

No. S233757

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BIANKA M.,
Petitioner,

v.

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

Respondent;
GLADYS M.,

Real Party in Interest.

SUPREME COURT
FILED

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

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

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

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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

Dated: April 10, 2017

Respectfully submitted.



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

To the Honorable Tani Cantil-Sakauye, Chief Justice:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

violence survivors report that the first incident of abuse occurred during their pregnancy,⁹ and as many as 20 percent of women in the United States experience domestic violence *during* pregnancy.¹⁰

The health effects of domestic violence are particularly acute during pregnancy.¹¹ Intimate partner violence is often targeted at a woman's womb, and includes kicking or punching the pregnant woman's abdomen.¹² Domestic violence during pregnancy is associated with significant health consequences including low weight gain, anemia, kidney infections, first and second trimester bleeding, low birth weight, preterm birth, increased risk of cesarean delivery, uterine rupture, hemorrhage, placental abruption, antenatal hospitalization, femicide, and neonatal death.¹³

B. Domestic Violence Is Widespread In Honduras, Forcing Countless Victims Like Bianka To Flee To Other Countries To Escape Abuse

Bianka and her mother fled from Honduras, where—the United Nations Special Rapporteur on Violence Against Women concluded—violence against women is “widespread and systematic.”¹⁴ While reporting

VAND. L. REV. 1015, 1060–61 <<https://www.vanderbiltlawreview.org/wp-content/uploads/sites/89/2014/06/Enjoining-Abuse-The-Case-for-Indefinite-Domestic-Violence-Protection-Orders.pdf>> [as of April 3, 2017] [“Pregnant women experience domestic violence at rates that are twice as frequent and severe in injury as the rates for nonpregnant abuse survivors, and research shows that abuse escalates as the pregnancy progresses.”]

⁹ Camp, *supra*, at p. 291.

¹⁰ Gazmararian et al., *Prevalence of Violence Against Pregnant Women* (1996) 275 J. Am. Med. Assoc. 1915, 1918 (1996).

¹¹ Camp, *supra*, at p. 294.

¹² *Ibid.*

¹³ Leone et al., *Effects of Intimate Partner Violence on Pregnancy Trauma and Placental Abruption*, (2010) 19 J. Women's Health 1501, 1501–02.

¹⁴ United Nations, *Special Rapporteur on violence against women finalized country mission to Honduras and calls for urgent action to address the*

rates in Honduras are high, conviction rates are dismal. The resolution rate for domestic violence cases in Honduras is only 2.55 percent.¹⁵ Moreover, the government of Honduras does not provide victims with sufficient protection, legal and financial resources, or shelters.¹⁶

The lack of government resources is one of the reasons why so many victims have been forced to leave the country to escape violence. Indeed, more than 200,000 unaccompanied children, including more than 40,000 children from Honduras, have fled to America over the last four years to escape violence in other countries.¹⁷ A quarter of unaccompanied children from Honduras fled to America to escape abuse at home.¹⁸ Tens of thousands of these abused, abandoned, and neglected children file SIJ status petitions every year.¹⁹

culture of impunity for crimes against women and girls, (July 7, 2014) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833>> [as of April 3, 2017].

¹⁵ *Ibid.*

¹⁶ United States Department of State, *Honduras 2015 Human Rights Report*, <<https://www.state.gov/documents/organization/253235.pdf>> [as of April 3, 2017].

¹⁷ United States Customs and Border Protection, *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, Statement by Secretary Johnson on Southwest Border Security* (Oct. 18, 2016), <<https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>> [as of April 3, 2017].

¹⁸ United Nations, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, Rashida Manjoo, Mission to Honduras, March 31, 2015, at ¶ 27.

¹⁹ United States Citizenship and Immigration Services, *Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal year and Case Status 2010-2017* (March 28, 2017), <https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Citizenship/I360_sij_performedata_fy2017_qtr1.pdf> [as of April 3, 2017].

C. Undocumented Immigrants Face Unique Challenges In Fleeing And Reporting Domestic Violence

Undocumented immigrants are particularly vulnerable to domestic violence in the United States. The abuser may manipulate the victim's immigration status by not filing legal documents to establish residency or citizenship, or may threaten to have the victim deported if she reports abuse.²⁰ And partners accused of abuse may retaliate by withdrawing from immigration proceedings, destroying documents showing the victim's legal status, or alerting employers or immigration officials to the victim's undocumented status.²¹

Among other barriers, language and poverty inhibit access to U.S. court systems for immigrants who are financially dependent on abusive partners.²² To make matters worse, the Chief Justice has acknowledged, California trial courts have reported "that immigration agents appear to be stalking undocumented immigrants in our courthouses to make arrests."²³

²⁰ National Center on Domestic and Sexual Violence, *Immigrant Power And Control Wheel*, adapted from the Power and Control Wheel developed by the Domestic Abuse Intervention Project, Duluth, MN <http://www.ncdsv.org/images/Immigrant%20P&C%20wheel%20NO%20SHADING%20-%20NCDSV-ICE_updated2009.pdf> [as of April 3, 2017].

²¹ *Ibid.*

²² Futures Without Violence, *The Facts on Immigrant Women and Domestic Violence*, <https://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Immigrant.pdf> [as of April 3, 2017].

²³ Letter from Chief Justice Cantil-Sakauye to Attorney General Sessions and Secretary Kelly (Mar. 16, 2017), <<http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>> [as of April 3, 2017]; see also Zapotosky, *Top U.S. Officials Defend Courthouse Arrests of Undocumented Immigrants in Escalating Feud with California Justice*, (Mar. 31, 2017) Washington Post, <<https://www.washingtonpost.com/world/national-security/top-us-officials-defend-courthouse-arrests-of-undocumented-immigrants-in-escalating->

Similar reports of immigration agents at courthouses have forced prosecutors to drop domestic violence cases because victims are afraid to come to court.²⁴

In short, undocumented immigrants are among the populations most vulnerable to domestic violence and least able to remediate it.

ARGUMENT

The statutory interpretation underlying the decision below produced a result in conflict with the established interpretations of other statutes governing custody determinations in the domestic violence context.

The Court of Appeal held that the Uniform Parentage Act (“UPA”), Family code section 7600, et seq., did not permit the trial court to award custody over a child within its jurisdiction unless parentage status could be established for an absent “alleged” parent over whom personal jurisdiction is lacking. Yet both the DVPA and the UCCJEA allow custody determinations without a parentage determination for an absent parent or an assertion of jurisdiction over him. Those provisions are based on sound policy. Indeed, the Immigration and Nationality Act (“INA”) expressly prohibits requiring a SIJ status applicant to contact the abusive or abandoning parent. Forcing an abused or abandoned child or an abused

[feud-with-california-justice/2017/03/31/d92dddfe-1627-11e7-ada0-1489b735b3a3_story.html?utm_term=.85a3fbfaff0f](http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html?utm_term=.85a3fbfaff0f) [as of April 3, 2017].

²⁴ Queally, *ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court*, (Mar. 16, 2017) Los Angeles Times, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html> [as of April 3, 2017]; Stern, *Bad for Undocumented Immigrants, a Gift to Domestic Abusers*, (Mar. 8, 2017) Slate, http://www.slate.com/articles/news_and_politics/jurisprudence/2017/03/denver_city_attorney_kristin_bronson_on_the_trump_immigration_crackdown.html [as of April 3, 2017]; KUSA, *Denver City Attorney: Deportation Fears Impacting Criminal Cases*, (Feb. 26, 2017), <http://www.9news.com/news/local/politics/city-attorney-deportation-fears-impacting-criminal-cases/415790173> [as of April 3, 2017].

parent to renew contact with an abusive parent, and to beg for that parent's cooperation on pain of likely deportation of the child, runs a serious risk of harm to the child and the abused parent. That result should be avoided, and can be through a more reasonable interpretation of the governing statutes here.

I. FORCING DOMESTIC VIOLENCE SURVIVORS TO BEG THEIR ABUSERS TO COOPERATE RETRAUMATIZES VICTIMS AND PUTS THEM AT RISK OF FURTHER ABUSE

As the Requested Amicus Curiae pointed out (Req. Am. Br. 42), because the present case arises from a request for SIJ status findings, the imposition below of a requirement that Bianka find her alleged father and bring him—or a stipulation from him—into court contravenes the INA, which provides that a child requesting SIJ status “shall not be compelled to contact the alleged abuser.” (8 U.S.C. § 1357(h).) Should the contrary holding below remain in place, the very harm Congress sought to prevent will come to pass.

Congress's determination that an abused or abandoned child seeking SIJ status should not be forced to re-establish contact with the abusive parent was well-founded. Forcing victims to interact with their abusers to attempt to establish personal jurisdiction over them or to ask them to stipulate to parentage would vest abusive parents with overwhelming power and control over their children and the abused parent. That renewed power imbalance is conducive to retraumatization and further abuse, including serious bodily injury or death. It would certainly endanger the health, safety, and welfare of the child, which the Legislature has made clear is the primary concern for family courts in making custody determinations. (Fam. Code, §§ 3020(a), 3011.)

A. Perpetrators Of Domestic Violence Use Power And Control To Abuse Their Victims

The dynamics of domestic abuse already create a significant power

imbalance between victims of domestic violence and their abusers.

Domestic violence, or intimate partner violence, is a pattern of physical, sexual, or emotionally abusive behavior perpetrated by one intimate partner to gain or maintain power and control over another intimate partner.²⁵ (See *Hernandez v. Ashcroft*, *supra*, 345 F.3d at pp. 836–38 [discussing the dynamics of power and control and the pattern of violence and abuse of domestic violence].)

Power and control motivate domestic violence. Indeed, an “abusive partner’s behavior stems more from a psychological need to dominate and control than it does from a desire to inflict pain.”²⁶ The Power and Control Wheel, developed by the Domestic Abuse Intervention Project in Duluth, Minnesota in the 1980s, is a widely used tool for understanding the pattern of abusive behaviors used by abusers to establish and maintain control over their victims.²⁷ The wheel includes eight spokes, covering typical abusive behaviors: coercion and threats; intimidation; emotional abuse; isolation; minimizing, denying, and blaming; using children; economic abuse; and male privilege.²⁸ Since its creation, the wheel has also been adapted to

²⁵ United Nations High Commissioner for Refugees, *supra*, at p. 35. The DVPA defines abuse as (1) intentionally or recklessly causing or attempting to cause bodily injury; (2) sexual assaulting; (3) placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or (4) molesting, attacking, striking, stalking, threatening, battering, harassing, telephoning, destroying personal property, contacting, or disturbing the peace of the other party. (Fam. Code §§ 6203(a), 6320(a).)

²⁶ Kohn, *The Justice System & Domestic Violence: Engaging the Case but Divorcing the Victim* (2008) 32 N.Y.U. Rev. L. & Soc. Change 191, 210, <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1183&context=faculty_publications> [as of April 3, 2017].

²⁷ National Center on Domestic and Sexual Violence, *Power and Control Wheel*, <<http://www.ncdsv.org/images/powercontrolwheelnoshading.pdf>> [as of April 3, 2017].

²⁸ *Ibid.*

address special concerns of certain communities, such as immigrants, who face unique vulnerabilities to domestic violence.²⁹

Given that abuse stems from a need to exert power and control over a victim, forcing victims and their children to solicit cooperation with the abuser would empower abusers, thus gravely harming the health, safety, and welfare of children.

B. Perpetrators Of Domestic Violence Often Use Child Custody Proceedings To Abuse Their Partners

Custody proceedings offer another opportunity for abusers to gain access to and leverage over their victims. For that reason, the insistence of the courts below that an absent and abusive parent must be brought into court before a child custody proceeding can proceed—even though the abusive parent already declined to participate after being given notice and an opportunity to be heard—was especially misdirected.

Abusers often use the legal system, and especially custody proceedings, as a tool to exert control and authority over the abused parent after separation.³⁰ They sometimes seek custody over children they have abandoned merely to avoid having to pay child support, or file meritless, retaliatory claims against their victim. The renewed contact resulting from a custody dispute provides an opportunity for harassment, intimidation,

²⁹ National Center on Domestic and Sexual Violence, “*Wheels*” Adapted from the *Power and Control Wheel Model*, <http://www.ncdsv.org/publications_wheel.html> [as of April 3, 2017].

³⁰ Watson & Ancis, *Power and Control in the Legal System: From Marriage/Relationship to Divorce and Custody* (2013) 19(2) Violence Against Women 166, 167–68, 180–82; Family Violence Appellate Project, *2016 Survey of Domestic Violence Service Providers* (2016), at p. 7, <http://www.fvaplaw.org/uploads/1/1/2/9/11292541/fvap_2016_survey_of_ca_domestic_violence_service_providers.pdf> [as of April 3, 2017] [finding that nearly 90 percent of California survey respondents reported use of the legal process to continue abuse against domestic violence survivors].

withholding of financial support, endangerment of the children, and disruption to the victim's relationship with the children.³¹ And abusive parents seeking custody often win the battle against non-abusive parents, in part because of gender bias in the legal system.³²

Custody disputes can actually increase the risks to survivors because of the high rate of serious violence by perpetrators of domestic violence after a separation.³³ The victimization rate of women who are separated from their husbands is three times higher than that of divorced women, and 25 times higher than that of married women.³⁴ When domestic violence results in the murder of a child, a breakup is often the precipitating factor.³⁵ Bringing a victim face to face with her abuser, while necessary in some circumstances, should not be a goal of the courts when the abuser is safely outside the jurisdiction and has shown no inclination to enter it.

³¹ Domestic Abuse Intervention Program: Home of the Duluth Model, *Post Separation Power and Control Wheel* (2013), <<http://www.theduluthmodel.org/cms/files/Using%20Children%20Wheel.pdf>> [as of April 3, 2017].

³² Bemiller, *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts* (2008) 5:3–4 *Journal of Child Custody* 228, 244–47.

³³ Bancroft & Silverman, *Assessing Risk to Children from Batterers* (2002), <<http://lundybancroft.com/articles/assessing-risk-to-children-from-batterers/>> [as of April 3, 2017].

³⁴ Bachman & Saltzman, Bureau of Justice Statistics, *Violence Against Women: Estimates from the Redesigned Survey* (August 1995) p. 4, <<https://www.bjs.gov/content/pub/pdf/FEMVIED.PDF>> [as of April 3, 2017].

³⁵ Jaffe & Juodis, *Children as Victims and Witnesses of Domestic Homicide: Lessons Learned from Domestic Violence Death Review Committees* (2006) 57 *Juv. & Fam. Court J.* 13, 15.

C. Because Absent Or Abusive Parents Are Unlikely To Cooperate, The Requirement Imposed Below Would Increase Deportations Of Abused Children To Harmful And Abusive Environments

The Court of Appeal's decision produces a senseless result: it forces children to seek a stipulation of personal jurisdiction from abusive parents who have no incentive to cooperate and who have already demonstrated a propensity to act against the child's best interests. Child abuse, like domestic violence, stems from a parent's desire to assert power and control in the child's life.³⁶ As a result, abusers are unlikely to participate in court proceedings that would help their victims escape the abuser's control. This phenomenon often manifests in custody proceedings, but the Court of Appeal's ruling makes it likely that abusive parents will use the SIJ status process as yet another means of exerting power and control over their children. In other words, because of the power dynamics of child abuse, it is highly unlikely that an abusive parent will grant the stipulation required by the Court of Appeal's ruling. The practical consequences are dire: a parent's refusal to stipulate will effectively doom the abused, neglected, or abandoned child's SIJ status petition, thereby frustrating the child's effort to flee to safety, and leading to the deportation of the child back into an unsafe environment.

The harmful effects to children of abusive home environments are well-documented. In addition to the immediate physical, psychological, and emotional harms that flow from abuse, research has identified "strong and cumulative" impacts that continue to plague child victims throughout their

³⁶ Straka & Montminy, *Family Violence: Through the Lens of Power and Control* (2008) 8:3 *Journal of Emotional Abuse* 255, 268.

adult lives.³⁷ Children raised in violent homes are significantly more likely to develop long-term health problems, such as ischemic heart disease, chronic lung disease, liver disease, or cancer.³⁸ And they are more likely to suffer from motor, cognitive, linguistic, and socio-emotional developmental deficits.³⁹ Physical abuse in childhood is also strongly correlated with behavioral and psychological disorders, such as aggressive behavior and delinquency in adolescence and adulthood, depression, anxiety, post-traumatic stress disorder (“PTSD”), suicidal tendencies, behavioral disorders, and risk-seeking behaviors.⁴⁰ Many children who experience physical abuse also experience sexual abuse, which can lead to anxiety, depression, insomnia, poor self-confidence, drug use, and suicide attempts.⁴¹

And the negative impacts of child abuse aggregate with each new instance of abuse.⁴² All new instances of abuse suffered by the children deported back to the abusive conditions in their home countries will only compound the ruinous physical and mental effects of any previous abuse.⁴³

³⁷ Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study* (1998) 14(4) American Journal of Preventative Medicine 245, 251-56 <http://www.traumacenter.org/initiatives/Polyvictimization_Articles/Felitti,%201998,%20Relationship%20of%20Childhood%20Abuse%20and%20Household..pdf> [as of April 3, 2017].

³⁸ *Ibid.*

³⁹ Tuscic et al, *The Consequence of Childhood Abuse* (2013) 9(1) Pediatrics Today 24, 27.

⁴⁰ *Ibid.*; Felitti et al, *supra*, at pp. 249–50.

⁴¹ Tuscic et al, *supra*, at p. 29.

⁴² Felitti et al, *supra*, at pp. 245, 251–56.

⁴³ Powers et al., *Childhood Trauma, PTSD, and Psychosis: Findings from a Highly Traumatized, Minority Sample* (2016) 58 Child Abuse & Neglect 111, 114.

To avoid that deeply undesirable result, the decision below should be reversed.

D. Making Custody Determinations Contingent On Renewed Contact With Abusive Parents Endangers The Very Children That The SIJ Statute Is Intended To Protect

Children seeking SIJ status have been abused, neglected, or abandoned. Forcing them to contact their abusers before they can obtain SIJ findings from a court would expose children to further abuse and retraumatize them. Retraumatization occurs when a situation reminiscent of an earlier traumatic event (a “retraumatization mechanism”) reactivates trauma-related symptoms arising from the earlier trauma (“reactivation of traumatic memories”).⁴⁴ In the context of child abuse, contact with a former abuser can trigger retraumatization, leading a child to feel unsafe. As a result, where a parent has previously abused or neglected a child, “it is imperative [to] . . . consider the ramifications of helping the child establish relationships with the offender,” in order to prevent reactivation of traumatic memories.⁴⁵ Reactivation of traumatic memories, moreover, may also reactivate the physical symptoms of trauma, such as hyperarousal and hypervigilance, sleep and eating disorders, inability to learn, and difficulty getting along with others.⁴⁶

⁴⁴ Carello & Butler, *Potentially Perilous Pedagogies: Teaching Trauma is Not the Same as Trauma-Informed Teaching* (2014) 15 *Journal of Trauma & Dissociation* 153, 156; Fossion et al., *Beware of Multiple Traumas in PTSD: The Role of Reactivation Mechanism in Intrusive and Hyper-arousal Symptoms* (2016) 19(3) *Aging & Mental Health* 258, 261.

⁴⁵ Keller-Dupree, *Understanding Childhood Trauma: Ten Reminders for Preventing Retraumatization* (2013) 2 *Journal of Counseling and Professional Psychology* 1, 4.

⁴⁶ Fossion et al., *Beware of Multiple Traumas in PTSD: The Role of Reactivation Mechanism in Intrusive and Hyper-arousal Symptoms* (2016) 19:3 *Aging & Mental Health* 258, 261.

The practice required by the decision below—which forces children seeking SIJ status to contact their absent, abusive, or neglectful parents for stipulations of parentage or personal jurisdiction—creates a high risk of retraumatizing the very children Congress intended to protect when it created SIJ status and specifically provided that they “shall *not* be compelled to contact the alleged abuser.” (8 U.S.C. §1357(h) [emphasis added].) Under the decision below, a child’s fate rests entirely in the abusive parent’s hands, and that parent—by mere *inaction*—can foreclose a child’s ability to seek SIJ status findings under the UPA. That groundless legal framework gives abusive parents immense power and control over their children.

Because parental abuse of children itself is often a means of exerting power and control, a legal rule that gives so much power to an abusive or neglectful parent is highly likely to place children in a situation akin to the abusive power dynamics from which they are trying to escape.⁴⁷ This situation carries a high risk of triggering retraumatization.

As explained above (at pp. 22–23), adverse childhood experiences have a “strong and cumulative” impact on long-term health.⁴⁸ Retraumatization can only exacerbate that impact. The SIJ statute provides protection specifically for children who cannot reunite with at least one parent due to “abuse, neglect, abandonment, or a similar basis.” (8 U.S.C. § 1101(a)(27)(J)(i).) It would frustrate the purpose of the statute to put children at further risk of harm from their abusers in order to obtain SIJ status.

⁴⁷ Indeed, child abuse is often rooted in the feeling of chaos experienced by abusive parents when they “feel they have less power and control over their children.” (Straka & Montminy, *supra*, at p. 268.)

⁴⁸ *Felitti, supra*, at pp. 251–56.

E. Requiring Abused Parents To Interact With Their Abusers Puts Domestic Violence Victims At Risk Of Further Abuse And Retraumatizes Them

In addition to the potential harm to abandoned, abused, and neglected children, the decision below exposes victims of intimate partner violence to harm by forcing them to beg their abuser to enter into a stipulation for parentage or submit to personal jurisdiction before a custody determination can be made.

The process of seeking a stipulation from the absent, neglectful, or abusive parent may jeopardize the safety of the parent seeking custody, who has to re-engage with the abusive parent after successfully separating and achieving safety. It is already very difficult for the non-abusive partner to escape the abuse safely and end the relationship.⁴⁹ It takes survivors an average of five to seven attempts at leaving the abusive situation before they fully succeed in doing so.⁵⁰ Abusive partners often escalate abuse when the victim attempts to leave in order to intimidate the victim into staying or returning after leaving.⁵¹ And merely exiting an abusive relationship is not the final step for a victim, who must work to stay safe.⁵² As a consequence, re-engaging with an abusive partner is dangerously counterproductive.⁵³

⁴⁹ Haggblom & Moller, *Fighting for Survival and Escape from Violence: Interviews with Battered Women* (2007) 2 Int'l J. Qualitative Studies on Health & Well-being 169, 170.

⁵⁰ Lindgren, *Intimate Partner Violence and the Leaving Process* (2008) 3 Int'l J. Qualitative Studies on Health & Well-Being 113, 122.

⁵¹ Anderson, "Why Doesn't She Just Leave?": *A Descriptive Study of Victim Reported Impediments to Her Safety* (2003) 18(3) Journal of Family Violence 151, 151-53.

⁵² Ornstein & Rickne, *When Does Intimate Partner Violence Continue After Separation?* (2013) 19(5) Violence Against Women 617, 627-29.

⁵³ *Ibid.*

Moreover, domestic violence can impair victims' physical, reproductive, and mental health.⁵⁴ The harmful impact of domestic violence on victims "may be immediate and direct (such as death and injury), longer term and direct (such as disability and chronic illness), indirect (such as self-perceived health and health behaviors), or all three."⁵⁵ It may also cause "mental health problems such as depression, . . . PTSD, generalized anxiety disorder, phobias, obsessive compulsive disorder, panic disorders, somatization, attempted suicide, and substance-related disorders."⁵⁶

The Court of Appeal's decision effectively forces the parent seeking custody to re-engage with the abusive parent in a context that will put the parent seeking custody at risk of further abuse and re-traumatization, by creating a dynamic of power and control similar to that suffered by the victim during the romantic involvement with the abuser.⁵⁷ Forcing the abused parent to bargain for the abusive parent's cooperation re-initiates a relationship that was dangerous and difficult to end.⁵⁸ In some cases, the non-abusive parent may be compelled to agree to resume an unsafe and unhealthy relationship in exchange for the abuser's consent to a stipulation of parentage or voluntary submission to the court's jurisdiction, risking the victim's safety (and quite possibly that of the child as well).⁵⁹ In other cases, it may trigger a new wave of abuse, putting the victim at risk of harm.

⁵⁴ World Health Organization, *supra*.

⁵⁵ Wong & Mellor, *supra*, at p. 171.

⁵⁶ *Id.* at p. 173.

⁵⁷ Valpied et al, "Sometimes Cathartic. Sometimes Quite Raw": Benefit and Harm in an Intimate Partner Violence Trial (2014) 19 Aggression and Violent Behavior 673, 679.

⁵⁸ Haggblom & Moller, *supra*, at pp. 175-77.

⁵⁹ Anderson, *supra*, at pp. 151, 153.

In short, the Court of Appeal’s decision jeopardizes the safety of both the parent seeking custody, and the child over whom custody is sought. That result flies in the face of the public policies established by the state and federal laws that properly govern the issues presented here.

II. THE DVPA AUTHORIZES CUSTODY ORDERS REGARDLESS OF WHETHER PARENTAGE OF THE NONCUSTODIAL PARENT HAS BEEN ESTABLISHED

The principal briefs on the merits explain why, under the UPA, the Superior Court had full authority to make SIJ status findings, and the attendant custody order, without first adjudicating the paternity of Bianka’s alleged father.⁶⁰ This Court’s resolution of the issue under the UPA should also take into account the pertinent provisions of the DVPA, given the detrimental impact the rule set forth below would have on these matters. The DVPA authorizes a court to make a binding custody order where only one parent has established a parent-child relationship with the child, and where the other party has received notice and an opportunity to be heard.⁶¹ Affirmance of the decision below might draw that aspect of the DVPA into question, with significant and deleterious practical effects.

The Legislature has made clear that courts making child custody determinations should be primarily concerned with “assur[ing] . . . the health, safety, and welfare of children.” (Fam. Code § 3020(a).) Indeed, the Legislature specifically found and determined that domestic violence is detrimental to children. (*Ibid.*)

⁶⁰ See OBM 30–44; Req. Am. Br. 32–34.

⁶¹ The Requested Amicus Curiae Brief suggested that all of the documents Jorge was served with should have been translated into Spanish. (Req. Am. Br. 25–26.) Of the listed 7,099 living languages in the world, about 3,233 are likely unwritten languages, so that translation of a document may not always be possible. (Simons & Fennig, *Ethnologue: Languages of the World*, SIL International (2017), <<http://www.ethnologue.com>> [as of April 3, 2017].)

Accordingly, courts are required to consider any history of child abuse or domestic violence by a parent when making custody determinations. (Fam. Code § 3011(b).) Indeed, a finding that a parent has committed domestic violence within the previous five years triggers a rebuttable presumption against awarding custody to that parent. (See Fam. Code § 3044(a); *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1498.) The presumption places the burden on the abusive parent to show that awarding him custody is in the child’s best interest. (Fam. Code § 3044(a).)⁶²

Although the present case was not brought under the DVPA, the DVPA clearly indicates the Legislature’s policy of protecting victims of domestic violence and their children. (*Ritchie v. Konrad* (2004) 115 Cal. App. 4th 1275, 1287 [“The overall purpose of our ‘domestic violence’ legislation is . . . to prevent future acts of abuse.”]; see also *Babalola v. Superior Court* (2011) 192 Cal.App.4th 948, 963 [noting “the Legislature’s consistent and repeated efforts to ensure the courts utilize all available tools . . . to safeguard victims of domestic abuse”].) The DVPA allows courts to grant custody and visitation orders when issuing temporary, long-term, and permanent domestic violence restraining orders. If a party seeking a restraining order has established a parent-child relationship and the other party has not, a court may award temporary custody on an ex parte basis to

⁶² As explained below (at pp. 34–36), to the extent that the lower courts were concerned that SIJ findings of abandonment and abuse would trigger the application of Family Code section 3044’s rebuttable presumption against awarding custody to Jorge, their concerns were misplaced. First, Family Code section 3044 would not apply here because the statute covers only abandonment and abuse that occurred within the previous five years. More importantly, to the extent that any such findings purport to bind Jorge, he could collaterally attack those findings in later proceedings because the court lacked personal jurisdiction over him.

the party that has established the parent-child relationship. (Fam. Code § 6323(a)(1); see also *id.* § 6323(a)(2)(B)(i) [party can establish a parent-child relationship by giving birth to the child].) Then, upon notice and a hearing, the court can extend the custody order. (Fam. Code § 6340(a).)

Critically, the DVPA permits courts to issue custody awards without making any finding of parentage as to the *noncustodial* parent. (Fam. Code §§ 6323(a)(1), 6340(a).) And in *ex parte* proceedings, the DVPA ensures that any custody order issued will have no effect in any other action to establish a parent-child relationship—thus adequately protecting the absent, noncustodial parent’s rights. (Fam. Code § 6323(b)(1).) In fact, the court cannot even make a finding of paternity in an *ex parte* DVPA proceeding unless paternity is both stipulated and uncontested. (*Ibid.*)

To illustrate, a Court of Appeal in *Gonzalez v. Munoz* held that courts can award custody even when the parentage of a noncustodial party has not been established. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413.) In *Gonzalez*, a domestic violence victim sought a DVPA temporary restraining order against the abuser and asked for an order awarding her custody of their child. (*Id.* at p. 417). The victim had established a parent-child relationship with the child; the abuser had not. (*Ibid.*) The trial court granted both temporary orders, but (after notice and a hearing) extended only the restraining order for one year, concluding that it lacked the authority to extend the temporary child custody order as well. (*Id.* at pp. 416–17.)

The Court of Appeal reversed, holding that Family Code section 6340 authorizes the extension of any orders made at the time of the *ex parte* request, including custody orders. (*Id.* at p. 422.) Section 6340 also specifically *requires* the court to consider “whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought.” (*Ibid.* (quoting Fam.

Code § 6340).)

The *Gonzalez* court's conclusion that "[c]ourt procedures, however well-intentioned, should not be imposed at the expense of the parties' basic rights to have their matters fairly adjudicated" is particularly apt here. (*Id.* at p. 424.) In its efforts to preserve the due process rights of Bianka's alleged father, the Court of Appeal's decision strips Bianka of her due process right to a hearing on her application for SIJ status. Adjudication of parentage is simply not required before issuing a custody order if the parent seeking the custody order has established a parent-child relationship, as Bianka's mother has here.

In addition, denying the requested custody order contravenes the policy expressed in section 6340, which requires courts to consider whether failure to issue a custody order in a domestic-violence setting may "jeopardize the safety" of the child and the petitioning parent. As explained above (at pp. 24–28), forcing Bianka to contact the man who abandoned her and abused her mother could place both mother and daughter at risk. Moreover, simply by refusing either to participate in the proceedings or to stipulate that he is Bianka's father, Jorge could prevent Bianka from applying for SIJ status and effectively force her to return to Honduras where her safety would be in jeopardy. That is not what the Family Code requires, or permits.

III. THE UCCJEA PERMITS COURTS TO ENTER ORDERS NECESSARY TO PROTECT A SURVIVOR OF DOMESTIC VIOLENCE WITHOUT FIRST ESTABLISHING PERSONAL JURISDICTION OVER THE ABUSER

Courts' authority under the DVPA to make custody determinations in connection with protective orders supplements the broader authority conferred by the UCCJEA to issue binding custody determinations without personal jurisdiction over an out-of-state parent.

The UCCJEA (and its precursor, the Uniform Child Custody

Jurisdiction Act) were enacted to harmonize state child custody laws to provide a uniform procedure for establishing and modifying child custody orders across jurisdictions.⁶³ To that end, the UCCJEA vests California courts with jurisdiction to make initial child custody determinations for a child whose home state is California. (Fam. Code § 3421(a)(1).) The relevant inquiry—and source of power—under the UCCJEA is the residence of the *child*, not the parents. (Fam. Code § 3421(a).) Indeed, the UCCJEA expressly states that “physical presence of, or personal jurisdiction over, a party . . . is not necessary or sufficient to make a child custody determination.” (*Id.* § 3421(c).)

This authority to take care of children within the court’s jurisdiction, without regard to the court’s inability to assert jurisdiction over one or both parents, has particular resonance when a child flees across state borders to escape abuse. When a child’s “home state” is outside of California, the UCCJEA generally gives jurisdictional priority to make custody determinations to courts situated in the child’s “home state.” (Fam. Code §3402(g) [defining “home state” as the state in which a child has lived with a parent for at least six consecutive months immediately prior to the custody proceeding].) Consistent with California’s strong interest in protecting survivors of domestic violence, however, the UCCJEA provides an exception to that rule in cases of domestic violence, abuse, or abandonment. (Fam. Code § 3424(a).) Thus, a California court has “temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.” (*Ibid.*)

This express authority is important because victims of domestic

⁶³ See UCCJEA Prefatory Note, § 9 U.L.A. 649, 650 (1997).

violence often flee with their children across state lines and national borders to escape abuse.⁶⁴ Even after a parent or child has fled to safety, however, establishing custody over minor children is often necessary to rebuild the family unit, to prevent harassment by the former abuser, to prevent the abused parent from being prosecuted for child abduction, and to afford survivors of abuse access to the legal protections and benefits that an award of custody confers upon the affected child. An award of physical custody determines where the child will live, and legal custody enables parents to make decisions regarding their child's education, religion, health care, and general welfare. (See generally, Fam. Code §3000 et seq.) Custody determinations are particularly important for undocumented immigrant parents, who may need to make legal arrangements to care for their children in case the parents are deported.

The UCCJEA not only grants jurisdiction over children fleeing domestic violence (see Fam. Code § 3424(a)); it also prohibits courts from declining jurisdiction based on “unjustifiable conduct” if, “as a result of domestic violence,” the party seeking custody took the child away from one who lawfully had custody over that child. (Fam. Code § 3428(d).)

By declining to determine Bianka's custody unless she could establish personal jurisdiction over the man who abandoned her and abused her mother, the courts below disregarded the plain meaning of Family Code

⁶⁴ See Bookey, (2012), *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012* (2013) 24 Hastings Women's L.J. 107, <<https://cgrs.uchastings.edu/sites/default/files/Final%20WLJ%20Version.pdf>> [as of April 3, 2017]; Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence after the Violence Against Women Act of 2000*, (2004) 13 Colum. J. Gender & L. 101; Goelman & Mitchell, *Protecting Victims of Domestic Violence Under the UCCJEA* (2010) 61 Juv. & Fam. Court J. 1.

section 3421 and prior authority construing it. It is settled that personal jurisdiction over a nonresident parent is not required to make a custody determination. (See *In re Marriage of Leonard* (1981) 122 Cal.App.3d 443, 459.) And the Family Code repeatedly reinforces the principle that survivors of domestic violence should not be penalized for fleeing into California to escape an abuser. (Fam. Code §§ 3424(a), 3428(d).)

If the Court of Appeal's decision is upheld, survivors of domestic violence fleeing with their children to California would no longer be able to rely on this state's protections. They could be forced to return to the state or nation of their abuser to litigate the custody of their children. And abused or abandoned children residing in California—over whom *only* California properly has jurisdiction to determine custody—would be placed in indefinite limbo under the custody of no one at all. Those results cannot be reconciled with the domestic violence protections of the UCCJEA.

IV. BECAUSE THE ABUSER COULD COLLATERALLY ATTACK FINDINGS MADE IN HIS ABSENCE, THERE IS NO SOUND BASIS TO DENY SIJ STATUS AND CUSTODIAL RELIEF TO CHILD (AND ADULT) SURVIVORS WITHIN THE COURT'S JURISDICTION

The courts below appear to have been motivated in part by a misplaced concern that the abandoning or abusive parent would face potential consequences if the SIJ findings and custody order were issued. Yet there is no genuine risk that SIJ findings of abandonment or abuse made without the participation of the accused parent could prejudice that parent's ability to assert parental rights in the future. It is well-established that judgments “purporting to bind . . . [a] person . . . over whom the court ha[s] not acquired in personam jurisdiction [are] void” as against the party over whom the court lacks jurisdiction and are subject to collateral attack at any time. (*Hanson v. Denckla* (1958) 357 U.S. 235, 250; *People v. Am. Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660.) That principle of

federal constitutional law would preclude any contrary effects that otherwise might flow from a statutory rule.

To be sure, the UCCJEA states that custody determinations bind persons who have received notice and an opportunity to be heard. However, it also states that personal jurisdiction is not required to make a custody determination. (Fam. Code §§ 3406, 3421(c).) Those provisions may be construed, consistent with the Due Process Clause, as making a custody determination under the UCCJEA “binding” only in the sense that any court judgment that properly decides the rights of the parties before it (i.e. the rights of Bianka and her mother, Gladys) is binding. Because the court lacked personal jurisdiction over Jorge, the custody determination would not preclude him from seeking an adjudication of his own parental rights in the future.

But the potential availability of a later collateral attack would not preclude the court in this case from awarding custody to Gladys and making the SIJ status findings. The court had subject-matter jurisdiction under the UCCJEA, UPA, and INA, and personal jurisdiction over Bianka and Gladys. Its lack of personal jurisdiction over Jorge is irrelevant because the relief did not determine Jorge’s rights vis-à-vis Bianka or impose any affirmative duty or responsibility upon him. SIJ status proceedings address the minor’s rights vis-à-vis federal immigration authorities, qualifying the minor to seek further immigration relief through the United States Citizenship and Immigration Services’ SIJ petition process. And custody awards simply determine a child’s status with respect to the custodial parent. (See *Titus v. Superior Court* (1972) 23 Cal.App.3d 792, 797–798; *In re Marriage of Leonard, supra*, 122 Cal.App.3d at pp. 458–459.) A noncustodial, abandoning parent who changed his mind would not be precluded from asserting his parental rights in the future and seeking to modify any custody orders.

The court's inability to make orders that would conclusively bind a person outside its jurisdiction does not vitiate its ability to make orders that affect only persons within its jurisdiction. A misplaced concern for effects on the absent parent provide no basis to deny relief to the parties properly before the court. And that phantom concern surely provides no reason to force distressed parties within the jurisdiction to expose themselves to danger from an abuser outside it in order to obtain relief to which they are entitled.

CONCLUSION

Requiring abused, neglected, and abandoned children to establish personal jurisdiction over their abusive parents, or otherwise appeal to their abusers for a stipulation of parentage, in order to obtain custody orders and SIJ status findings exposes the children and abused parents to further harm and is contrary to the UPA, DVPA, UCCJEA, and the INA. The judgment of the Court of Appeal should be reversed with instructions to issue a writ of mandate directing the Superior Court to make the SIJ status findings and enter the custody order Bianka M. requested.

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