Supreme Court of California
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Supreme Court of California
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Supreme Court No.:
IN THE SUPREME COURT OF CALIFORNIA

IN THE MATTER OF Saniyah R., et al. minors.	Court of Appeal Nos. B326812 Superior Court No. 22CCJP03750A/B
Dept. of Children and Family Services, Respondent, v. S.F., Appellant.	

PETITION FOR REVIEW

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, LOS ANGELES

Hon. Lisa Brackelmanns, Judge

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By appointment of the Court of Appeal under
the CAP-LA Independent Case System

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Supreme Court No.:
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Petition for Review

TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Appellant S.F. (Mother) petitions for review by this Supreme Court after the lower court Second District Court of Appeal, Division Eight dismissed the appeal on May 31, 2024 over appellant's objection. A copy of the dismissal order is attached to this petition as Appendix A (hereinafter referred to as "the Order"].)

Introduction

The present case concerns the proper application of this Court's opinion *In re D.P.* (2023) 14 Cal.5th 266 (*D.P.*) which clarified when appeals from jurisdictional findings in juvenile dependency are moot. "[W]hen a parent has demonstrated a specific legal or practical consequence that will be averted upon reversal, the case is not moot, and merits review is required." (*D.P., supra,* at p. 283.) In *D.P.*, the father claimed that his jurisdictional appeal was not moot despite the termination of jurisdiction due to actual or possible inclusion in the Child Abuse Centralized Index (the CACI). (*Id.* at p. 280.) As this Court acknowledged, "[i]nclusion in the CACI carries several consequences for parents" and therefore if a parent has been or will be included in the CACI as a result of the jurisdictional allegations reversal of the jurisdictional findings could provide both practical and effective relief. (*Id.* at p. 279.) The problem was that the *D.P.* father "ha[d] not shown that the general neglect allegation against him was reported for inclusion in the CACI, nor has he shown that this type of allegation is reportable. These two layers of uncertainty render[ed] Father's CACI claim too speculative to survive a mootness challenge." (*Id.* at p. 280.)

Unlike in *D.P.*, here Mother showed that the allegations of physical abuse resulting in physical injury were certainly reportable. It takes no speculation to assume that the Los Angeles Department of Children and Family Services (the Department) has in fact forwarded this report as they are required to by both the law and their own manual. The record

even shows that Mother lost her job due to the allegations. Regardless, the relevant statutes contain no deadline and if Mother has not been reported to CACI she could be at any point in the future. Nevertheless, the appellate court declared the appeal moot and ordered dismissal. The appellate court dispelled any concern of CACI inclusion in a footnote claiming Mother had not provided sufficient proof. Put differently, the appellate court refused to assume that the Department has or will follow the law.

Granting review would allow this Court to clarify that when the law requires the Department to report a particular offense to the Department of Justice (DOJ) for inclusion in the CACI, an appellate court should assume that the Department has in fact followed the law or will do so in the future. An alternative rule would create unnecessary burdens on indigent appellants and the overall judicial system. Appellants and their counsel would be forced to seek extensive delays to hunt down information the Department has at its fingertips. (*D.P., supra,* 14 Cal.5th at p. 279.) Further, appeals could be dismissed as moot only to have the Department forward the substantiated report or the DOJ process the substantiated report after dismissal. At a minimum, this Court should grant review "[f]or the purpose of transferring the matter to the Court of Appeal" with directions to address the merits. (Cal. Rules of Court, Rule 8.500(b)(4).)[1]

[1] Further references to Rules of Court will be to the California Rules of Court unless otherwise specified.

Issues presented

1.) When the law requires the Department to report a particular offense to the Department of Justice (DOJ) for inclusion in the CACI, should an appellate court presume that the Department has or will follow the law? Or should the appellate court presume the law has *not* been followed and place on appellant the burden to prove she has been listed in the CACI?

2.) Put differently, on an otherwise silent record does a parent need to prove more than that the alleged parental conduct is by law reportable in order to avoid dismissal for mootness?

3.) Since the relevant statutes contain no deadline, does the possibility of future CACI inclusion defeat a mootness challenge?

Necessity for review

This Supreme Court should grant review in order to settle an important legal question of statewide importance. (Rule 8.500, subd. (b)(1).) "The dependency scheme, when viewed as a whole, provides the parent due process and fundamental fairness…" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) This is because of the "significant safeguards" built into this system of family regulation one of which is the right to appeal. (*Ibid*; *In re A.R.* (2021) 11 Cal.5th 234, 246.) Therefore, any limit on parents' right to appellate review calls into question the constitutionality and proper functioning of the entire system and is a matter of great public importance.

A mere 17 months ago this Court stepped in to provide much needed clarity as to when a parent's appeal from a

jurisdictional finding is moot. (*D.P., supra,* 14 Cal.5th at p. 276.) While "[i]nclusion in the CACI carries several consequences for parents" the *D.P.* father failed to show that the general neglect allegation against was reported or even reportable. (*Id.* at p. 280.) This Court concluded: "[t]hese two layers of uncertainty render Father's CACI claim too speculative to survive a mootness challenge." (*Ibid.*) As evidenced by the Dismissal Order here confusion remains for the common circumstance where the alleged offense is *reportable* and there is no reason to believe the Department has not or will not comply with the law. (Dismissal Order, p. 4.)

Here, counsel represented to the appellate court a good faith belief that Mother has been reported to CACI despite the present unavailability of documentation.[2] The allegation of physical abuse resulting in physical injury must be reported to the DOJ for inclusion in the CACI. (Pen. Code § 11169(a).) Unlike in *D.P.*, the Department has not represented to the court that a report has not and will not be forwarded to the Department of Justice; in fact the Department did not even address CACI

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[2] As counsel explained to the appellate court, Mother reported to counsel that she was notified that she was reported to CACI but lost the documents in the process of moving. (Appellant's April 24, 2024 Supplemental Letter Brief concerning mootness, p. 4 fn. 2.) The appellate court originally supplied counsel with 5 days to address mootness and ultimately after extension requests counsel was allowed roughly a month which was not sufficient for Mother to obtain additional proof. Counsel understands these assertions are not evidence (*In re Zeth S.* (2003) 31 Cal.4th 396, 414 fn. 11) but wishes only to assure this Court a good faith belief that Mother suffers ongoing harm from these findings. (Cf. *D.P., supra,* 14 Cal.5th at p. 281.)

inclusion in their supplemental briefing. (Compare with *D.P., supra,* 14 Cal.5th at pp. 280, 281 [sworn declaration that report was not forwarded according to Department policy].) Further, the record shows that Mother lost her job as a direct result of these allegations which supports the conclusion that the law was followed and the report was forwarded. (1CT 185.)[3] Nevertheless, the reviewing court dispelled any concerns related to CACI in a footnote stating: "Without proof of this allegation, we decline to act upon it." (Dismissal Order, p. 4 fn 1.) Put differently, the appellate court did not view *the law* as sufficient proof; again, the law requires this report be forwarded to the DOJ for inclusion in the CACI. Instead, the appellate court placed on Mother the burden to definitively and rapidly prove CACI inclusion by hunting down information the Department had at its fingertips and chose not to address. (See Respondent's Letter Brief addressing mootness generally.)

Granting review over the present appeal would give this Court the opportunity to clarify what evidence of CACI inclusion is required to defeat a mootness challenge. If this Court holds that appellate courts should reasonably assume that the Department routinely follows the law then appeals would be streamlined by avoiding unnecessary delays and expenditure of resources through lengthy supplemental briefing to address possible mootness. This would eliminate any games of "hide the ball" and instead encourage candor by the Department on

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[3] Mother reported to the social worker that she was unemployed because her "previous employers do not allow their employees to have charges related to child abuse." (1CT 185.)

whether a particular parent has been reported to CACI or will be. On the other hand, if this Court holds that despite clear legal requirements the parent must obtain relevant documentation to show that the Department has followed the law and the parent is presently listed in the CACI then appellant's counsel will know to request necessary extensions to allow their clients to do so. Granting review would also allow this Court to address how the possibility of future inclusion in the CACI should factor into an appellate court's analysis.

At a minimum, this Court should grant review and transfer the matter back to the appellate court to reach the merits of Mother's appeal. Mother respectfully asserts the appellate court erred in dismissing her appeal. This Court should order the appellate court to reach the merits of Mother's appeal because Mother has proven that she was reported to CACI given that the Department is required by law to do so and she lost her job as a result of the allegations here.

Statement of the Case and Facts

For the purposes of this petition only, Father adopts the background set forth by the appellate court in the Dismissal Order. (Dismissal Order, pp. 1-2.) Where relevant counsel will clarify factual and procedural details throughout this petition. Counsel adds these additional and/or clarifying details here:

The court took jurisdiction over the children and removed them from Mother's custody on January 23, 2023. (2CT 383-85; RT 224-25.) Mother timely filed a Notice of Appeal on February 6, 2023. (2CT 405-06.) Over five and a half months later Mother

was appointed counsel on July 25, 2023.[4] The children had been returned to Mother's custody the day prior. (Appellant's Opening Brief (AOB), p. 15; Appellant's 12/12/23 Request for Judicial Notice, Exhibits A and B.) Counsel filed an Opening Brief on December 12, 2023 after three extensions of time.[5] Concurrent with the filing of the Opening Brief, counsel filed a request for judicial notice to alert the appellate court that the children had been returned to Mother's custody but jurisdiction had continued. (Appellant's Opening Brief (AOB), p. 15; Appellant's 12/12/23 Request for Judicial Notice, Exhibits A and B.) Respondent filed their Response Brief on March 21, 2024 after one extension.

The appellate court issued a letter indicating they were considering dismissing the appeal on April 5, 2024 – this was 14 months after Mother timely filed a Notice of Appeal. The letter did not indicate how the jurisdictional appeal could possibly be moot given that the appellate court had only judicially noticed minute orders showing the children had been returned to parental custody *with continued jurisdiction*. (Appellant's 12/12/23 Request for Judicial Notice, Exhibits A and B.) Parties were provided 5 days to file a supplemental letter brief. (4/5/24

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[4] Docket link: https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=2514959&doc_no=B326812&request_token=NiIwLSEmLkw3WzBRSCMtXEhIUFw6USxXISM%2BJztTUCAgCg%3D%3D

[5] As counsel explained to the appellate court these extensions are not normal and were necessary as a result of counsel accepting a large number of appointments at the request of California Appellate Project-Los Angeles to assist with a massive backlog of appeals. (See Appellant's extension requests generally.)

Government Code Letter.) Respondent filed a letter brief on April 10, 2024 requesting dismissal of the appeal without articulating how Mother's challenge to the *jurisdictional* findings and orders had been mooted. (See Respondent's 4/10/24 Supplemental Letter Brief generally.) Counsel for mother through outside investigation discovered that jurisdiction had been terminated on February 1, 2024. (Appellant's 5/6/24 Judicial Notice Request, Exhibits A-F.) Counsel out of an interest in candor to the court requested additional time in order to supply the relevant minute orders and address related questions of mootness. (Appellant's 4/10/24 and 4/23/24 Extension requests.) On May 6, 2024 appellant's counsel filed a judicial notice request alerting the appellate court that jurisdiction had been terminated on February 1, 2024, a motion pursuant to Civil Code section 909 asking the appellate court to accept additional evidence which included social worker's reports showing Mother's cooperation and compliance, along with a letter brief asserting that the appeal was not moot or should alternatively be considered via discretionary review. (Appellant's 5/6/24 Judicial Notice Request, Exhibits A-F; Appellant's 5/6/24 909 Motion, and Appellant's 5/6/24 Letter Brief concerning mootness.)

In the letter brief, Mother's counsel explained that Mother does believe she has been reported to CACI but no longer has the notice documents in her possession as she lost them when she moved. (Appellant's 5/6/24 Letter Brief concerning mootness, p. 4 fn. 2.) Regardless, Mother's position was that the law required the Department to forward the report of physical abuse resulting

in physical injury and therefore the appellate court should assume that the Department has or will comply with the law. (Appellant's 5/6/24 Letter Brief concerning mootness, pp. 2-5.) The appellate court dismissed the appeal on May 31,2024. (Dismissal Order, pp. 1-4.) In the Dismissal Order the appellate court appeared to focus on Mother's dispositional arguments and addressed the possibility of CACI inclusion related to the jurisdictional findings in a footnote stating: "In her supplemental brief, Mother urges us to reach the merits because she may have been reported to the statewide Child Abuse Centralized Index (CACI). Without proof of this allegation, we decline to act upon it." (Dismissal Order, p. 4 fn. 1.)

Argument

I. The appellate court erred in finding that Mother's appeal from the jurisdictional findings and orders is moot. Due to Mother's inclusion in CACI she is prejudiced by the jurisdictional findings and orders and merits review is mandatory.

As this Court has recently clarified, an appeal is not moot if the "parent has demonstrated a specific legal or practical consequences that will be averted upon reversal." (*D.P., supra,* 14 Cal.5th at p. 283.) "A case becomes moot when events render it impossible for a court, if it should decide the case in favor of plaintiff, to grant him any effective relief." (*Ibid* [citations omitted].) "For relief to be 'effective,' two requirements must be met, First, the plaintiff must complain of an ongoing harm. Second, the harm must be redressable or capable of being

rectified by the outcome the plaintiff seeks." (*Ibid* [citations omitted].)

A. Actual or probable future CACI inclusion is a harm sufficient to defeat mootness.

As a threshold matter, actual or probable future inclusion in CACI defeats any claim of mootness. First, the parent is *harmed* by inclusion in the CACI and the sustained petition insulates that harm. "California's Child Abuse and Neglect Reporting Act (CANRA; Pen. Code § 11164 et seq.) requires that several state agencies, including the Department, forward substantiated reports[6] of child abuse or neglect to California's Department of Justice (DOJ) for inclusion in the CACI." (*D.P., supra,* 14 Cal.5th at p. 280 [citing Pen. Code § 11169, subd. (a)].) As acknowledged by this Court:

> Inclusion in the CACI carries several consequences for parents. A CACI check is required for 'any prospective foster parent, or adoptive parent, or any person 18 years of age or older residing in their household.' (Health & Saf. Code § 1522.1,

[6] A "substantiated report" means "a report that is determined by the investigator who conducted the investigation to constitute child abuse. (Pen. Code § 11165.12(b).) An "unfounded report" "means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect." (Pen. Code § 11165.12(a).) An "inconclusive report" "means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect." (Pen. Code § 11165.12(c).)

subd. (b).) California law also requires state agencies to search the CACI before granting a number of rights and benefits, including licensing to care for children in a day care center (*id.*, § 1596.877, subd. (b)) and employment in child care (*id.*, § 1522.1, subd. (a)). Even if an agency or employer is not legally required to check the CACI, it may do so as a matter of internal policy. CACI information is available to a variety of entities, including law enforcement entities investigating a case known or suspected child abuse (Pen. Code § 11170, subd. (b)(3)), a court appointed special advocate program conducting a background investigation for employment or volunteer candidates (*id.*, subd. (b)(5), an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children (*id.*, subd. (b)(7), a government agency conducting a background investigation of an applicant seeking employment as a peace officer (*id.*, subd. (b)(9)), a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who will have direct contact with children at risk of abuse or neglect (*id.*, subd. (b)(10)), and out-of-state agencies making foster care or adoptive decisions (*id.*, subd. (b)(10)), and out-of-state agencies making foster care or adoptive decisions (*id.*, subd. (e)(1)). These agencies and employers are not barred from hiring or granting a license to an applicant listed in the CACI, but they may be hesitant to do so…Moreover, because the information

> included in the CACI is available to a wide variety of state agencies, employers, and law enforcement, it may be stigmatizing to the person listed.

(*D.P., supra,* 14 Cal.5th at p. 279.) "Persons listed in the CACI are generally entitled to challenge the basis for their inclusion at a hearing before the reporting agency." (*Id.* at p. 279 [citing Pen. Code § 11169, subd. (d).) "However, if 'a court of competent jurisdiction has determined that suspected abuse or neglect has occurred,; the hearing request 'shall be denied.' " (*Ibid* [quoting § 11169, subd. (e)].) Put simply, if a parent is included in the CACI registry and a sustained petition exists for the same conduct the parent is unable to contest their inclusion in the CACI. Further, the penal code contains no specified deadline and a report could be forwarded at any time following substantiation. (Pen. Code § 11169(a).)

Clearly, a parent facing both CACI inclusion and a sustained petition suffers ongoing harm. The question is then whether a reviewing court is capable of rectifying that harm. "If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report." (Pen. Code § 11169(a).) Reversal of the jurisdictional finding would undermine the Department's substantiation, requiring the removal of the report. Therefore, the harm is "redressable or capable of being rectified by the outcome the plaintiff seeks." (*D.P., supra,* 14 Cal.5th 266 at p. 276.)

B. The appellate court erred in finding that Mother did not defeat mootness because of insufficient proof that she is presently listed in the Child Abuse Centralized Index. To the contrary, the Department is required by law to forward this report and there is no reason to believe they have not fulfilled their legal duty.

In *D.P.*, the father argued that the appeal was not moot despite the termination of jurisdiction because "the jurisdictional finding [] has resulted or will result in his inclusion in [CACI]." (*D.P., supra,* 14 Cal.5th at p. 278.) The father did "not assert that he has actually been reported for inclusion in the CACI." (*D.P., supra,* 14 Cal.5th at p. 280.) The *D.P.* Father argued:

> that his potential inclusion in CACI is sufficient to avoid mootness. He argue[d] that he will be reported to the CACI in the near future because the juvenile court's findings require the Department to forward the report for inclusion in the CACI. And he asserts that the allegations against him could subsequently be forwarded for inclusion in the CACI, at which point the juvenile court's finding against him would estop him from challenging his inclusion in the CACI.

(*D.P., supra,* 14 Cal.5th at p. 280.) The only substantiated allegation was for "general neglect." (*Id.* at pp. 281-82.) Allegations of "general neglect" are not eligible for inclusion in the CACI. (*Id.* at p. 281 [citing Pen. Code § 11165.2(a)].) Further, the social worker submitted a sworn declaration that the allegation was not reported to the DOJ "pursuant to Department policy." (*Id.* at pp. 280, 281.) Also, counsel for the Department

asserted at oral argument that the Department would not ever report the parents to the DOJ based on the subject allegations. (*Id.* at p. 281.) This Court concluded: "Father has not shown that the general neglect allegation against him was reported for inclusion in the CACI, *nor has he shown that this type of allegation is reportable*." (*Ibid* [emphasis added].) "These *two layers* of uncertainty render[ed] Father's CACI claim too speculative to survive a mootness challenge." (*Ibid* [emphasis added].)

Unlike in *D.P.*, the record here shows that the allegation has been or will be forwarded to the DOJ for inclusion in the CACI. Again, the Department is required by law to report allegations of "child abuse" and "severe neglect." (*D.P., supra,* 14 Cal.5th at p. 281 [citing Penal Code § 11165.2(s)].) Here, the report and ultimate petition allegations were physical abuse resulting in physical injury which clearly falls into the definition of "child abuse and neglect." (1CT 9-12; Pen. Code § 11169(a).) Also unlike in *D.P.*, pursuant to Department policy a report of physical abuse must be forwarded to the DOJ for inclusion in the CACI. (*D.P., supra,* at p. 281.) The Los Angeles Department of Children and Family Services manual states:

> When a child abuse/neglect investigation concludes with a substantiated finding in the categories of sexual abuse, ***physical abuse***…the investigating CSW is responsible for forwarding the BCIA 8583, Child Abuse or Severe Neglect Form to the Department of Justice (DOJ). In turn, the DOJ records this information in the Child Abuse Central Index (CACI).

(Los Angeles DCFS Manual, *Reporting Substantiated Findings*, available at https://policy.dcfs.lacounty.gov/Policy?id=5775&searchText=concludes%20with%20a%20substantiated%20finding&SearchType=3 [as of July 1, 2024].) "A Court of Appeal will ordinarily presume an official duty has been regularly performed." (*D.P., supra,* 14 Cal.5th at p. 280 [citing Evid. Code § 664].) In *D.P.*, the father did not establish that the Department had an official duty and regardless the Department rebutted any presumption by submitting a sworn declaration explaining that a report had not been forwarded and would not be forwarded. (*Id.* at pp. 280, 281; compare with *In re Emily L.* (2021) 73 Cal.App.5th 1, 14 ["Because the conduct alleged here reasonably falls within the definition of child abuse, Mother is at risk of inclusion in CACI" and therefore the mother demonstrated sufficient prejudice].)[7] Further supporting the conclusion that Mother is listed in the CACI, she is unemployed as a direct result of these allegations.

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[7] The *In re Emily L.* court found "prejudice sufficient to warrant a discretionary review" relying upon the factors announced by an earlier case *In re Drake M.* (*In re Emily L., supra,* 73 Cal.App.5th at p. 15.) The *In re Drake M.* factors were: (1) "serves as the basis for dispositional orders that are also challenged on appeal"; (2) "could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings"; or (3) "could have other consequences for [the appellant], beyond jurisdiction." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762 *disapproved of by D.P.* (2023) 14 Cal.5th 266, *disapproved of by In re N.R.* (2023) 15 Cal.5th 520.) This Court clarified in *D.P.* that legal or practical consequences beyond jurisdiction are sufficient to avoid mootness and merits review is required. (*D.P., supra,* at p. 283.)

(1CT 185.) Mother's "previous employers do not allow their employees to have charges related to child abuse." (1CT 185.) For these reasons, the appellate court erred when it concluded that Mother had not supplied "proof of this allegation" of CACI inclusion. (Dismissal Order, p. 4 fn. 1.)

C. Review should be granted in order to clarify that when the Department is required to forward a report to the Department of Justice for inclusion in the Child Abuse Centralized Index, an appellate court should assume the Department has or will fulfill their legal obligation. The contrary rule enforced by the appellate court risks lengthy delays while appellants hunt down information the Department could easily supply. In addition, due to vagaries in the law and functioning of the Child Abuse Centralized Index appeals may be unjustly dismissed despite true prejudice.

In *D.P.*, this Court clarified that, "when a parent has demonstrated a specific legal or practical consequence that will be averted upon reversal, the case is not moot, and merits review is required." (*D.P., supra,* 14 Cal.5th at p. 283.) In other words, "the critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error." (*Id.* at p. 276 [citing *In re N.S.* (2016) 245 Cal.App.4th 53, 60].) Where an appellant is or could be included in the CACI and the challenged petition allegations will prevent him or her from challenging their inclusion in the CACI, the reviewing court can provide "effective relief." (See *Id.* at p. 276.)

The question posed in the present case is: how does an appellate court determine whether a parent has been or could be included in CACI? This Court has supplied the answer. This Court explained in *D.P.*:

> In sum, Father has not shown that he was included in the CACI or that he will be reported in the future based on the allegations at issue here. And even if the Department attempted to report him, Father has not shown that the allegations against him are reportable. In light of these layers of uncertainty, we find Father's CACI claim too speculative to demonstrate a specific legal consequence that a favorable judgment could redress.

(*D.P., supra,* 14 Cal.5th at p. 282.) Following that logic, where the law requires that an allegation be forwarded to the DOJ for inclusion in the CACI a reviewing court should assume that the parent is or will be included in the CACI. (See *ibid.*) Nevertheless, the Dismissal Order here shows that lower courts remain confused.

This Court should grant review to clarify that where the law requires an allegation to be reported to the DOJ, the appellate court should assume that the parent is or will be included in the CACI and therefore the appeal is not moot. The alternative approach utilized by the appellate court ignores both law and logic. Mother explained to the appellate court that both the law and Department policy requires the Department to report the allegations here. (Appellant's 4/24/24 Supplemental Letter Brief concerning mootness, pp. 3, fn. 1.) The Department never

denied that Mother has been included in the CACI. The Department could easily check. (*D.P., supra,* 14 Cal.5th at p. 279 [An investigating social worker has access to CACI].) The court ignored both the law and the Department's own policies and procedures and placed on Mother the heavy burden to prove definitively and rapidly that the Department had in fact forwarded the report to the DOJ.

A holding from this Court clarifying that appellate courts should look to the plain language of Penal Code section 11169, subdivision (a) to determine whether a particular report is *reportable* and as long as the allegation is *reportable* the appellate court should assume the Department has or will comply with the law. This approach will streamline jurisdictional appeals. Often appeals from jurisdiction/disposition are fully briefed and waiting for decision from the assigned panel when jurisdiction is terminated. At that point, additional time and resources are wasted to address questions of mootness and discretionary review. The appellate court often reviews all the briefing and supplemental briefing during this process. An ultimate dismissal saves little if any judicial resources and whatever is saved is not outweighed by the additional time and resources spent by appointed counsel. If appellate courts and practitioners understood that where the allegation(s) is *reportable*, merits review is mandatory parties and courts would preserve precious time and resources.

Further, Mother asserts that a rule focused on whether the parent has been able to prove present inclusion in the CACI

through documentation risks the unjust dismissal of numerous appeals. A parent must be notified of their inclusion in CACI. (*D.P., supra,* 14 Cal.5th at p. 279 [citing Pen. Code § 11169(c)].) Indigent parents often do not have stable housing and notices can easily be lost – either the notice never makes it to the parent or the parent later loses the paperwork. Parents may inquire "by sending a notarized and signed letter to the DOJ." (*Id.* at p. 280 [citing Pen. Code § 11170(f)(1)].)[8] This requirement places actual cost on an indigent parent. Additionally, the notarized statement requires a social security number or California Identification Number which may thwart an undocumented parent. (Pen. Code § 11170(f)(1).)[9] Regardless, it is unclear whether a parent could be told they are not included in the CACI simply because the substantiated report has not been processed by the DOJ yet. (Pen. Code § 11170(a)(1) [no specific timeline].) Further, there is no deadline in the relevant statutes addressing when the Department must forward a report. (Pen. Code § 11169(a).) It is also unclear how long a parent must wait for a response from the DOJ. (Pen. Code § 11170(f)(1).) Even if the DOJ responded to a parent and represented that the parent was not *presently* included in the CACI, no competent appellate counsel could

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[8] Child Abuse Central Index Self Inquiry Request, available at: https://oag.ca.gov/system/files/media/bcia4056.pdf

[9] AB 1766 passed in 2022 does not go into effect until 2027. (Frequently Asked Questions: California IDs for All – A rundown of California Assembly Bill 1766 and what it means for immigrants living in the Golden State, pp. 1, 3, available at: https://caimmigrant.org/wp-content/uploads/2023/02/faq_ab_1766_ca_ids_for_all_dec_2022-english.pdf [as of July 1, 2024].)

advise that the parent voluntarily abandon the appeal given the real possibility of future CACI inclusion. If any *reportable* offense was presumed to be reported, candor by the Department would be encouraged who could verify whether a parent is or will be included in the CACI.

Put simply, Mother proposes that parents and courts be able to rely upon the plain language of the relevant statutes. If the law says a report has been or will be forwarded to the DOJ for inclusion in the CACI then the appellate court should presume the Department's official duty is regularly performed. (Evid. Code § 664.) An alternative approach is nonsensical and places undue burden on indigent parents to hunt down information that the Department has at its fingertips; this approach would also cause significant delays. Further even if a parent is not presently included in the CACI, that parent has no protection from future inclusion after an appeal is dismissed.

Conclusion

For the foregoing reasons review should be granted to determine whether Mother's jurisdictional appeal is moot. Alternatively, the matter should be remanded back to the appellate court with instructions to address the merits of Mother's appeal.

DATED: July 2, 2024

Respectfully submitted by,

/S/

Sean Burleigh, Attorney for Appellant

CERTIFICATE OF WORD COUNT

The foregoing petition contains 4,871 words (excluding tables, cover information, signature blocks, certificates, proofs of service and any supporting documents). This word count is based on the software utilized to draft this brief.

Executed on July 2, 2024 at Tucson, AZ.

Respectfully submitted by,

/S/

Sean Burleigh, Attorney for Appellant

Appendix A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL – SECOND DIST.
FILED
May 31, 2024
EVA McCLINTOCK, Clerk
mfigueroa Deputy Clerk

In re S.R. et al., Persons Coming Under the Juvenile Court Law.	B326812
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.F., Defendant and Appellant.	Los Angeles County Super. Ct. No. 22CCJP03750A, B ORDER DISMISSING APPEAL

Juvenile dependency proceedings were prompted by a physical altercation between S.F. (Mother) and her two eldest daughters, ages 16 and 22. As a result of the physical violence between Mother and her children, the Los Angeles Department of Children and Family Services (DCFS or the Department) filed a petition alleging that the 16-year-old daughter and Mother's third and youngest daughter were at risk of serious physical and emotional harm because Mother struck the 16-year-old daughter on the head with her fist, struck her body with the pole end of a metal shovel, and brandished a knife. It was also alleged that mother was unable and unwilling to provide the youngest daughter, who was developmentally disabled, with ongoing care and supervision. The final allegation was that Mother was a current daily user of marijuana.

At the combined jurisdictional/dispositional hearing on January 23, 2023, the parties agreed that Mother was defending herself from her two eldest daughters who angrily came to her home ready to physically attack her because she had asked the adult daughter to move out of the house. The issue before the juvenile court was whether Mother's use of force to defend

herself was reasonable. The juvenile court found "Mother's reaction in this incident was not reasonable and longer than the perceived threat lasted. [¶] I would imagine there was a lot of disrespectful language that was directed at mother, but the court does not find that her grabbing a shovel and hitting [the 16 year old], leaving a mark on her, and, then, grabbing a knife and threatening to kill them was justified; and, in fact, her actions escalated the situation. [¶] I do believe the crux of this case is anger management issues that the Mother needs to continue to address in DCFS-approved programs." The court sustained the petition as it related to the physical violence between Mother and her children. The court dismissed the allegations that Mother abused marijuana and was unwilling to care for the children.

As to disposition, the juvenile court removed the children from Mother's home, ordered Mother to participate in individual counseling and conjoint counseling with the children and ordered monitored visitation.

Mother filed a timely notice of appeal on February 6, 2023. At the six-month review hearing on July 24, 2023, the juvenile court returned both children to Mother. (We grant appellant's two requests for judicial notice of the minute orders returning the children to her custody and terminating jurisdiction with a juvenile custody order. We also grant appellant's request to take additional evidence, which we deem a motion to take judicial notice.) The children remained dependents of the court and Mother was ordered to comply with family maintenance orders, including participation in family preservation, cooperating with unannounced home visits, conjoint counseling, and excluding the 22-year-old daughter from the home. On February 1, 2024, the juvenile court terminated jurisdiction with a juvenile custody order giving Mother joint legal custody with Father and sole physical custody with unmonitored visits for Father.

On April 5, 2024, we advised the parties that we were considering dismissal of the appeal as moot and invited supplemental briefing on the issue. Both parties filed supplemental briefs which we have reviewed and considered.

DISCUSSION

Mother contends that the juvenile court erroneously assumed jurisdiction over her two youngest daughters and erroneously removed them from her custody. As set out above, the juvenile court returned the children to Mother on July 24, 2023.

The Department contends that Mother's appeal is moot because now that the children are back in Mother's custody, she has obtained the relief she seeks on appeal. We agree Mother's appeal is moot.

The governing principles are described in *In re D.P.* (2023) 14 Cal.5th 266 (*D.P.*). "[W]hen a parent has demonstrated a specific legal or practical consequence that will be averted upon reversal, the case is not moot, and merits review is required. When a parent has not made such a showing, the case is moot, but the court has discretion to decide the merits nevertheless." (*Id.* at p. 283.)

Here, Mother argues that appeals from removal orders present issues of public importance as they implicate the overarching goals of the dependency system: to provide maximum safety and protection for children with a focus on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. (*D.P., supra*, 14 Cal.5th at p. 286.) She also contends that mooting appeals where parents have successfully regained custody of their children will mean erroneous separation of families will go "forever un-remedied." Mother argues that in the "event of any future removal, the dispositional orders could deprive Mother of any further reunification services." Finally, Mother posits that when and how to start the clock on the six months of reunification services to which she was entitled is an issue that should be decided on this appeal.

We are not persuaded these contentions should be decided in the context of this case. In *D.P.*, the Supreme Court discussed a nonexhaustive list of factors for assessing whether a court should exercise discretionary review of a moot appeal. (*D.P.*, *supra*, 14 Cal.5th at pp. 285–287.) These include whether the challenged jurisdictional finding could be prejudicial to the appellant in future dependency proceedings (*id.* at p. 285); whether the finding is based on particularly pernicious or stigmatizing conduct (*id.* at

pp. 285–286); and whether the case became moot due to prompt compliance by parents with their case plan (*id.* at p. 286).

D.P. instructs us to consider all relevant factors, the totality of the evidence, and the overarching goal of the dependency system to safeguard children, with a focus on preserving the family and the child's well-being. (*D.P.*, *supra*, 14 Cal.5th at p. 286.) Here, the court ordered Mother to continue to participate in services after it returned the children to her, so whether reunification services must be offered as a matter of law is not her issue. The jurisdictional finding is limited to one event started by the children's attempt to physically harm their mother, and the juvenile court made no findings of stigmatizing or pernicious conduct.[1] Whether the findings could be prejudicial to Mother in future dependency proceedings is speculative. Indeed, the juvenile court acknowledged that Mother was defending herself from the children and found fault only in the excessive nature of her response. We recognize, as will courts in the future (if there are future proceedings) that Mother immediately cooperated with the Department in her efforts to regain custody of her children. We see no reason to exercise our discretion to consider the merits of Mother's moot appeal.

The appeal is dismissed as moot.

Stratton Grimes Viramontes

STRATTON, P. J. GRIMES, J. VIRAMONTES, J.

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[1] In her supplemental brief, Mother urges us to reach the merits because she may have been reported to the statewide Child Abuse Centralized Index (CACI). Without proof of this allegation, we decline to act upon it.

PROOF OF SERVICE
IN THE SECOND DISTRICT COURT OF APPEAL

CASE NAME: *In re Saniyah R., et al.*
TRIAL COURT CASE NO.: 22CCJP03750A/B
APPELLATE COURT CASE NO.: B326812

I, Sean Burleigh, declare and state:

That I am not a party to the within action; that I am an attorney admitted to practice law in the State of California appointed by this Court to represent appellant.

That on July 2, 2024, I served the following:

Appellant's Petition for Review

Upon the persons or organizations listed below electronically. I utilized service through the true filing electronic system.

California Appellate Project, Capdocs@lacap.com
Lianna Karchikyan, Karchikyan1@ladlinc.org
County Counsel, appellate@counsel.lacounty.gov
Christopher Kim, Kimc@clcla.org
Superior Court, JuvJoAppeals@lacourt.org
Appellate court, through truefiling

Upon the persons or organizations listed below, by placing this document in the mail addressed to:

Appellant – address on file

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 2, 2024 at Tucson, Arizona.

/S/
Sean Burleigh

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 7/2/2024 by Dianna Urzua, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Saniyah R., et al.**
Case Number: **TEMP-QHW253QZ**
Lower Court Case Number:

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

2. My email address used to e-serve: **saburleigh@gmail.com**

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

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7/2/2024
Date

/s/Sean Burleigh
Signature

Burleigh, Sean (305449)

Last Name, First Name (PNum)

Law Office of Sean Burleigh

Law Firm