the power to grant a guardianship under this provision in the absence of a SIJ petition.

Here, once the court denied the SIJ petition, there was no longer a SIJ petition with which the guardianship could be connected. It was therefore proper for the court to dismiss the guardianship petition as moot.

DISPOSITION

The court's orders denying appellant's petition for special immigrant juvenile findings and denying as moot appellant's petition for appointment of guardian are affirmed.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.

Appendix B

Modified Opinion • Case No. B308440
Second Appellate District, Division One
Filed September 28, 2021

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Guardianship of S.H.R. _____ S.H.R., Petitioner and Appellant, v. JESUS RIVAS et al., Real Parties in Interest.	B308440 (Los Angeles County Super. Ct. No. 19AVPB00310) ORDER MODIFYING OPINION AND DENYING APPELLANT'S PETITION FOR REHEARING (NO CHANGE IN JUDGMENT)

THE COURT:

The opinion in the above-entitled matter filed on September 2, 2021, is modified as follows:

1. On page 1, the caption of the published opinion is revised to reference the parties Jesus Rivas et al. as the Real Parties in Interest (see above-referenced caption). Additionally, on that same page, the last line of the appearances is revised to read: No appearance for Real Parties in Interest.

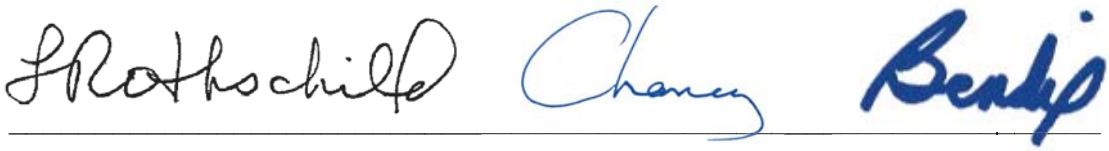
2. On page 4 in the first sentence of the second paragraph of the FACTUAL AND PROCEDURAL SUMMARY, the phrase "then 18 years old" is deleted and replaced with: then 17 years old.

3. On page 5, the first sentence of the first complete paragraph is deleted and replaced with the following sentence:

> On December 3, 2019, S.H.R.—then 18 years old—filed a petition for special immigrant juvenile findings (the SIJ petition) in the superior court.

These modifications do not constitute a change in the judgment.

Appellant S.H.R.'s petition for rehearing filed September 17, 2021 is denied.



ROTHSCHILD, P. J. CHANEY, J. BENDIX, J.

PROOF OF SERVICE

Guardianship of S.H.R.
Court of Appeal Case No.: B308440
California Supreme Court Case No.: S_____

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On October 12, 2021, I served true copies of the following document(s) described as **PETITION FOR REVIEW** on the interested parties in this action as follows:

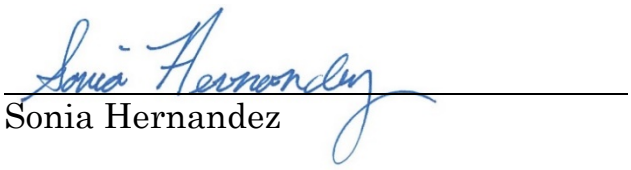
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 12, 2021, at Burbank, California.



Sonia Hernandez

SERVICE LIST
Guardianship of S.H.R.
Court of Appeal Case No.: B308440
California Supreme Court Case No.: S_____

Munmeeth Soni (SBN 254854) Marion Donovan-Kaloust (SBN 301632) Immigrant Defenders Law Center 634 South Spring Street, 10th Floor Los Angeles, California 90014 Tel: (213) 634-7602 Fax: (213) 282-3133 Email: meeth@immdef.org mickey@immdef.org	Co-Counsel for Petitioner and Appellant **SAUL STEVEN HERNANDEZ RAMOS (YOUTH)** ***Via TrueFiling***
Saul Ricardo Hernandez Dora Delmy Ramos Col. Las Brisas Barrio Los Remedios SN Salida a la Cuidad Dolores Sensuntepeque, Cabanas El Salvador, Central America	**FATHER AND MOTHER** ***Hard copy via U.S. Mail***
Jesus Rivas 37808 Rudall Avenue Palmdale, California 93550	**PROPOSED GUARDIAN** ***Hard copy via U.S. Mail***
Rex S. Heinke (SBN 66163) Jessica Michael Weisel (SBN 174809) California Appellate Law Group LLP 811 Wilshire Blvd., 17th Floor Los Angeles, CA 90017 Tel: (213) 878-0404 Email: rex.heinke@calapplaw.com jessica.weisel@calapplaw.com	Amicus Curiae ***Via TrueFiling***
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Commissioner Scott Nord 2011 4th Street West Lancaster, California 93534	Trial Court Commissioner [Case No. 19AVPB00310] ***Hard copy via U.S. Mail***

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Guardianship of S.H.R.**
Case Number: **TEMP-B8LOPVDO**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **dettinger@horvitzlevy.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	2021-10-12 PFR - Guardianship of SHR

Service Recipients:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/12/2021
Date

/s/David Ettinger
Signature

Ettinger, David (93800)
Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm