S233757

COPY

IN THE SUPREME COURT OF CALIFORNIA

BIANKA M.,
Petitioner,

v.

THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,
Respondent,
GLADYS M.,
Real Party in Interest.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE
CASE NO. B267454

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; BRIEF OF AMICI CURIAE PRESIDENT PRO TEMPORE OF THE CALIFORNIA STATE SENATE, SPEAKER OF THE CALIFORNIA STATE ASSEMBLY, SPEAKER EMERITUS OF THE CALIFORNIA STATE ASSEMBLY, CHAIR OF THE LATINO LEGISLATIVE CAUCUS, AND FORMER CHAIR OF THE LATINO LEGISLATIVE CAUCUS IN SUPPORT OF PETITIONER

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Pursuant to rule 8.520(f) of the California Rules of Court, Senator Kevin de León, President pro Tempore of the California State Senate, Assemblyman Anthony Rendon, Speaker of the California State Assembly, Senator Toni Atkins, Speaker Emeritus of the California State Assembly, Senator Ben Hueso, Chair of the Latino Legislative Caucus, and Senator Ricardo Lara, Chair of the Latino Legislative Caucus (2013-2014) (collectively, the Signatories)

respectfully request permission to file the attached brief of amici curiae in support of petitioner Bianka.[1] No parties or their counsel have funded or made a monetary contribution to this proposed brief, in whole or in part.

The Signatories are the leaders of our State Senate, our State Assembly, and the Latino Legislative Caucus. The Signatories were the architects and sponsors of Code of Civil Procedure section 155 (section 155), the statute that the Court of Appeal misinterpreted and misapplied in reaching its conclusion that Bianka was not entitled to the findings that would enable her to apply for Special Immigrant Juvenile Status (SIJS) and obtain relief from removal.

The Signatories are familiar with the content of Bianka's petition for review, the opening brief on the merits, the Brief of *Amicus Curiae* at the Request of the California Supreme Court, and the reply brief on the merits; several of the Signatories also filed an amici curiae letter in support of Bianka's petition for review here. The Signatories seek to file this brief to share with this Court their special knowledge of the Legislature's intent concerning the enactment of section 155, as well as the Legislature's intent that the California courts have a limited, but vital, role in facilitating a child's access to SIJS relief under 8 U.S.C. § 1101(a)(27)(J). The Signatories are in a unique position to help this Court understand

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[1] This application refers to the petitioner as "Bianka" without her last initial, to avoid confusion with the title of the case on appeal, *Bianka M. v. Superior Court* (2016) 245 Cal.App.4th 406, review granted May 25, 2016, S233757 (*Bianka M.*).

that *Bianka M.*'s interpretation of section 155 and the role of the State courts does not effectuate the intent of the Legislature.

Although the Legislature amended section 155 after *Bianka M.*'s publication to clarify the Legislature's intent for that statute, these clarifications do not render this appeal moot. In particular, the amendment to section 155 does not affect *Bianka M.*'s holding that Bianka was required to join her alleged father, who resides in Honduras, as a party to her action to be placed in her mother's custody. Although *Bianka M.* framed this holding as a narrow one, its practical effect is to make it nearly impossible for many SIJS-eligible children to obtain the findings they need to apply for SIJS relief. Because this holding is incorrect and runs contrary to the Legislature's policy of facilitating access to SIJS relief, this Court should address it and the other issues presented by Bianka in this appeal. The Signatories also believe that an opinion from this Court clarifying the Legislature's policy of welcoming immigrant children who were abandoned, abused, or neglected in their countries of origin would help ensure that section 155 is faithfully carried out by our State's courts.

April 7, 2017

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BRIEF OF AMICI CURIAE

INTRODUCTION

Senator Kevin de León, President pro Tempore of the California State Senate, Assemblyman Anthony Rendon, Speaker of the California State Assembly, Senator Toni Atkins, Speaker Emeritus of the California State Assembly, Senator Ben Hueso, Chair of the Latino Legislative Caucus, and Senator Ricardo Lara, Chair of the Latino Legislative Caucus (2013-2014), leaders of our State Senate, our State Assembly, and the Latino Legislative Caucus (the Signatories), respectfully submit this brief of amici curiae to request that this Court reverse *Bianka M. v. Superior Court* (2016) 245 Cal.App.4th 406, review granted May 25, 2016, S233757 (*Bianka M.*).

Code of Civil Procedure section 155 (section 155) lies at the heart of the *Bianka M.* opinion. The Signatories—as the architects of section 155 and its amendment in 2016—think that *Bianka M.* misunderstood the intent of the Legislature in interpreting section 155, and therefore wrongfully held that Bianka[2] was not entitled to findings that would allow her to seek relief from removal to Honduras. Section 155 was passed to facilitate access to federal immigration relief and protect vulnerable children from being sent back to their countries of origin where they faced significant

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[2] This brief refers to the petitioner as "Bianka," to distinguish her from the title of the case on appeal.

challenges to their survival. Although the Legislature acted to amend and clarify section 155 after the *Bianka M.* opinion was published, an opinion from this Court remains necessary to ensure an accurate and fair reading of section 155 and to correct the Court of Appeal's other errors that impede children from obtaining relief from removal. Such an opinion would further the Legislature's policy of protecting abandoned, abused, and neglected children in California by ensuring their ability to seek Special Immigrant Juvenile Status (SIJS) from the federal government. (See 8 U.S.C. § 1101(a)(27)(J) (the Federal SIJS Statute).)

SUMMARY OF THE ARGUMENT

" 'California wants unaccompanied immigrant children treated as children. We want their well-being ensured, their best interests pursued, and their safety protected.' " (Press Release, *Governor Brown, Attorney General Harris, and Legislative Leaders Announce Unaccompanied Minor Legislation* (Aug. 21, 2014) California Latino Legislative Caucus <http://goo.gl/ObFBr3> [as of Apr. 4, 2017] (hereafter 8/21/14 Press Release).) And the Legislature believes that "a kid is a kid is a kid. It doesn't matter—it shouldn't matter—their immigration status. We need to go out of our way to make sure that children are safe and give them every benefit of the doubt when it comes to their petition . . . to stay here." (California Senate Democrats, *Steinberg, De León, Lara, Torres—Undocumented & Unaccompanied Children* (Aug. 21, 2014)

YouTube <http://goo.gl/AhQhKn> [as of Apr. 4, 2017] (hereafter 8/21/14 Joint Statement).)

To that end, the Legislature passed section 155. Section 155 empowers the State's courts to "make [those] factual findings necessary to enable a child to petition the United States Citizenship and Immigration Services for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code." (Code Civ. Proc., § 155, subd. (a)(1).) Under that federal statute, a child seeking relief from removal must first obtain findings (SIJS-predicate findings) from a state court that (1) the child is has been declared dependent on a juvenile court or has been placed in the custody of the State or other court-appointed person or entity; (2) the child cannot be reunified with one or both of his or her parents "due to abuse, neglect, abandonment, or a similar basis found under State law"; and (3) it is not in the child's best interest to be returned to his or her country of origin. (8 U.S.C. § 1101(a)(27)(J)(i) & (ii).)

Section 155 was drafted to establish " 'unequivocally that California courts have the authority to review cases involving unaccompanied minors seeking the Special Immigrant Juvenile Status.' " (8/21/14 Press Release.) By establishing a streamlined process for SIJS-eligible children to obtain SIJS-predicate findings and thereby seek relief from removal from the United States Citizenship and Immigration Services (USCIS), the Legislature " '[stood] up for these children who have faced unimaginable hardships.' " (*Ibid.*)

" 'The systematic challenges addressed by [section 155] . . . without exaggeration, could be the difference between the life and death of a child.' " (8/21/14 Press Release.) The Signatories emphasize that their intention in drafting section 155 was to facilitate access to SIJS-predicate findings and protect children facing unimaginable hardships in their countries of origin. Yet section 155 also recognizes the State's limited role in the SIJS process: the authority to grant SIJS relief lies solely with USCIS, not with the State. The superior courts' role, therefore, is limited to issuing SIJS-predicate findings to a child who has established that he or she satisfies those predicates.

Bianka M. misapplied section 155 and the State courts' role in the SIJS process. *Bianka M.* interpreted section 155 to permit a court to refuse to issue SIJS-predicate findings based on that court's perception of a child's motivation for instituting the action, and that court's guess as to whether USCIS would ultimately grant a child's SIJS petition. (*Bianka M.*, *supra*, 245 Cal.App.4th at pp. 427-428.) This holding misunderstands the superior courts' limited role in the federal SIJS framework and the Legislature's intention that SIJS-predicate findings be accessible to the abandoned, abused, and neglected children who now make California their home.

The Signatories are also disturbed at the extent to which *Bianka M.* fails to embrace section 155's ethos: that " 'victimized children deserve to be treated with kindness and justice.' " (8/21/14 Press Release.) It is undisputed that Bianka has no one to care for her in Honduras and that it is not in her best interest to return

there. (2 AE 311[3] [family court finding that "both the overall violence of her city and the lack of available relatives to care for her, is [*sic*] untenable, and supports a finding that **it would not be in the best interest[ ] of [Bianka] to be returned to Honduras**" (emphasis in original)].) Yet the opinion establishes several rules or potential rules which, contrary to the Legislature's intent, make it even more difficult for children to obtain SIJS-predicate findings and, by extension, relief from deportation to the abandonment, abuse, or neglect awaiting them in their countries of origin.

Following the publication of *Bianka M.*, the legislative leaders and the Latino Legislative Caucus immediately moved to clarify section 155 and their intention that " 'these kids have every opportunity to seek permanent residency, including through Special Immigrant Juvenile Status.' " (8/21/14 Press Release.) Within four months of *Bianka M.*'s publication—the blink of an eye in legislative time—the Legislature amended section 155 to clarify that a child could seek SIJS-predicate findings at any point in a superior court proceeding, and that the superior court issuing such findings should not comment on or refer to the child's perceived motivation for seeking the SIJS-predicate findings. (Code Civ. Proc., § 155, subds. (a)(2) & (b)(2).)

This clarification does not render this case moot, however. As noted above, *Bianka M.* created several rules or potential rules that make it substantially more difficult for SIJS-eligible children to obtain SIJS-predicate findings; not all of these holdings have been

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[3] References to "AE" are to the Appendices of Exhibits filed by Bianka in the Court of Appeal.

remedied by the Legislature's clarification of section 155. For example, *Bianka M.* held that Bianka was required to join her alleged father and to establish his parentage in Bianka's action to be placed in her *mother's* custody, and that, in the absence of such joinder, Bianka could not obtain the SIJS-predicate findings she seeks. (*Bianka M.*, *supra*, 245 Cal.App.4th at pp. 430-431.) Although *Bianka M.* portrayed these holdings as narrow ones, the practical effect of these holdings is to make it nearly impossible for many children with an abusive or neglectful parent outside the country to obtain SIJS-predicate findings. In light of *Bianka M.*'s wide-reaching holdings, this appeal is not moot, and this Court should issue an opinion reversing *Bianka M.*

LEGAL ARGUMENT

I. IN 2014, THE LEGISLATURE ENACTED CODE OF CIVIL PROCEDURE SECTION 155 TO FACILITATE THE ACCESS OF IMMIGRANT CHILDREN TO SIJS-PREDICATE FINDINGS.

The Federal SIJS Statute provides a path for abandoned, abused, and neglected immigrant children to obtain relief from removal to a hostile country of origin and to seek lawful permanent residence status. (8 U.S.C. § 1101(a)(27)(J); *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 344 (*Leslie H.*).) The Federal SIJS Statute grants USCIS the exclusive authority to grant or deny SIJS to a child. (8 U.S.C. § 1101(a)(27)(J)(iii); *Eddie E. v. Superior*

Court (2015) 234 Cal.App.4th 319, 326 (*Eddie E. II*).) However, the Federal SIJS Statute grants the state courts a narrow, but vital, role in the SIJS process: determining, as a preliminary matter, whether an immigrant child has established that (1) the child has been declared dependent on a juvenile court or has been placed in the custody of the State or other court-appointed person or entity; (2) the child cannot be reunified with one or both of his or her parents "due to abuse, neglect, abandonment, or a similar basis found under State law"; and (3) it is not in the child's best interest to be returned to his or her country of origin. (8 U.S.C. § 1101(a)(27)(J)(i) & (ii); *Leslie H.*, at p. 348.) If the child establishes these factors, the state court issues SIJS-predicate findings, which will be considered by the USCIS in connection with the child's application for SIJS. (8 U.S.C. § 1101(a)(27)(J)(i) & (ii); see *Leslie H.*, at p. 348.)

Although the creation of the SIJS program dates as far back as 1990, the program took on a heightened vitality starting in 2014 with the surging migration of unaccompanied minors from Central America caused by terrible violence and upheaval in the region. (*History of SIJS Status* (July 12, 2011) U.S. Citizenship and Immigration Services <http://goo.gl/Yqy7xK> [as of Apr. 5, 2017]; *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 26, 2015) American Immigration Council <https://goo.gl/UJehS9> [as of Apr. 5, 2017].) In the summer of 2014, then-Senate President pro Tempore Darrell Steinberg and a delegation of our State's lawmakers went on a fact-finding mission to Central America. (8/21/14 Press Release.) The delegation

returned with a heightened understanding of the humanitarian crisis that has engulfed much of Central America and a renewed commitment to protect the children who risked everything to seek a better life in California. (*Ibid.*)

The Legislature immediately commenced its investigation into how to best serve these children, and discovered, "in researching the obstacles for many of these [SIJS-eligible] children . . . a major hole in state law." (8/21/14 Joint Statement.) At that time, California had no codified procedure through which abandoned, abused, or neglected immigrant children could seek SIJS-predicate findings in the state courts.[4] And at the same time, "[t]oo many state judges [were not] aware of [the SIJS-predicate order] requirement and [were] denying any form of preliminary . . . state relief because they think this is just a federal immigration issue." (8/21/14 Joint Statement.) Because of this misunderstanding, many state courts refused to issue SIJS-predicate findings *at all*, preventing California's SIJS-eligible children from applying for SIJS relief from USCIS. (See, e.g., *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621; *In re Y.M.* (2012) 207 Cal.App.4th 892.) And in many instances, these superior courts improperly injected their own policy considerations into their refusals. (E.g., *Leslie H., supra*, 224 Cal.App.4th at p. 350 [superior court erred by refusing to grant predicate SIJS findings on the basis

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[4] The Judicial Council issued forms to aid in the process in 2007, 2012, and 2013. (Child, *Memorandum: Senate Bill 873 and the Special Immigrant Juvenile Process in the Superior Courts* (Sept. 30, 2014) Judicial Council of Cal. <http://goo.gl/vXF0Je> [as of Apr. 5, 2017].)

of its own "misplaced policy considerations"]; see also *Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622 (*Eddie E. I*).)

To fill this "major hole in state law" and ensure that SIJS-eligible children could obtain the SIJS-predicate findings that would allow them to seek SIJS relief, the legislative leaders and the Latino Legislative Caucus drafted and introduced Senate Bill No. 873 (S.B. 873), which was codified in section 155 later that year. (See Sen. Bill No. 873 (2013-2014 Reg. Sess.), added by Stats. 2014, ch. 685 (S.B. 873) § 1.) The Legislature's purpose behind S.B. 873 was unambiguous:

> "With these bills we're making it clear California wants unaccompanied immigrant children treated as children. We want their well-being ensured, their best interests pursued, and their safety protected." . . ."[T]he humanitarian crisis that has brought so many children to our country continues. While the root causes of this crisis are being addressed, these victimized children deserve to be treated with kindness and justice."

(8/21/14 Press Release.)

S.B. 873 codified the procedures for the superior courts' role in the overall SIJS framework. S.B. 873 did *not* give the superior courts the authority to decide which abandoned, abused, or neglected children should be granted SIJS relief. (See Sen. Bill No. 873 (2013-2014 Reg. Sess.), added by Stats. 2014, ch. 685 (S.B. 873) § 1.) Instead, S.B. 873 created a streamlined process through which SIJS-eligible children can obtain the SIJS-predicate findings from the superior courts, on the basis of the child's declaration alone. (*Ibid.*) And consistent with the Legislature's intention of facilitating access to SIJS-predicate findings, S.B. 873

expressly granted jurisdiction to *any* superior court "to make judicial determinations regarding the custody of children within the meaning of the federal [SIJS statute]." (*Id.* § 1, subd. (a).)

S.B. 873 also incorporated the Legislature's intention that the superior courts have little discretion to decline to make SIJS-predicate findings: "The bill would *require* the superior court to make an order containing the necessary findings regarding special immigrant juvenile status pursuant to federal law, if there is evidence to support those findings." (Legis. Counsel's Dig., Sen. Bill No. 873 (2013-2014 Reg. Sess.) Stats. 2014, Summary Dig., p. 94, emphasis added; Sen. Bill No. 873 (2013-2014 Reg. Sess.) § 1, subd. (b) [if child establishes SIJS-predicate factors, superior court "shall" issue SIJS-predicate findings]; see also 8/21/14 Joint Statement ["So we are clarifying, or seek to clarify in state law, that the state courts—whether it be a family court, a juvenile court, a probate court—must make that requisite finding, if appropriate, to say that a child's return to their home country would be a danger to themselves, and their futures"].) This provision is consistent with the Federal SIJS Statute, which gives USCIS, not the state courts, the authority to grant or deny an application for SIJS. (See 8 U.S.C. § 1101(a)(27)(J).)

S.B. 873 also earmarked funds to be used to contract with qualified nonprofit legal services organizations to provide representation for unaccompanied minors navigating the SIJS process. (Legis. Counsel's Dig., Sen. Bill No. 873 (2013-2014 Reg. Sess.) Stats. 2014, Summary Dig., p. 94; codified at Welf. & Inst. Code, § 13300.) The provision of counsel for unaccompanied minors

underscores the extent to which the Legislature intended to implement a framework to help unaccompanied minors navigate the SIJS process.

S.B. 873 was passed by the Legislature and signed by Governor Brown in near-record time, taking effect on September 27, 2014.

II. *BIANKA M.* MISCONSTRUES SECTION 155 AND THE ROLE OF OUR STATE COURTS IN THE SIJS PROCESS.

A. *Bianka M.*'s holding that Bianka's request for SIJS-predicate findings was premature misapplied section 155.

Bianka M. states that Bianka's request for SIJS-predicate findings was "premature" because the request was made before an evidentiary hearing on Bianka's request to be placed in her mother's custody. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 424.) *Bianka M.* relied on section 155 to reach this conclusion. (*Id.* at p. 425.) But nothing in section 155, as then in effect or currently, supports *Bianka M.*'s interpretation. (See Code Civ. Proc., § 155, as enacted by Stats. 2014, ch. 685, § 1 and as amended by Stats. 2016, ch. 25, § 1.) The Court of Appeal therefore erred by imposing procedural requirements that the Legislature did not intend. (E.g., *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 (*Dyna-Med*) [courts should construe statutes to ascertain

the intent of the Legislature by first looking at the plain meaning of the words in the statute]; Code Civ. Proc., § 1858 [in statutory construction, courts should not "insert what has been omitted"].)

B. Section 155 does not require—or permit—the superior courts to determine whether a custody proceeding is "bona fide."

The Court of Appeal in *Bianka M.* apparently made its own factual determination in this case: that Bianka filed her custody action with the ulterior motive of seeking SIJS-predicate findings. (*Bianka M.*, *supra*, 245 Cal.App.4th at pp. 427-428.) Based on its impression of Bianka's motivation, the Court of Appeal in *Bianka M.* concluded that USCIS would determine that the SIJS-predicate findings were not issued in a "bona fide custody proceeding" and that USCIS would reject her application for SIJS. (*Id.* at p. 428.) *Bianka M.* stated that it would therefore "not be useful" to issue Bianka the SIJS-predicate findings, and denied Bianka's writ petition on that basis. (*Id.* at p. 427.) *Bianka M.* is wrong.

As then in effect, section 155's plain text did not require a superior court to determine the underlying motivation of a child or whether the underlying state court action was "bona fide." (See Code Civ. Proc., § 155, as enacted by Stats. 2014, ch. 685, § 1, before amendment.) Nor does the Federal SIJS Statute, or any other authority, make the child's perceived motivation relevant to a grant of SIJS-predicate findings. *Bianka M.* cites to *proposed, but*

never enacted, USCIS regulations to support its conclusion that USCIS would reject Bianka's application as not arising from a "bona fide" custody proceeding. (*Bianka M., supra*, 245 Cal.App.4th at pp. 421-422, 427-428; see 76 Fed.Reg. 54985 (Sept. 6, 2011) [proposed regulations for USCIS consideration of SIJS applications]; see also 8 U.S.C. § 1101(a)(27)(J).) Because no authority supports *Bianka M.*'s conclusions that USCIS would ultimately reject Bianka's application, or that a child's motivation for instituting a custody proceeding is relevant in a superior court proceeding for SIJS-predicate findings, the Court of Appeal's "bona fide" holding is the kind of "misplaced policy consideration[ ]" that should not be injected into the interpretation of section 155. (E.g., *Leslie H., supra*, 224 Cal.App.4th at p. 350.)

Bianka M.'s "bona fide" determination also invades the federal government's authority to regulate immigration. *Bianka M.* presumptuously decided that USCIS would reject Bianka's SIJS application, and denied her the opportunity to even *apply* for SIJS on that basis. (*Bianka M., supra*, 245 Cal.App.4th at pp. 427-428.) However, none of the authorities cited by *Bianka M.* grants state courts the power to preemptively reject a request for SIJS predicate findings based on that court's guess at how USCIS would decide a SIJS application. (See *id.*, at pp. 422-426; see also Code Civ. Proc., § 155, as enacted by Stats. 2014, ch. 685, § 1, before amendment; 8 U.S.C. § 1101(a)(27)(J); 76 Fed.Reg. 54985 (Sept. 6, 2011) [proposed regulations for USCIS consideration of SIJS applications].) Even if the Legislature had intended to grant the superior courts the power to preempt the USCIS—it did not—such

power would be an impermissible intrusion into the federal prerogative to grant SIJS relief. (*Eddie E. II, supra,* 234 Cal.App.4th at p. 326 [" '[T]he federal government has exclusive jurisdiction with respect to . . . the final determination whether an alien child will be granted permanent [SIJS]' "].)

Furthermore, *Bianka M.*'s "bona fide" determination is directly contrary to the purpose of section 155 as passed by the Legislature. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632 [statute should be interpreted to effectuate the intent of the Legislature]; *Dyna-Med, supra,* 43 Cal.3d at p. 1386 [same].) The Legislature enacted section 155 to facilitate a child's access to SIJS relief from the USCIS, by allowing children to seek SIJS-predicate findings in the superior courts, including the family courts. (Code Civ. Proc., § 155, subd. (a).)

Finally, *Bianka M.*'s professed concern that Bianka's custody action was not a bona fide proceeding because it was "uncontested" and thus did "not appear to require any intervention by the court" is wrong as a matter of California constitutional law. (See *Bianka M., supra,* 245 Cal.App.4th at p. 427.) Unlike in federal court, there is no constitutional requirement in California that there be an actual " 'case or controversy' " to invoke the court's jurisdiction. (*Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117, fn. 13.) Thus, California courts may not withhold relief simply because there is no " ' "concrete adverseness which sharpens the presentation of issues." ' " (*Gollust v. Mendell* (1991) 501 U.S. 115, 125-126 [111 S.Ct. 2173, 115 L.Ed.2d 109]; Cal. Const., art. VI, § 10; see

National Paint & Coatings Assn. v. State of California (1997) 58 Cal.App.4th 753 ["Our state Constitution contains no 'case or controversy' requirement"].) As *Bianka M.* concedes, an uncontested parentage action "is not expressly prohibited under the UPA or the applicable rules of court." (*Bianka M.*, at p. 427.) The court's observation that Bianka's proceeding was "novel" (*ibid.*) simply did not support withholding the critical relief for which she was eligible.

By concluding that Bianka's custody action is not "bona fide" simply because the court perceived the action was "brought only to obtain SIJS findings," *Bianka M.* created a rule whereby only children who appear indifferent to SIJS relief can obtain SIJS-predicate findings. (*Bianka M.*, *supra*, 245 Cal.App.4th at pp. 427-428.) But nothing in section 155, the Uniform Parentage Act (UPA), the California Rules of Court, the California Constitution, or the Federal SIJS Statute, requires Bianka to feign apathy as to whether she is returned to a country where "both the overall violence of her city and the lack of available relatives to care for her" are untenable or to have her right to sole custody with her California-based parent contested. (2 AE 311.) *Bianka M.* runs contrary to the generous spirit of section 155 and our State's policy to "go out of our way to make sure that children are safe and give them every benefit of the doubt when it comes to their petition . . . to stay here." (8/21/14 Joint Statement.)

C. *Bianka M.*'s joinder holdings would make it nearly impossible for many SIJS-eligible children to obtain SIJS-predicate findings and, by extension, SIJS relief.

Bianka M. can be read to create a rule that substantially impairs the ability of any child with a parent remaining in the child's country of origin to ever obtain SIJS-predicate findings.[5] The opinion holds that, *in this case*, the superior court did not abuse its discretion in ordering that Bianka's alleged father be joined as a party. (*Bianka M.*, *supra*, 245 Cal.App.4th at p. 428.) But *Bianka M.* goes on to suggest that joinder would be required in *every case* where a child seeking SIJS-predicate findings has a parent (or an alleged parent) remaining in his or her country of origin: "[W]e are hard pressed to think of a circumstance in which it would not be prudent and consistent with principles of due process" to join an absent, non-custodial parent before issuing a custody order in favor of a present parent. (*Ibid.*)

Bianka M. acknowledges that, under the joinder rule it created, Bianka could not obtain a valid default judgment against her absent, abusive, alleged father in her custody action unless she

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[5] *Bianka M.* relies on the mistaken assumption that a custody determination requires a parentage determination of the *noncustodial parent*, and that Bianka's SIJS-predicate findings will effectively terminate Bianka's alleged father's parental rights, in reaching its joinder holding. As discussed in Bianka's opening brief on the merits, these predicate holdings are wrong as a matter of law. (See OBOM 33-35.)

could join him as a party in that action.[6] (*Bianka M., supra,* 245 Cal.App.4th at pp. 430-431.) And *Bianka M.* admits that such joinder is likely impossible: Bianka's alleged father lives in Honduras, outside the reach of our State's courts. (*Id.* at pp. 416-417, 430.) However, *Bianka M.*'s only proffered "solution" to this harsh result is that Bianka *seek a stipulation to paternity from her absent, abusive, alleged father.* (*Id.* at p. 431.)

The practical reality is that, under *Bianka M.*, Bianka would never be able to obtain SIJS-predicate findings (and, by extension, SIJS relief), because the superior court does not have jurisdiction over her alleged father and he is unlikely to stipulate to his parentage. Moreover, *Bianka M.* can be interpreted to raise a significant barrier for *every* child who was abandoned, abused, or neglected by a parent who still resides in the child's country of origin from obtaining SIJS-predicate findings, because the vast majority of those children will not be able to join the abandoning, abusive, or neglectful parent as a party in the proceeding in which he or she requests findings under section 155. Furthermore, requiring abused children to negotiate with their abusive parents to stipulate to paternity puts them in harm's way and potentially gives the abusive parent leverage to demand concessions from his abused child in exchange for the stipulation.

This rule created by *Bianka M.* goes squarely against the state's policy toward children fleeing violence and abuse in their

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[6] *Bianka M.*'s holding also improperly conflated the rights due to Bianka's *alleged* father and the rights due to a *presumed* father under California Law. (See OBOM 35-37.)

countries of origin and the Legislature's intention for section 155. What is more, as recognized in Part II.F of the Brief of Amicus Curiae at the Request of the California Supreme Court, *Bianka M.*'s rule is contrary to *federal* law prohibiting a child from having to contact his or her alleged abuser as part of the SIJS process. (Brief of Amicus Curiae at the Request of the Cal. Supreme Ct. 42; 8 U.S.C. § 1357(h).) *Bianka M.*'s imposition of joinder and parentage requirements goes above and beyond what is required by section 155, the Uniform Parentage Act (UPA), the California Constitution, federal law, and this State's commitment to ensuring the well-being and safety of all its children.

III. THE LEGISLATURE ACTED SWIFTLY TO CLARIFY ITS INTENT FOR SECTION 155 AND THE ROLE OF THE SUPERIOR COURTS.

After *Bianka M.* was published, the legislative leaders and Latino Legislative Caucus sprang into action to minimize the harmful effects of the opinion's mistaken interpretation of section 155. To ensure that the revisions would be implemented as quickly as possible, the Legislature included revisions to section 155 in the pending Budget Act of 2016, Assembly Bill No. 1603 (2015-2016 Reg. Sess.) (A.B. 1603), in June.

First, the revisions in A.B. 1603 clarified that, contrary to *Bianka M.*'s holding that Bianka's request was premature, a child can seek SIJS-predicate findings "at any point in a proceeding regardless of the division of the superior court or type of proceeding

if the prerequisites of that subdivision are met." (Assem. Bill No. 1603 (2015-2016 Reg. Sess.) § 1.) This change reflects the Legislature's intention that SIJS-eligible children be able to obtain SIJS-predicate findings expediently and independently of any other relief they may be seeking in court.

Second, A.B. 1603 clarified that, contrary to *Bianka M.*'s "bona fide" holding,

> [t]he asserted, purported, or perceived motivation of the child seeking classification as a special immigrant juvenile shall not be admissible in making the findings under [section 155]. The court shall not include nor reference the asserted, purported, or perceived motivation of the child seeking classification as a special immigrant juvenile in the court's findings under [section 155].

(Assem. Bill No. 1603 (2015-2016 Reg. Sess.) § 1.) With this change, the Legislature reiterated its intention that SIJS-eligible children be able to access the superior courts in order to obtain SIJS-predicate findings, and that the superior courts should not try to "look behind" the papers and discern the child's "true" motivation for bringing his or her action. The use of the word "perceived" is particularly significant because it includes, indeed appears to be directed at, the judicial officer or officers hearing the case—a direct rebuke to the approach endorsed in *Bianka M.*

A.B. 1603 was signed by Governor Brown without change and took effect on June 27, 2016. The Signatories hope that the superior courts have taken the revisions to heart and will grant SIJS-predicate findings to SIJS-eligible children with the generosity and compassion that the Legislature intended.

IV. *BIANKA M.* IS NOT MOOT IN LIGHT OF THE REVISIONS TO SECTION 155. AN OPINION EXPLAINING THE ROLE OF THE SUPERIOR COURTS IN THE SIJS FRAMEWORK WOULD BENEFIT CALIFORNIA'S MOST VULNERABLE CHILDREN.

A. The Legislature's clarification of section 155 resolved one aspect of the erroneous *Bianka M.* opinion. It did not resolve other misguided determinations that interfere with a child's ability to obtain SIJS-predicate findings.

Although the Legislature acted swiftly after *Bianka M.* to clarify section 155 and the superior courts' role in the SIJS process, this clarification corrected only *Bianka M.*'s misinterpretation of section 155. (See Parts III.A. & B., *ante,* pp. 17-21.) However, the *Bianka M.* opinion relies on misapplications of other state and federal laws, the cumulative effect of which is to hinder the ability of SIJS-eligible children from utilizing section 155 to obtain SIJS-predicate findings and, by extension, SIJS relief. In particular, as discussed above, *Bianka M.*'s purported rule requiring joinder of an absent parent in a custody action erects a barrier to SIJS-predicate findings that the Legislature did not intend. (See Part III.C., *ante*, pp. 22-24.) Additionally, *Bianka M.*'s confusion of the rights due to alleged and presumed parents could be relied on to create further obstructions to SIJS access. (See OBOM 35-39.)

These holdings deal with the interaction of multiple sources of California laws—including the Family Code and the Rules of Court—and could not have been abrogated by the Legislature's amendment of section 155. Accordingly, Bianka's appeal is not moot.

B. An opinion clarifying the purpose and goals of section 155, and the role of the superior courts in the SIJS process, would help prevent further harm to children who have already suffered more than any child should.

The Signatories are concerned that the family court, and the *Bianka M.* opinion, withheld SIJS-predicate findings from a child who, without question, came from a violent, untenable situation in her country of origin, and who would have no one to care for her if she were forced to return. The family court expressly found that "both the overall violence of her city and the lack of available relatives to care for her, is [*sic*] untenable, and supports a finding that **it would not be in the best interest[ ] of [Bianka] to be returned to Honduras**," yet both that court and the Court of Appeal denied Bianka's request for SIJS-predicate findings. (2 AE 311, emphasis in original.) This is squarely at odds with California's policy of generosity toward immigrant children who, like Bianka, were abandoned, abused, and neglected in their countries of origin. (8/21/14 Press Release [" 'California wants unaccompanied immigrant children treated as children. We want their well-being ensured, their best interests pursued, and their

safety protected. . . . [T]hese victimized children deserve to be treated with kindness and justice.' "].) The Legislature enacted section 155 to ensure that these children—so many of whom faced unimaginable conditions in their countries of origin—receive a helping hand in California, not a shove.

The Court of Appeal's denial of relief also contradicts another fundamental principle of California law. "[I]t is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children." (Fam. Code, § 3020, subd. (a); see *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31; *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 811 [family courts are courts of equity]; *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 ["Under California's statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child"].) Best interest determinations are made from the child's standpoint and must assess all factors bearing on the health, safety, and welfare of the child. (Fam. Code, §§ 3011, 3020, 3021, 3022; *Burgess*, at p. 32.) The state's interest in healthy families and children is not diminished merely because the child at issue is an immigrant.

California welcomes children like Bianka, who made the "unbelievably risky, difficult, and in many instances courageous decisions to try to lead a better life," with open arms. (8/21/14 Joint Statement.) This is the policy enshrined in section 155 and the policy that the legislative leaders, the Latino Legislative Caucus,

and the Legislature, will continue to fight for. A published opinion from this Court likewise enshrining this policy would help prevent misunderstandings like the one in *Bianka M.*, and help protect some of California's most vulnerable children.

CONCLUSION

For the foregoing reasons, in addition to those set forth by Bianka's briefs on the merits, the Court of Appeal's decision should be reversed.

April 7, 2017

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1).)

The text of this brief consists of 5,551 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: April 7, 2017

Allison W. Meredith

PROOF OF SERVICE

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 Business Arts Plaza, 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

On April 10, 2017, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; BRIEF OF AMICI CURIAE PRESIDENT PRO TEMPORE OF THE CALIFORNIA STATE SENATE, SPEAKER OF THE CALIFORNIA STATE ASSEMBLY, SPEAKER EMERITUS OF THE CALIFORNIA STATE ASSEMBLY, CHAIR OF THE LATINO LEGISLATIVE CAUCUS, AND FORMER CHAIR OF THE LATINO LEGISLATIVE CAUCUS IN SUPPORT OF PETITIONER** on the interested parties in this action as follows:

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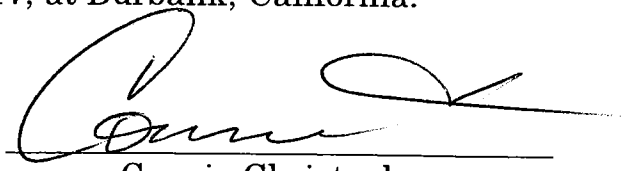

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