Supreme Court Case No. S271265

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA
En Banc

Guardianship of S.H.R.

S.H.R.
Petitioner and Appellant,

vs.

JESUS RIVAS et al.
Real Parties in Interest.

After A Decision By The California Court Of Appeal
Second Appellate District, Division One, Case No. B308440

Appeal From The Los Angeles County Superior Court
Honorable Scott J. Nord, Judge Pro Tempore
Case No. 19AVPB00310

CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS FILED IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

Other Authorities

INTRODUCTION

We have the utmost respect for the amici and for the noble work that they do on important causes. However, their arguments in the present case do not lead to reversal.

I. A Petitioner Seeking SIJ Findings Must Establish The Required Facts By A Preponderance Of The Evidence.

A. Amici's textual arguments do not alter the conclusion that superior courts should review petitions for SIJ findings under a preponderance of the evidence standard.

The Answering Brief demonstrates that the text of Code of Civil Procedure section 155 requires superior courts to engage in actual *factfinding*: To weigh evidence and decide whether reunification is not viable because of abuse, abandonment, or neglect—not merely to determine under the substantial evidence standard the *legal* issue that a hypothetical factfinder *could* find non-viability. (ABM § I.B.)

Indeed, the statute requires the court to indicate "the date on which reunification *was determined* not to be viable," which is wholly inconsistent with the interpretation that courts are not to determine that issue and are instead only to decide whether a hypothetical jurist could have found non-viability. (Code Civ. Proc., § 155, subd. (b)(1)(B), italics added.) What's more, the Legislature knows how to write a "substantial evidence" standard into a statute; it has done so in numerous statutes, but it did not use that terminology here. (ABM §§ I.B., I.D.2.) The

Legislature's silence on the burden of proof reflects its understanding that Evidence Code section 115's default burden—preponderance of the evidence—applies.

Two of the amicus briefs make textual arguments in support of a substantial evidence standard of review. (National Immigrant Women's Advocacy Project Br. ("Women's Project Br.") 41-45; Bet Tzedek Br. 16-32.) Neither fundamentally alters the analysis.

Failure to address the statute as a whole. Neither of these briefs endeavors to read section 155 as a whole or to square its arguments with any of the other textual points raised in the Answering Brief.

If "there is evidence." One of the amicus briefs essentially provides no analysis for its textual argument. It points to a single phrase in section 155—that the court "shall" issue the order if "there is evidence"—and then *asserts* that this must mean that courts are restricted to a "substantial evidence" evaluation. (Women's Project Br. 41-45.)

The brief rests that assertion on its citation to *O.C. v. Superior Court* (2019) 44 Cal.App.5th 76, 83 (*O.C.*) and *In re Scarlett V.* (2021) 72 Cal.App.5th 495. (Women's Project Br. 41-43.) But those cases provide no help.

First, as the Court of Appeal below recognized and as the Answering Brief demonstrated, *O.C.*'s single sentence on the subject is pure dicta and unsupported by any analysis. (ABM 30-

31, 47-48; *Guardianship of S.H.R.* (2021) 68 Cal.App.5th 563, 575 (*S.H.R.*).)

Second, *In re Scarlett V.* did not consider or decide whether to apply a substantial evidence standard or a preponderance of the evidence standard. Instead, the Court of Appeal simply noted the disagreement between *S.H.R.* and *O.C.* and then held that the "juvenile court here erred under *either* interpretation of section 155"—"under *either* the substantial-evidence standard adopted by the court in *O.C.* or the preponderance-of-the-evidence standard adopted by the court in *S.H.R.*" (*In re Scarlett V., supra*, 72 Cal.App.5th at p. 502, italics added.) As the Court of Appeal explained, under the preponderance standard, the superior court erred because the petitioner's evidence was not just "uncontradicted and unimpeached" but also "left no room for a contrary judicial determination." (*Ibid.*)[1/]

What's more, in the same section that urges a substantial evidence standard, (1) the amicus brief relies on *Romero v. Perez* (Md. 2019) 205 A.3d 903—which adopts a preponderance of the evidence standard (*id.* at p. 912)—and (2) the amicus brief says that in considering SIJ-finding petitions, state courts must act

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[1/] The same section of the brief cites a number of other California cases that have nothing to do with what evidentiary standard applies. (*In re Israel O.* (2015) 233 Cal.App.4th 279, 287-292 [deciding "only" the purely legal issue of what the SIJ statute means by reunification with "1 or both" parents—no burden of proof issue]; *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 350-351 [holding only that juvenile court erred by considering an irrelevant factor, whether the petitioner "'broke the law'"].)

"as fact finders" who "assess witness credibility and discredit evidence when warranted," which is not a court's function when it merely assesses the existence of substantial evidence. (Women's Project Br. 44; ABM 29.)

Evidence "may consist solely of" the child's declaration. Another amicus brief makes a narrow textual argument based on a single clause of section 155, which states that a child's evidence "may consist solely of, but is not limited to, a declaration by the child . . . ." (Code Civ. Proc., § 155, subd. (b)(1); Bet Tzedek Br. 25-28.) Contrary to what amicus suggests, a preponderance of the evidence standard is not incompatible with the Legislature's contemplation that a single declaration can *sometimes* suffice.

Section 155's recognition that a child's evidence "*may* consist solely of, *but is not limited to*, a declaration by the child" makes clear that (1) the child need not testify on the stand and (2) the child need not corroborate his attested-to facts with supporting documents or other witnesses.

While in *some* cases the child's declaration will suffice, this statutory language does not say or mean that the Legislature intended courts to not weigh the evidence, or to simply defer to a child's *position* by drawing all inferences favorable to the child while ignoring all contradictory evidence or inferences even if the court thinks the adverse evidence and inferences are far more likely to be true. Indeed, the remaining portions of section 155 make clear that the court must make actual factual findings—not merely the legal determination that substantial evidence exists

from which a hypothetical factfinder *could* find in the petitioner's favor.

The amicus brief attempts to use the Court of Appeal's analysis to "illustrate[]" amicus's point that a single declaration could never satisfy the preponderance of the evidence standard. Amicus says that the "Court of Appeal observed that 'nothing in [S.H.R.'s] declaration' rebutted the inferences the Superior Court, or the panel, chose to draw"—something that amicus say is hardly surprising when the only evidence is the child's declaration. (Bet Tzedek Br. 27.)

To the contrary, the partially quoted language actually makes clear that a child's declaration alone could have established the burden, but that in this case, there "is nothing in S.H.R.'s declaration to *suggest*" that reunification is unviable. (*S.H.R., supra*, 68 Cal.App.5th at p. 581, italics added.) The court did not draw an adverse inference out of the ether and then fault Saul for not rebutting it. Rather, the sole declaration that Saul chose to file did not even "suggest" a necessary fact. Indeed, the opinion itself goes on to list some of the many ways that Saul's declaration alone could have—in theory—established the necessary facts:

- His declaration contained nothing "to suggest that if he returned" to his parents, his childhood experience of working in the field would recur; in fact, contrary evidence in his declaration established that it would not recur. (*Id.* at pp. 581-582.)

- His declaration likewise included "no evidence . . . to suggest that he left his parents in 2018 because his parents made him work in the fields several years earlier," further severing the link between the past neglect and the viability of reunification. (*Id.* at p. 581.)
- His declaration did not suggest that reunification was unviable out of any extreme anger with his parents' decision to remove him from school; instead, "it appears from his declaration that he understands his parents' protective intentions." (*Id.* at p. 582.)
- Similarly, the Court of Appeal recognized that Saul's declaration "does not suggest that he left his parents because of a failure to support him and there is nothing in his declaration to indicate that he, as an adult, would need the level of support for a child or that he would be unable to contribute to the family's income." (*Ibid.*)

The shortcomings in the declaration are exactly why Saul's counsel urges that courts should simply presume that reunification is unviable whenever there was any past neglect. (OBM 57-60; ABM 64-65.)

A single witness's testimony—in the SIJ context or any context—can establish a fact by a preponderance of the evidence, even though Saul's declaration did not do so (or even "suggest" the critical fact here). But the Legislature did not mean that

every child's declaration is sufficient. That the Legislature provided that a child seeking SIJ findings "may" carry that burden solely with his or her own declaration does not mean that the Legislature adopted the substantial evidence standard without ever uttering the words "substantial evidence."

B. A California court order premised merely on the existence of substantial evidence does not satisfy federal requirements and thus, does not serve the California Legislature's purpose.

The Legislature's goal in enacting section 155 was to provide qualified immigrant children in California with documentation needed to apply for SIJ status through the federal government. A California court's mere conclusion that substantial evidence exists falls far short of the federal standard, making such a conclusion worthless and ultimately preventing immigrant children from securing SIJ status. That cannot be what the Legislature intended. (ABM § I.C.)

However unintentionally, one of the amicus briefs drives the point home. As it explains, a "'child is *eligible* for SIJ status if . . . the child cannot reunify with one or both parents due to abuse, neglect, abandonment, or similar basis *found under state law* . . . .'" (Women's Project Br. 16, italics added.) These "'*findings* [*are*] *to be made in the course of state court proceedings*.'" (*Id.* at p. 17, original italics, quoting *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1013.) The federal statute "commits to a juvenile court . . . the limited, *factfinding role*" and only the state courts can "make th[ose] predicate findings . . . ."

(Women's Project Br. 16, 18, italics modified.) The state court is "responsible" for making those findings. (*Id.* at p. 19.) In "recognition of state court's expertise," Congress gave the responsibility to state courts "to apply their state law definitions of child neglect, abuse, and abandonment to the facts." (*Id.* at pp. 21, 24.) "The very reason that the *fact-finding function* is vested in state courts is that state courts are familiar" with "applying" the state's child welfare laws and in doing so, the federal system expects that state courts will "determine whether the facts of a particular child's case meet state-law standards." (*Id.* at pp. 26, 32, italics added.) Without these state court factual findings, the child will be ineligible to receive SIJ status.

That was the Court of Appeal's point precisely. The state court's required *factfinding role* is inconsistent with the notion that California courts are forbidden from weighing evidence, applying the law to the facts, and actually *making the findings* that reunification is unviable due to abuse, neglect, or abandonment. When a California judge does nothing more than determine that substantial evidence supports the child's position, he or she does not engage in factfinding. (*S.H.R., supra*, 68 Cal.App.5th at p. 576.) Instead, the California judge is merely determining the legal issue that a hypothetical judge *could* make such a finding if the hypothetical judge ignored all adverse evidence and inferences. (*Ibid.*)

If California SIJ "findings" are nothing more than determinations of the existence of substantial evidence that do not comply with the federal requirements, USCIS will reject

them. Prohibiting California courts from actually finding facts will result in immigrant children in California having no means of obtaining SIJ status, because the only type of state court order they could obtain does not comply with federal law. Case after case will be denied. And, as another amicus puts it, the consequences of such denials "are catastrophic," resulting in "the deportation of a child who was in fact abandoned, abused, or neglected in her country of origin." (Bet Tzedek Br. 28-30.) We agree those are "grave consequences indeed" (*id.* at p. 30), which is precisely why section 155 should not be interpreted as expressing a legislative intent to foreclose immigrant children in California from receiving actual SIJ factual findings and instead limiting them to substantial evidence determinations.

One amicus argues that this concern is "speculative" and that there is no "basis to believe USCIS will deny" SIJ status to children who present a substantial-evidence determination rather than an actual factual finding of the SIJ eligibility requirements. (Bet Tzedek Br. 30.) But as the Answering Brief explains, USCIS's documentation makes this clear beyond speculation. USCIS does not "*reweigh* evidence" on these factual issues because the entire system is premised on state courts having *weighed* the evidence in the first place. (U.S. Citizenship and Immigration Services, USCIS Policy Manual (2021), vol. 6, pt. J <https://www.uscis.gov/policy-manual/volume-6-part-j> [as of Mar. 26, 2022], ch. 2, italics added.) Likewise, USCIS does not make its own "independent determinations" of these factual eligibility requirements because the system expects and requires

the state courts to have made the factual determinations. (*Ibid.*) But when California courts merely decide, under a substantial evidence standard, that a hypothetical judge *could* find in the child's favor, the courts do not *weigh* evidence and do not make the factual determinations. Amicus does nothing to explain why a mere substantial evidence determination satisfies the federal standard.

There is no doubt that USCIS has the power to deny SIJ applications that do not present a state court order actually making the required factual findings. "Whether a state court order submitted to a federal agency . . . made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose." (*Budhathoki v. Nielsen* (5th Cir. 2018) 898 F.3d 504, 511.) That a child presented substantial evidence of his position is a far cry from an actual factual finding that the reunification with one or both parents *is* unviable due to abuse, neglect, or abandonment.

To be sure, we are unaware of any case that denies SIJ status based on the fact that the state court was precluded from weighing evidence and limited to deciding merely whether—after ignoring all contrary evidence and inferences—the child's position was supported by substantial evidence. But that is because no state uses such a system.

USCIS would take note the moment that this Court publishes a decision holding that, in California, superior court SIJ findings mean nothing more than that, without weighing the evidence and perhaps contrary to the judge's own strong

conviction, a hypothetical judge *could* adopt the child's position. USCIS will understand that this means that no decisionmaker has actually considered the evidence and actually made the factual findings that are the requisites for SIJ eligibility. At that point, the result will be catastrophic for immigrant children in California. The Legislature could not have intended section 155 to have that effect.

C. Amici's policy arguments do not justify an interpretation that superior courts review petitions only for substantial evidence.

One amicus urges that a substantial evidence rule should apply because a preponderance of the evidence standard is too "rigorous" and creates "insurmountable" "real-world challenges" for SIJ applicants. (Bet Tzedek Br. 16-17, 19, 21-23, 28.)

But other states have adopted a preponderance of the evidence standard without any indication that this has unfairly deprived qualified applicants of the SIJ findings they require to seek SIJ status. (*B.R.L.F. v. Sarceno Zuniga* (D.C.Ct.App. 2019) 200 A.3d 770, 776 (*B.R.L.F.*) [adopting preponderance of evidence standard for SIJ findings]; *Romero v. Perez*, *supra*, 205 A.3d at p. 912 [same]; *In re B.A.A.R.* (Nev.Ct.App. 2020) 474 P.3d 838, 842 [same].) Preponderance of the evidence requires nothing more than that the facts to be found are "'more likely to be true than not true.'" (*Masellis v. Law Office of Leslie F. Jensen* (2020) 50 Cal.App.5th 1077, 1092.)

A child seeking such findings needs to present a declaration stating (1) his or her *own experiences* that establish the legal elements of neglect, abuse, or abandonment and (2) evidence based on his or her own experiences and/or mental state that show that the neglect, abuse, or abandonment makes reunification impracticable. The Court of Appeal's opinion itself lists "examples" of the many ways that Saul and his counsel might have drafted a declaration to satisfy the latter requirement that—if they were true—would have been within Saul's own experiences. (*S.H.R., supra*, 68 Cal.App.5th pp. 581-582.) Likewise, the Court of Appeal opinion points to the type of evidence that existed in other SIJ cases, all of which was related to the child's own experiences—not evidence that exists in another country with which the child has no connection. (*Id.* at pp. 580-581.)

Amicus also urges that California courts should be limited to substantial evidence review, rather than to actually making factual findings, out of fear that courts might make the wrong call, resulting in the federal government deporting the child. (Bet Tzedek Br. 16.) While we sympathize with this concern, it is not too high a burden to expect a child to show that reunification is "more likely than not" unviable. Congress entrusted state courts with the responsibility to apply the facts to state law definitions of neglect, abuse, and abandonment due to state court familiarity and "expertise" in that area. (Women's Project Br. 21, 24, 26, 32.) Appellate review further protects against amicus's concern. Had the California Legislature been so concerned about

the risk of a judicial error to curtail the analysis to determining merely the existence of substantial evidence, we would expect to see the expression of that concern and that standard in both the legislative history and the statutory text; but it is found in neither. The Legislature presumably understood that without stating a burden of proof, California's statutory-default rule of preponderance of the evidence would apply and that that standard was appropriate.

D. Amicus's suggestion that the court invent a modified preponderance of the evidence standard is problematic and ultimately would not change the result here.

One amicus argues that this Court should adopt a modified version of the preponderance of the evidence standard that has been adopted by D.C. courts. (Bet Tzedek Br. 16-24, citing *B.R.L.F.*, *supra*, 200 A.3d at pp. 776-777.)[2/]

First, generally, "'California courts will not consider issues raised for the first time by an amicus curiae.'" (*California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1048, fn. 12 (*California Building Industry Association*).) Here, Saul sought review of whether the Court of Appeal "err[ed] in expressly disagreeing with *O.C. v. Superior Court* (2019) 44 Cal.App.5th 76, 83 (*O.C.*), which said the statute means that, 'if substantial evidence supports the

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[2/] By D.C. courts, we mean the courts for the District of Columbia rather than the federal courts within the District.

requested SIJ findings, the issuances of the findings is mandatory'?" (OBM 11 [stating the issues that were presented in the petition for review].) Likewise, Saul's briefs have focused exclusively on whether California law contemplates a substantial evidence standard or a preponderance of the evidence standard—not whether the Court should adopt some modified preponderance of the evidence standard that D.C. courts use. While the Court, of course, has discretion to reach amicus's newly-raised issue, we urge caution, given that the Court will be establishing law on an issue that counsel has had to address in only a one-week period while also addressing numerous other issues and amicus briefs.

Second, the D.C. courts' standard is amorphous, essentially amounting to "I know it when I see it." With no explanation, it directs that while the child must prove his entitlement to SIJ findings by a preponderance of the evidence, the court must be mindful of the "international" nature of the case and "all the relevant factors must be understood in the light most favorable to determinations of neglect and abandonment, with an eye to the practicalities of the situation without excessive adherence to standards and interpretations that might normally apply in strictly local contexts." (*B.R.L.F., supra,* 200 A.3d at p. 777.) A concurring opinion suggests a standard that is possibly different, although the extent of departure is unclear: that "ambiguous" situations and "close cases" should be made in favor of the child, leaving it to federal immigration authorities to sort out. (*Id.* at p. 781 (conc. opn. of Ferren, J.).) If California courts are to use

some modified version of the typical preponderance of the evidence standard, this Court would need to supply a far better explanation to adequately guide lower courts.

Third, even the D.C. courts' amorphous standard would not require reversal here. As the Court of Appeal explained, this case was not a "close call." The Court of Appeal assumed that the facts stated in Saul's declaration established neglect and held—even on de novo review—that there "is *nothing* in S.H.R.'s declaration *to suggest*" that the neglect made reunification unviable. (*S.H.R., supra*, 68 Cal.App.5th at pp. 579-582, italics added.) Nothing to even suggest. What's more, the Court of Appeal provided many "examples" of the sorts of things that Saul's declaration did not say that could have suggested the unviability of reunification (*id.* at pp. 581-582)—none of which are the sort of subjects that the "international" nature of the case would have made challenging for a child to declare to if they were true. For instance, the "international" nature of the case would not have made it challenging for Saul to explain that:

- "[H]e left his parents in 2018" because they had made him work in the fields years earlier or that he thought it at all likely that if he returned, he would be made to work in the fields again despite his intervening work in a car wash in El Salvador. (*Ibid.*)
- He was so angry with or traumatized by his parents' decision to remove him from school that he cannot reunify with them. (*Id.* at p. 582.) The international

nature of the case does not hinder Saul's ability to declare his own feelings toward his parents. In fact, he indicated that he "understands his parents' protective intentions." (*Ibid.*)

- At his current age, he "would need the level of [financial] support" from his family that he did when he was a young child. (*Ibid.*) That too depends on information about Saul—not information that exists in El Salvador.

This isn't a case about "close" evidence on the viability of reunification. It is a case in which "nothing in S.H.R.'s declaration" even suggests that the presumed neglect had a continuing impact on the viability of reunification. The D.C. standard cannot salvage that.

II. The Court of Appeal Applied The Correct Standard Of Review To The Superior Court's Determination.

The Court of Appeal applied the well-established standard of review when a party who had the burden of proof in the trial court contends that the court erred in making findings against him: Reversal is appropriate only when "'the evidence compelled the trial court to find in'" the appellant's favor. (ABM 44-48, italics omitted.) As the Answering Brief demonstrates and contrary to Saul's argument, this Court and the courts of appeal have consistently applied that standard of review even when the evidence is uncontradicted and unimpeached. (*Ibid.*)

Amicus California Academy of Appellate Lawyers apparently agrees. They add only that this deferential form of substantial evidence review does not apply to a factual finding made in the context of an incorrect legal analysis. (Academy Br. 8-9.)

From this, the Academy notes that "*if* Petitioner is correct that the trial court erred in relying on what Petitioner dubs the 'poverty alone' rule, then the Court of Appeal could not properly apply a deferential standard to affirm the order's conclusion that the minor had not established neglect." (*Id.* at p. 9, italics added, citation omitted.) But that exception to the standard of review cannot warrant reversal here.

First, even if the trial court committed legal error in its analysis of neglect and abandonment, that would still not impact the analysis of the second issue: unviability of reunification, as to which no "poverty alone" considerations possibly applied.

Saul argued that it was legal error to consider the "poverty alone" rule in "*identifying abuse, neglect, or abandonment* experienced by the child . . . ." (OBM 36, italics added.) Similarly, amicus say that if Saul is correct about the "poverty alone" error, the Court of Appeal could not defer to the superior court's "conclusion that the minor had not *established neglect*." (Academy Br. 9, italics added.) Saul likewise points to the Court of Appeal's discussion of neglect findings as the "parallel" reasoning for the "poverty alone" rule. (OBM 35-36, citing *S.H.R., supra*, 68 Cal.App.5th at p. 578 [under the heading in the opinion that addresses neglect and abandonment].)

But any such legal error was accounted for in the Court of Appeal's alternative holding that "[e]ven if S.H.R. had established that his parents were guilty of neglect towards him," he still did not establish that that neglect made reunification unviable. (*S.H.R., supra*, 68 Cal.App.5th at pp. 579-580.) So as to the latter issue, any legal error regarding the "poverty alone" rule could not alter the appellate standard of review.

Second, as to neglect and abandonment, there is no basis for Saul's argument that the trial court committed reversible error in mentioning "poverty alone." (ABM 57-58; § III.B.3., *post*.) That is precisely why the Court of Appeal did not mention that language.

III. Amici's Arguments Do Not Establish Reversible Error In Denying Saul's Petition For SIJ Findings.

A. Assuming arguendo that Saul established neglect or abandonment, the decisions below applied the correct standard regarding whether reunification was not viable.

1. The decisions below correctly focused on the present viability of reunification.

In addition to finding past abuse, neglect, or abandonment, courts issuing SIJ findings must also determine that the child's reunification with the parents is not viable because of that past mistreatment. One amicus argues that this inquiry should not be "forward-looking." (Bet Tzedek Br. 35.) But that cannot be right.

Indeed, the analysis that this amicus urges is itself forward-looking.

First, the SIJ statute itself frames the finding with a forward-looking focus: The question is whether "reunification . . . is not viable." (8 U.S.C. § 1101(a)(27)(J)(i).) That is, whether the hypothetical future act of reunification is—present tense—not viable.

Second, to support the argument that this analysis is *not* forward-looking, amicus cites a case that recognizes that it *is*: *J.U. v. J.C.P.C.* (D.C.Ct.App. 2018) 176 A.3d 136. (Bet Tzedek Br. 35-36.) That case held that reunification was not viable based on "the lifelong history of [petitioner] with his father and the *bearing of that history on the prospects if C.J.P.U. were to be returned* to the immediate custody of his father in the home country." (*J.U., supra*, 176 A.3d at p. 143, italics added.) The court contemplates "the prospects if [the child] were to be returned"—a hypothetical, future event. In other words, the forward-looking analysis examines how the facts of past neglect or abandonment would impact the feasibility of a hypothetical upcoming reunification. Here, the Court of Appeal likewise recognized this when it affirmed that Saul's evidence failed to establish that reunification is unviable. (*S.H.R.*, *supra*, 68 Cal.App.5th at pp. 581-582 [assuming past mistreatment, Saul's declaration did not even suggest that that past mistreatment makes reunification unviable now].)

Third, even this amicus proposes a forward-looking analysis. It says that past mistreatment can result in *ongoing*

trauma and psychological impacts that make a hypothetical reunification unviable. (Bet Tzedek pp. 37-40.) We agree. But that is a forward-looking analysis about how the child's current psychological state bears on the prospects of the child being successfully reunified with the parents—not merely a retrospective examination of the past mistreatment.

2. We agree that a child can show that reunification is unviable based on factors other than the likely recurrence of the past mistreatment; the Court of Appeal did not hold otherwise.

Two amici argue that the Court of Appeal wrongly considered whether Saul's parents' mistreatment would recur. They say that the "true question" regarding unviability of reunification is whether the "effects of the years of neglect"—including psychological effects—"render unification non-viable." (Bet Tzedek Br. 33-38; KIND Br. 41-43.)

We believe that recurrence of mistreatment and the ongoing effects of past mistreatment can both provide a means for a child to show that reunification is not viable. That said, the Court of Appeal did not err in its analysis.

1. We wholeheartedly agree that reunification is not viable if past mistreatment has led to psychiatric conditions that would be exacerbated if the child is once again put in the home of his or her abuser. A court might even find reunification not viable if a child is so angry or resentful with his parents due to

their past mistreatment of him that the child cannot bear to live with them and is likely to run away.

2. But a court could also conclude that reunification is not viable if the circumstances suggest that it is more likely true than not that reunification will result in subjecting the child to the same or similar mistreatment. Other courts have similarly recognized that nonviability can be based on the fact that "there was a substantial danger to the physical health, safety, protection, or physical or emotional well-being of [petitioner] if she were returned to her father's custody"—that is, on the risk that past mistreatment will recur. (*In re Scarlett V.*, *supra*, 72 Cal.App.5th at p. 503.) Contrary to what amici argue, it was entirely proper for the Court of Appeal to have considered this issue. We are not certain why amici adopt an approach that cuts off this path for immigrant children seeking SIJ findings.[3/]

The question, then, is whether—as amici contend—the Court of Appeal based its analysis solely on the risk that

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[3/] One amicus contends that it is too "speculative" to try to show that past abuse, neglect, or abandonment is likely to recur. (Bet Tzedek Br. 39.) But whether this point is "speculative," in the sense that it lacks a solid evidentiary basis, depends on the case and the nature of the child's evidence. In the same vein, a permanent injunction can be imposed if misconduct is "likely to recur" (*People ex rel Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 10); a standard that—if proven—means that the issue is not too speculative to warrant relief. That some children seeking SIJ findings (or some parties seeking an injunction) cannot present evidence establishing that recurrence is likely does not mean that it should be foreclosed as an avenue for those who can.

mistreatment will recur while ignoring evidence of trauma or other ongoing effects of past mistreatment. The answer is "no."

First, the superior court and Court of Appeal did not address evidence of past "trauma" or ongoing psychiatric conditions caused by the neglect because Saul *offered no such evidence*. His declaration—the only admissible evidence—is silent on the issue. That the courts did not mention factors that might be considered in different cases involving different evidence does not mean that they committed reversible error.

Second, the lower courts' reunification analysis did consider emotional impacts of past neglect where Saul's declaration did touch on the subject. For instance, the Court of Appeal noted that Saul's parents' decision to pull him from school to protect him from gangs does not suggest that reunification is unviable because "it appears from [Saul's] declaration that *he understands* his parents' protective intentions. Thus, even if the parents' decision constituted neglect at that time, the decision would not render reunification with his parents unworkable now." (*S.H.R., supra*, 68 Cal.App.5th at p. 582, italics added.) That statement examines the impact of past neglect on Saul's current *mental and emotional state* and how that state affects the viability of reunification—exactly what amici erroneously say the Court of Appeal refused to consider.

Third, one amicus argues that the Court of Appeal only considered "whether a hypothetical 18-year old" could reunify with his parents rather than whether an 18-year-old who suffered the trauma that Saul suffered could reunify. (Bet

Tzedek Br. 35.) Amicus points to a line in the opinion that states that the past failure to provide "financial support" to S.H.R. does not prove that reunification is not currently viable because Saul's declaration "does not suggest that he left his parents because of a failure to support him and there is nothing in his declaration to indicate that he, as an adult, would need the level of support for a child or that he would be unable to contribute to the family's income." (*S.H.R., supra*, 68 Cal.App.5th at p. 582.) According to amicus, this sentence treats an "18-year old who experienced years of neglect before turning 18, identically to an 18-year old who did not experience any such trauma"—they are both just "adults." (Bet Tzedek Br. 37-38, italics omitted.)

Not so. What the Court of Appeal recognized was that Saul's declaration did nothing to indicate "that *he*" would now require the level of support that he needed as a young child. (*S.H.R., supra*, 68 Cal.App.5th at p. 582, italics added.) Not some hypothetical person. His declaration established that he was an adult, but it did not indicate that he suffers ongoing trauma, much less that such trauma requires an additional level of "financial support" that makes him different from other 18-year-olds. Courts are not required to presume that *everybody* who suffered any past neglect, abandonment, or abuse also suffers from ongoing trauma that requires heightened levels of financial support. (See ABM 64-65.) It is the petitioner's obligation to present evidence of this.

3. The lower court decisions properly took Saul's age into account as a fact relevant to whether reunification is viable.

A number of amici make arguments regarding the Court of Appeal's reliance on Saul's current age in deciding whether reunification is now viable. We endeavor to address those arguments in turn.

Whether age is a bar to SIJ findings. One amicus contends that the lower courts "mistakenly suggest that SIJ findings are inappropriate for immigrant youths who have reached the age of 18." (Public Counsel Br. 10-12.) Not so. Neither the superior court nor the Court of Appeal even hinted that youths are categorically barred from SIJ findings once they turn 18. Had that been the lower courts' view, they would not have engaged in any analysis of neglect, abandonment, or the viability of reunification.

Both the superior court and Court of Appeal mentioned Saul's change in age as reflecting a change in circumstances that—based on the limited evidence Saul submitted—led to the conclusion that Saul had not established that the past mistreatment would continue being an issue. (AA 169-170; *S.H.R., supra*, 68 Cal.App.5th at pp. 581-582; see also ABM 62-64.)

The Court of Appeal mused—in a footnote—that "arguably . . . reunification has meaning only in the context of parents and their minor children," but it then expressly assumed

"that S.H.R.'s age is not per se an impediment to reunification" and conducted the full analysis. (*S.H.R.*, *supra*, 68 Cal.App.5th at p. 581, fn. 13.)

Arbitrariness and irrelevance of age. One amicus urges that the child's age at the time that he or she seeks SIJ findings is "an arbitrary fact that has no relevance under California or federal law and would create absurd and inequitable results." (Bet Tzedek Br. 39-40.) Not so. Increased age *sometimes* reflects a change in circumstances that alters whether reunification is viable. For instance, as a young child Saul worked in the fields with his grandfather, but years later, he was old enough to work elsewhere (as his declaration establishes), alleviating concerns that his experiences in the fields are likely to recur if he is reunited with his family. There certainly may be instances when past abuse or neglect causes trauma and psychological conditions that do not wane with age. But that does not mean that age and the child's present state and circumstances are always irrelevant to the analysis required by the SIJ statutes.

Amicus says that it is inequitable that when a child delays seeking SIJ findings for several years, the change in their age can affect the analysis of whether reunification is presently unviable. (Bet Tzedek Br. 39-40.) But that was Congress's design. Congress intended the SIJ process to provide protections for children who cannot viably be reunited with their parents. If a child's circumstances change before seeking SIJ findings such that reunification is now viable, a denial of SIJ findings is no

inequity, even if the petitioner would still prefer to remain in the United States. It merely reflects Congress's intent to protect those who need protection now rather than those who needed protection at some point in the past but need it no longer.

Ignoring past mistreatment due to age. The Court of Appeal did not "ignore" past mistreatment due to Saul's age, as some amici argue. (Bet Tzedek Br. 37-40; KIND Br. 43-44.) Rather, the Court of Appeal *assumed* the past mistreatment and properly took into account Saul's current age and age at the time of the mistreatment as factors bearing on whether the past mistreatment made reunification unviable.

B. The decisions below correctly applied California law on abuse, neglect, and abandonment.

Several amici take issue with the courts' analysis of neglect and abandonment. We note that the Court need not decide these issues because—like the Court of Appeal—it can assume neglect and still affirm the denial of SIJ findings based on the failure to show that reunification is not viable.

1. The courts' failure to consider "similar" bases under other state laws does not constitute reversible error.

SIJ findings may be based on "abuse, neglect, abandonment, *or a similar basis pursuant to California law*." (Code Civ. Proc., § 155, subd. (b)(1)(B), italics added.) One amicus argues that although the lower courts considered neglect and abandonment, they "failed to consider 'similar' bases under

other state laws as independent grounds supporting SIJ findings." (Women's Project Br. 32.) The brief then proceeds to argue all the other similar state laws that should have been considered. (Women's Project Br. § B.)

We need not address whether those other laws can serve as a basis for SIJ findings in other cases. Here, the lower courts did not consider them because Saul did not assert them. His request for findings checked off the boxes for "neglect" and "abandonment," but left blank the box for "another legal basis." (AA 53.) That is why the superior court's decision considered neglect and abandonment and then, under the heading "Other Similar Basis," stated that Saul did not allege any other basis. (AA 169.) For the same reason, the Court of Appeal's opinion does not address other similar bases.

2. The decisions below adopted correct definitions of abuse, neglect, and abandonment.

Several amici argue that the decisions below should have applied other definitions of abuse, neglect, or abandonment. (KIND Br. 29-40; Women's Project Br. 34-39.) The other definitions they propose, however, fail to justify reversal, in two distinct ways.

First, many of these proposed definitions are similar to the definitions that the decisions below *did* apply, so much so that applying the proposed definitions would not have changed the result. For example, consider the definitions of mistreatment

listed in Welfare and Institutions Code section 300. (Women's Project Br. 37.) Although the decisions below did not cite this exact statute, it largely overlaps with the laws that they did cite. (Compare, e.g., Welf. & Inst. Code, § 300, subd. (b)(1) ["there is a substantial risk that the child will suffer[] serious physical harm or illness"] with *S.H.R.*, *supra*, 68 Cal.App.5th at p. 577 [neglect is "'harm or threatened harm to the child's health or welfare'"], and Welf. & Inst. Code, § 300, subd. (g) ["The child has been left without any provision for support"] with AA 166-167 [abandonment is "leaving a child 'without provision for reasonable and necessary care or supervision'"].) Amici do not explain how these similar standards of law would have led to a different result if they had been applied below. (Cf. *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1107 ["[A]t least since 1851, our generally applicable statutes have precluded reversal for errors in civil cases absent prejudice," italics omitted].)

Second, one amicus urges that courts must give "significant weight" to the Education Code and Labor Code provisions in analyzing neglect. (KIND Br. 35-39.) We are aware of no case that does so. And if amicus means that these statutes are "a similar basis pursuant to California law" under which SIJ findings can be based, that issue was long ago waived. (§ III.B.1., *ante*.) What's more, while amicus is correct that the Labor Code protects children from "exposure to dangerous, immoral, or unhealthful conditions" and from "malnutrition" and disease (KIND Br. 35-36), Saul's declaration does not suggest that his parents exposed him to any of that.

Finally, despite another amicus's claim to the contrary, "[w]hether a child has been neglected does," in many cases, "hinge on whether the parental actions that led to inadequate care were 'reasonable' . . . ." (KIND Br. 39.) This amicus actually invokes reasonableness by arguing that Saul's parents' conduct constituted neglect under a statute defining neglect as the "*willful or negligent* failure . . . to provide the child with adequate food, clothing, shelter, or medical treatment." (*Id.* at pp. 34-35, ellipsis in original, italics added, quoting Welf. & Inst. Code, § 300, subd. (b)(1).) Whether Saul's parents committed neglect under this statute depends on whether they were "negligent," in other words, it depends on the reasonableness of their actions. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753-754 [defining negligence as "a failure to exercise the degree of care in a given situation that a *reasonable person* under similar circumstances would employ to protect others from harm," italics added].)

Other definitions of neglect also require negligence, or higher levels of parental culpability. (See Welf. & Inst. Code, § 300, subd. (b)(1) ["the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left"]; Pen. Code, § 11165.2 [defining "neglect" as "the *negligent treatment* or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare," italics added].) This Court has made clear that the element of negligence cannot

be read out of these provisions, even if it should also not be read *into* the provisions that lack it. (See *In re R.T.* (2017) 3 Cal.5th 622, 630 ["[T]he Legislature has made parental culpability (based on either willful or negligent conduct) a requirement in some, but not all, grounds for asserting dependency jurisdiction" arising from mistreatment of a child].)

Indeed, Saul himself argues that the definition of neglect found in Penal Code section 11165.2 ("'negligent treatment'") applies here. (OBM 52.)

When the lower courts considered whether the actions of Saul's parents were reasonable under the circumstances, therefore, they were not creating a catchall "exception from neglect for 'a reasonable parental decision' . . . ." (KIND Br. 39-40.) They were applying an element of several definitions of neglect, including the definition that amicus relies on. (See *id.* at p. 34.) The courts committed no reversible error.

3. The decisions below correctly applied the definitions of abuse, neglect, and abandonment to the facts.

One amicus argues that the facts here establish abandonment under Welfare and Institutions Code section 300, subdivision (g). (KIND Br. 28.) Amicus argues that Saul was "left without provision for support" as defined in the statute, citing *In re E.A.* (2018) 24 Cal.App.5th 648, 662. But *In re E.A.* actually illustrates why this provision does not fit Saul's case.

In re E.A. expressly states that "section 300(g) is inapplicable when a parent arranges for the child to be cared for by a relative or a friend without financial recompense," because "[i]n that situation, the child has not 'been left' without provision for his or her support within the meaning of the first clause in section 300(g)." (*In re E.A.*, *supra*, 24 Cal.App.5th at p. 662.) This description fits Saul's situation. Although his parents could not fully provide for him on their own, they arranged for his continual support through the income provided by his sisters, himself, and other sources. (See ABM 53-54.) Saul offers no evidence to the contrary.

In re E.A. expressly distinguishes a situation like Saul's from one in which the "parents did not *arrange for* [their children's] care with" another caregiver: *In re E.A.* holds that section 300(g) applies only to the latter. (*In re E.A.*, *supra*, 24 Cal.App.5th at p. 662, italics added.)

Another amicus attempts to illustrate the lower courts' error here through a long recitation—without citations—of trial court cases in which this amicus has served as counsel. (University Br. 13-21.) It is impossible for us to comment on those trial court cases, but we can state the truism that different cases involving different facts and decided by different factfinders will come out differently.

Finally, several amici argue that the superior court's conclusion that Saul failed to establish abuse, neglect, or abandonment was based on erroneous consideration of the poverty of Saul's family. (Women's Project Br. 39-41; University

Br. 12-13.) This argument misreads the superior court's reasoning.

The superior court did not mention poverty in its analysis of abuse or abandonment. Instead, the court quoted and cited definitions of abuse and abandonment under California law—definitions whose applicability to SIJ findings amici do not challenge—and then applied those definitions to the facts to find no abuse and no abandonment. (AA 165-167.) So this argument has no possible force in connection with the superior court's findings on abuse or abandonment.

The court did raise the issue of poverty in connection with neglect. But before it discussed poverty, the court quoted definitions of "neglect" under California law and concluded, in parallel to abuse and abandonment, that "[n]othing in either the Declaration or the Petition alleges that Saul [was] ever neglected in any the manner [*sic*] by either parent or by his grandfather as 'neglect' is defined." (AA 167-168.) The court continued by stating the rule "that 'poverty alone' is not a basis for judicial, neglect-based intrusion"; the court repeats a bit later that "poverty" "is factually and legally insufficient to constitute neglect." (AA 168.) As a result, the court concluded, the fact that Saul's parents "requir[ed] that he leave school and start working to help support himself and the family" does not establish neglect. (AA 168.) The court further noted that Saul "does not cite a case in which 'poverty' or requiring a minor child to work to help with living expenses has been deemed 'neglect.'" (AA 169.) Additional facts are required to establish neglect under the

definitions with which the court begins this section, additional facts that Saul does not put forward.

Amici find fault with this. But not because they argue that the circumstances of poverty *do* constitute neglect—the logical opposite of the superior court's rule. Instead, they argue that poverty does not *excuse* neglect: "*If a child experiences neglect, abuse, abandonment, or the equivalent* (as defined by California laws) as a result of the poverty of his parents or the circumstances in his or her home country, that child is entitled to SIJ factual findings" (Women's Project Br. 40-41, italics added); superior courts should not "[r]efus[e] to grant SIJS findings because the actions of one or both parents were influenced by poverty" (University Br. 13). In this, they are correct. But they are attacking a straw man.

The superior court referred to poverty not to *excuse* conduct that would otherwise constitute neglect, but to hold that the circumstances of poverty in themselves did not *establish* "neglect." As mentioned above, neglect requires negligent conduct, which inherently means that it considers reasonableness and that poverty in and of itself does not equal neglect.

The real disagreement between amici and the superior court concerns whether Saul experienced "neglect" at all—not whether his family's poverty could excuse it. On this factual issue, the superior court's conclusion must be affirmed unless the evidence compels the contrary conclusion. (See II., *ante*.)

Amici attempt to reframe this factual disagreement as a legal argument that the superior court applied the wrong rule. But this distorts the superior court's reasoning. The superior court is correct that poverty in itself does not constitute neglect, and amici cite no law to demonstrate otherwise.

It's true that the "poverty alone" rule originates in cases involving the termination of parental rights, a context different from SIJ findings. (Women's Project Br. 39-41.) And in that context, poverty does operate as an excuse of sorts, protecting a parent's rights even when a child's placement with the parent "would be detrimental to [the child's] well-being . . . ." (*In re S.S.* (2020) 55 Cal.App.5th 355, 373-374.)

But that is not how the superior court employed this phrase. The superior court found that Saul did not present evidence satisfying California's statutory definitions of neglect, and that the poverty of Saul's family in itself did not constitute neglect. (AA 167-169.)

And even if the superior court's finding regarding neglect had rested on legal error, an order under Code of Civil Procedure section 155 also requires a determination of whether "reunification with 1 or both of the immigrant's parents is not viable . . . ." (8 U.S.C. § 1101(a)(27)(J)(i).) On this issue, the superior court stated, "[T]he Court cannot conclude that Saul cannot be reunited with one or both parents" because of prior mistreatment. (AA 169-170 [no evidence past "issues will continue to exist"; "he is no longer reliant on (his) parents" due to his age and other circumstances]; see also AA 165 ["no evidence is

provided, which suggests that should Saul be returned to El Salvador[,] reunification with one or both parents[,] absent a finding of other factors[,] is not possible or viable"].) Where the superior court presented this conclusion, the court made no mention of the "poverty alone" rule, so any purported "poverty alone" error cannot undermine this factual conclusion.

4. The Court of Appeal's dicta regarding intent to abandon does not support reversal.

Two amici argue that the Court of Appeal wrongly listed the intent to abandon as an element of abandonment. (Bet Tzedek Br. 40-46; KIND Br. 16-29.) Regardless of whether this accurately states the law, the Court of Appeal's decision did not depend on this element.

The Court of Appeal found no "evidence that either parent ever deserted *or* intended to abandon S.H.R." (*S.H.R.*, *supra*, 68 Cal.App.5th at p. 577, italics added.) The absence of evidence that either parent "deserted" Saul, on its own, disposes of the abandonment issue, independent of the court's conclusion regarding the parents' intent. The court also found it significant that Saul left his parents' home "'without telling them,'" meaning that their separation was "the fulfillment of [Saul's] intention and *action*," not that of his parents. (*Ibid.*, italics added.) The court's conclusion depended on actions.

The Court of Appeal's ruling on abandonment did not depend on Saul's parents' intent. This dicta does not support reversal.[4/]

5. The superior court did not apply El Salvador law.

One amicus develops Saul's insinuation that the superior court applied El Salvador law. (Women's Project Br. 30-32; see also OBM 42-44.) But the superior court's decision cited and applied only California and federal law (AA 162-170), as even Saul concedes (OBM 42 ["In its statement of decision, the superior court suggested it was applying California law, not El Salvador standards"]). In fact, the superior court itself made clear that its references to El Salvador did not mean that it was applying El Salvador law rather than California law. (AA 168.)

It is irrelevant that the court discussed "poverty, family relationships, and violence in El Salvador" at a hearing on Saul's petition. (Women's Project Br. 31.) That does not mean the court was applying El Salvador law during the hearing. In any event, "a judge's comments in oral argument may never be used to impeach the final order," and "a trial court's tentative ruling is

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[4/] Similarly, the superior court offered multiple rationales for its findings regarding abandonment. In one, the court relied on a definition of abandonment that requires intent. But after concluding that there was no such intent, the court also rejected abandonment on other grounds and held that "nothing in Saul's Petition or Declaration supports any finding that he was abandoned *in any respect* under California law." (AA 166-167, italics added.)

not binding on the court." (*Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300.) Nothing in the written decision even hints that the superior court was applying El Salvador law. This argument is empty.

IV. The Decisions Below Correctly Determined That The Denial Of Saul's Petition For SIJ Findings Renders Moot A Guardianship Petition That Is "In Connection With" Those Findings.

The superior court initially appointed a guardian under Probate Code section 1510.1, which authorizes such appointments "in connection with a petition to make the necessary findings regarding" SIJ issues. When the superior court denied the SIJ findings, however, it denied Saul's guardianship petition as moot. (AA 164.) Saul has argued that "because the court should have made the requested SIJ findings, there was no reason to reconsider the guardianship appointment order." (OBM 64.) One amicus goes further, arguing that even if the Court affirms the denial of Saul's petition for SIJ findings, the guardianship order should stand. (Public Counsel Br. 13-22.)

This Court did not include any issue related to guardianship among the issues to be briefed in its January 14, 2022 order appointing pro bono counsel. Nor does the issue appear in the Opening Brief's statement of the issues presented in the petition for review. (OBM 11.)

It is certainly true that if the Court reverses the denial of SIJ findings, the guardianship issue is not moot. But amicus's

new issue—that the guardianship petition must be separately adjudicated—is a different matter. Generally, "'California courts will not consider issues raised for the first time by an amicus curiae.'" (*California Building Industry Association, supra,* 4 Cal.5th at p. 1048, fn. 12.) As neither side had the opportunity to fully brief this issue, and as amicus requests relief beyond what is sought by Saul himself, the Court should not consider this issue here.

Without attempting to fully brief this new issue, we provide some commentary:

The federal government makes SIJ status available to immigrants under 21 years old, but also requires appointment of a guardian to obtain SIJ status. (8 C.F.R. § 204.11(c)(1); 8 U.S.C. § 1101(a)(27)(J)(i).) Before the enactment of Probate Code section 1510.1, California immigrants aged 18 to 20 struggled to meet this requirement, "solely because probate courts [could not] take jurisdiction of individuals 18 years of age or older by establishing a guardianship of the person." (Assem. Bill No. 900, Stats. 2015, Ch. 694, § 1, subd. (a)(5).) The Legislature enacted section 1510.1 specifically to correct this "misalignment between state and federal law" by providing for guardianships for immigrants aged 18-20. (Subd. (a)(4).)

The text of section 1510.1 makes this purpose clear, allowing courts to appoint a guardian "in connection with a petition" for SIJ findings and allows courts to extend an existing guardianship when an immigrant reaches 18 years of age "for *purposes of allowing the ward to complete the application process*

with [USCIS] for classification as a special immigrant juvenile . . . ." (Prob. Code, § 1510.1, subd. (a)(1), (b)(1), italics added.)

Given the statutory text and legislative history, we see no basis on which such a guardianship order can be sustained when SIJ findings have been denied, which effectively bars the child from "complet[ing] the application process" with USCIS.

Amicus notes that the appointment of a guardian offers concrete benefits to an immigrant aged 18 to 20 beyond allowing them to satisfy the federal requirements for SIJ status. (Public Counsel Br. 16-22.) This may be so. But the language and purpose of Probate Code section 1510.1 does not permit guardianships merely because they provide such non-SIJ-related benefits. It only permits a guardianship appointment and the extension of that appointment in connection with the SIJ process. The denial of a petition for SIJ findings severs the connection and renders the guardianship application moot.

CONCLUSION

The Court should affirm the denial of SIJ findings.

DATED: March 28, 2022

Respectfully submitted,

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By: /s/ *Stefan C. Love*
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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS FILED IN SUPPORT OF PETITIONER** contains **9,471** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

DATED: March 28, 2022

/s/ *Stefan C. Love*
Stefan C. Love

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036, and my email address is pherndon@gmsr.com.

On March 28, 2022, I hereby certify that I electronically served the foregoing **CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS FILED IN SUPPORT OF PETITIONER** through the Court's electronic filing system, TrueFiling. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. Electronic service is complete at the time of transmission:

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I further certify that participants in this case who are not registered TrueFiling users are served by mailing the foregoing document by First-Class Mail, postage prepaid, to the following:

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Executed on March 28, 2022, at Los Angeles, California.

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

/s/ *Pauletta L. Herndon*
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Guardianship of Saul (*Saul v. Jesus Rivas, et al.*)
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[Case No. 19AVPB00310]

CA Supreme Court Court Name	**PROOF OF SERVICE**	S271265 Case Number

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

03-28-2022
Date

/s/Paula Herndon
Signature

Love, Stefan (329312)
Last Name, First Name (Attorney Number)

Greines, Martin, Stein & Richland LLP

Firm Name