

Case No. 923-2015

IN THE

Supreme Court of the State of Whittier

January Term 2016

MARTA DOMINGUEZ,
Petitioner,

v.

STATE OF WHITTIER,
Ms. Kathryn Chandler
Dir. of the Whittier
Dep't of Child Welfare
Respondent.

ON WRIT OF CERTIORARI
TO THE STATE OF WHITTIER COURT OF APPEAL

BRIEF FOR THE RESPONDENT

January 5, 2016

Team #25
Brief for Respondent

QUESTIONS PRESENTED

- I. Did the Juvenile Court properly take jurisdiction of Jasmine, adjudicate her neglected and abandoned, and make an order for Special Immigrant Juvenile Status, in light of the fact that Ms. Dominguez had limited correspondence with Jasmine?

- II. Did the Juvenile Court properly terminate Ms. Dominguez's reunifications services, finding that the Department of Child Welfare made reasonable efforts towards reunification?

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OPINION BELOW

The unreported opinion of the State of Whittier Court of Appeal appears on pages 1-14 of the record. *Marta Dominguez v. State of Whittier* (Whit. Ct. App. Nov. 16, 2015), *cert. granted* (923-2015) (Whit. Nov. 16, 2015).

STATEMENT OF JURISDICTION

This Court granted the petition for writ of certiorari on November 16, 2015 pursuant to 28 U.S.C. § 1257.

STATEMENT OF THE CASE

Preliminary Statements

On January 29, 2014, the Jennings County Juvenile Court detained Jasmine pursuant to Whittier Juvenile Code §§ 100(b) and 100(g). Record (“R”) at 4. The Department of Child Welfare (“DCW”) authorized Ms. Ortiz as Jasmine’s caretaker. R. at 4.

On February 28, 2014, the court conducted the adjudication and disposition hearings. R. at 4. The court sustained the findings of neglect and abandonment pursuant to Whittier Juvenile Code §§ 100(b) and 100(g), and adjudicated Jasmine a dependent of the Juvenile Court. R. at 4. The court also ordered reunification services, per Ms. Dominguez’s request. R. at 5.

At the sixth month hearing in August 2014, the court addressed Ms. Dominguez’s failed attempts at reunification. R. at 5. In February 2015 at the twelve-month hearing, the Juvenile Court found that Ms. Dominguez had made some progress, but it also found that the DCW made reasonable efforts towards reunification, and accordingly terminated Ms. Dominguez’s reunification services. R. at 5. The court also made the required findings for Special Immigrant Juvenile Status (“SIJS”) pursuant to federal law. R. at 7. Ultimately, the court granted legal guardianship of Jasmine to Ms. Ortiz. R. at 5.

Ms. Dominguez timely appealed both the findings of abandonment and its correlation to SIJS, and the court’s termination of her reunification services. R. at 8. The court of appeal affirmed. R. at 14. Ms. Dominguez filed for writ of certiorari, which was granted on November 16, 2015.

Statement of the Facts

On November 1, 2000, Jasmine Dominguez was born to Marta Dominguez in Guatemala. R. at 1. Jasmine’s father had been killed before Jasmine was born in a shooting in their

neighborhood. R. at 1. At Jasmine's birth, doctors in Guatemala diagnosed Jasmine with a rare heart condition and advised Ms. Dominguez to take her daughter to the United States for advanced health care, which was not provided in Guatemala. R. at 1. By 2002, Ms. Dominguez saved enough money for plane tickets to the United States and obtained visas for herself and Jasmine. R. at 2. They traveled to Jennings County to live with Ms. Dominguez's sister, Ana Ortiz. R. at 2. Ms. Ortiz lives in a safe neighborhood in a 2-bedroom apartment and works as a nurse. R. at 2.

On January 30, 2002, only ten days after Ms. Dominguez and Jasmine arrived in the United States, Jasmine went into cardiac arrest. R. at 2. She was taken to Jennings County Medical Center where she had life saving surgery. R. at 2. In June 2002, Jasmine's health was stable but she required ongoing care. R. at 2. However, Jasmine's and Ms. Dominguez's visas were expiring so Ms. Dominguez left Jasmine with Ms. Ortiz and returned to Guatemala. R. at 2. Ms. Dominguez told Ms. Ortiz that she would return as soon as she could renew her visa. R. at 2. Ms. Ortiz continued to care for Jasmine while Ms. Dominguez was out of the country by providing Jasmine with her medications and taking her to all her monthly doctor appointments. R. at 2. While in Guatemala, Ms. Dominguez only called her daughter once a year on Christmas and sent a birthday card on Jasmine's birthday. R. at 2. She never inquired about Jasmine's health or sent any money to help pay for Jasmine's care. R. at 2.

Jasmine returned to Guatemala in 2005 when her health was stable. R. at 2. While in Guatemala, homelessness plagued Jasmine and Ms. Dominguez. R. at 2. Ms. Dominguez was jobless, and Jasmine did not receive any medical care, and only attended school occasionally. R. at 2. In January of 2013, Jasmine's health deteriorated and her doctors in Guatemala, fearing that

Jasmine's heart was failing, advised Ms. Dominguez to send Jasmine back to the United States for medical care. R. at 3.

Once back in Ms. Ortiz's care, Jasmine received the much needed medical care and was enrolled in school. R. at 3. But within weeks, Jasmine had to undergo open-heart surgery to increase her heart function. R. at 3. After the surgery, doctors told Ms. Ortiz that though the surgery was a success Jasmine's heart would eventually fail and that she would need a heart transplant. R. at 3. Ms. Dominguez remained in Guatemala. The transplant committee screened Jasmine for a new heart, but denied her the transplant because of her immigration status. R. at 3. Ms. Dominguez finally obtained a six-month visa and returned to United States. R. at 3.

But after only a month, Ms. Dominguez became overwhelmed by Jasmine's health condition and left in the middle of the night without saying goodbye to Jasmine or Ms. Ortiz. R. at 3. Ms. Ortiz did tell Jasmine, who was upset at her mother's abrupt departure, that her mother would return, but Ms. Ortiz did not know if that was true. R. at 3.

In January 2014, Jasmine had difficulty breathing while at school and was taken to Jennings County Medical Center where she was stabilized. R. at 3. It took several hours before Ms. Ortiz could be located by the hospital social worker. R. at 3. At this time the DCW was informed that Jasmine was alone in the hospital with no legal guardian in the country. R. at 3. Sam Wells, a social worker from the DCW, began to investigate. R. at 3.

In Mr. Wells' interview with Ms. Ortiz, he learned that Ms. Dominguez had left Jasmine with no notice and failed to send any financial support. R. at 4. When Mr. Wells failed to contact Ms. Dominguez after five phone calls and two letters, he filed a petition with Jennings County Juvenile Court alleging that Jasmine had been abandoned and neglected by her mother pursuant to Whittier Juvenile Code §§ 100(b) and (g). R. at 4. The Court appointed Jeffrey Stone to

represent Jasmine, and Maria Sanchez to represent Ms. Dominguez. R. at 4. Ms. Dominguez was finally located in a rural part of Guatemala, living with a new boyfriend. R. at 4. Ms. Ortiz was appointed caretaker for Jasmine. R. at 4.

On February 28, 2014, the Juvenile Court conducted the adjudication and disposition hearings and found that Jasmine had been neglected and abandoned and declared Jasmine a dependent of the Juvenile Court. R. at 4. Ms. Dominguez was found to have neglected and abandoned Jasmine because she did not provide financial support or maintain a parental relationship with Jasmine. R. at 5. Ms. Sanchez then asked, on behalf of Ms. Dominguez, for reunification services. R. at 5.

The reunification services ordered Ms. Dominguez to maintain regular contact with Jasmine by phone or mail, maintain contact with Mr. Wells, and attend classes on parenting medically fragile children and employment skills. R. at 5. The court indicated that these should be done from Guatemala if Ms. Dominguez was unable to return to the United States. R. at 5.

In August 2014, at Ms. Dominguez's six-month review hearing, Mr. Wells informed the court that Ms. Dominguez wanted to be reunited with her daughter and was attempting to obtain a visa to return to the United States. R. at 5. However, Ms. Dominguez was having difficulties complying with the court order because the services required were not offered in Guatemala. R. at 5. Ms. Dominguez still had not contacted Jasmine since July 2013. R. at 5. Mr. Wells was attempting to set up a call schedule, but this was proving to be challenging because Ms. Dominguez did not have regular access to a phone or internet. R. at 5. Mr. Stone asked the court for an order authorizing Special Immigration Juvenile Status (SIJS) for Jasmine. R. at 5. The Juvenile Court ruled that it would need more time to see if reunification was possible, so it

granted a six-month extension. R. at 5. Ms. Sanchez informed Ms. Dominguez that she had only six more months to comply with the reunification order. R. at 6.

Over the next six months, Ms. Dominguez contacted her daughter three times from the church that she had been living in. R. at 6. Ms. Dominguez had a hard time finding work, went without food at times, and still had not sent any money for Jasmine's care. R. at 6. Ms. Dominguez did, however, stay in contact with Mr. Wells. R. at 6. Ms. Dominguez reported that she attended three classes on basic parenting skills but could not find any classes on employment skills or parenting medically fragile children. R. at 6.

At the twelve-month review in February 2015, Ms. Dominguez appeared by phone from Guatemala. R. at 6. Mr. Wells reported on the difficulties that Ms. Dominguez had been having in Guatemala regarding maintaining employment and finding required classes. R. at 6. He also informed the court that Ms. Ortiz had grown frustrated with Ms. Dominguez's lack of support for Jasmine, and that Jasmine was doing well living in Ms. Ortiz's home. R. at 6.

Jasmine testified to how much she enjoyed living with Ms. Ortiz, how much safer it was there, how she could get reliable health care, and how much she liked attending a good school. R. at 6. Jasmine's doctor submitted a letter stating that Jasmine would likely die if she were to return to Guatemala because her medication was not available there. R. at 6.

Even though the court found that Ms. Dominguez had made some progress toward reunification, not enough progress had been made and reunification services were terminated given that DCW had made reasonable efforts towards reunification. R. at 6. The Juvenile Court set a plan for permanent legal guardianship of Jasmine by Ms. Ortiz. R. at 6. Ms. Sanchez objected to this order and stated that the DCW's efforts were not reasonable because Ms.

Dominguez was out of the country and that her failure to comply with the reunification plan was due to no fault of her own. R. at 6-7. The court overruled the objection. R. at 7.

SUMMARY OF ARGUMENT

The Juvenile Court properly took jurisdiction of Jasmine, adjudicated her neglected and abandoned, and made an order for SIJS. The court found that Ms. Dominguez failed to provide proper support and that such pattern of neglect and abandonment would likely continue. As such, the court held that Jasmine qualified for SIJS pursuant to federal law. Termination of Ms. Dominguez's parental rights and the order of SIJS was in Jasmine's best interest, allowing her to live a healthy, prosperous lifestyle in the United States.

The Juvenile Court also properly terminated reunification services because the DCW had made reasonable efforts towards reunification, yet Ms. Dominguez failed to comply with the plan. The DCW provided reasonable reunification services because it acted in earnest to provide a plan tailored to remedy Ms. Dominguez's obstacles with neglect and abandonment. The DCW also maintained continuous contact with Ms. Dominguez in order to assist her in achieving the requirements of her reunification plan. Although reasonable measures were taken, Ms. Dominguez did not comply with the plan and failed to demonstrate the capacity to provide Jasmine with proper care and support. Accordingly, the court's findings should be affirmed because they were supported by substantial evidence.

STANDARD OF REVIEW

The decision to terminate parental rights and reunification services is reviewed on a sufficiency of the evidence standard. *In re Heidi T.*, 87 Cal.App.3d 864, 871 (1978). The lower court's findings will only be overturned when such findings are found to be clearly erroneous. *In re Daniel C.*, 63 Conn.App. 339, 496 (2001). The reviewing court views the evidence in the light

most favorable to the respondents and must “draw all legitimate inferences in support of the findings of the Juvenile Court.” *In re Alvin R.*, 108 Cal.App.4th 962, 971 (2003).

ARGUMENT

I. THE JUVENILE COURT PROPERLY TOOK JURISDICTION OF JASMINE, ADJUDICATED HER NEGLECTED AND ABANDONED, AND MADE AN ORDER FOR SPECIAL IMMIGRANT JUVENILE STATUS.

There is substantial evidence in the record to uphold the Whittier Court of Appeal’s finding that the Juvenile Court properly took jurisdiction of Jasmine, adjudicated her neglected and abandoned, and made an order for Special Immigrant Juvenile Status. Jasmine was adjudicated dependent under § 100 of the Whittier Juvenile Code at the first Juvenile Court hearing in February 2014. R. at 4. Following that adjudication, Ms. Dominguez repeatedly failed to maintain a parental relationship with her child and failed to provide proper support. R. at 5. She demonstrated that this neglect and abandonment would continue, subjecting Jasmine to lifelong medical concerns. In February 2015, the Juvenile Court found that Jasmine qualified for SIJS pursuant to federal law. R. at 7. Termination of Ms. Dominguez’s parental rights and the order of SIJS was in Jasmine’s best interest, allowing her to live a healthy, prosperous lifestyle in the United States. As such, this Court should affirm the order to the appellate court.

A. Substantial Evidence Supports The Juvenile Court’s Determination That Jasmine Was Neglected And Abandoned By Ms. Dominguez.

The Juvenile Court had adequate basis for exercising jurisdiction over Jasmine because there is substantial evidence to demonstrate that Jasmine was neglected and abandoned by her mother. The decision of the Juvenile Court to take jurisdiction over a neglected child is governed by § 100 of the Whittier Juvenile Code. R. at 4.

1. Jasmine is a neglected and abandoned child pursuant to Whittier Juvenile Code § 100(b) because Ms. Dominguez failed to supervise Jasmine and failed to protect her from harm.

Pursuant to Whittier Juvenile Code § 100(b), a child shall be declared a dependent of the court if the child has suffered, or if there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child. Whit. Juvenile Code § 100(b). In any custody proceeding, the court must take into account the competing interests involved: that of the parent to maintain family integrity, and that of the state to protect the interest of the minor child. *In re Juvenile Appeal*, 455 A.2d 1313, 1319 (Conn. 1983). However, “the right to family integrity is not absolute.” *In re Pedro*, 154 Conn.App. 517, 537 (2014). Courts have long recognized that the state’s right to intervene in family matters is justified when it is found to be in the best interest of the child. *Id.* Such intervention is necessary when the child has been neglected or uncared for. *Id.*

Here, Ms. Dominguez’s failure to treat Jasmine’s life threatening medical condition constituted neglect under Section 100(b). Ms. Dominguez argues that because she made an appropriate plan for Jasmine’s care, Jasmine’s circumstances do not fall within Whittier Juvenile Code § 100(b). R. at 8. In support of her argument, Ms. Dominguez asked the Juvenile Court to note the outcome in *In re S.D.*, 99 Cal.App.4th 1068 (2002). *Id.* In *S.D.*, a California Appellate Court found that the juvenile court had no basis to take jurisdiction over S., the child. The court based its determination on the fact that the mother was able to arrange for S.’s care during the mother’s incarceration. *Id.* at 1077. The court noted that it was irrelevant whether the mother had arranged for S.’s care at the time of her incarceration. Rather, the issue was whether, as of the time of the jurisdictional hearing, the mother *could arrange* for S.’s care. *Id.* at 1077-78.

The Whittier Court of Appeal properly determined that *S.D.* is distinguishable from this case for at least two reasons. First, unlike the mother in *S.D.* who was in the United States and could be contacted, here Ms. Dominguez abandoned Jasmine and returned to Guatemala where

she could not be reached. R. at 9. At the time of the jurisdictional hearing, the social worker from the Department of Child Welfare unsuccessfully attempted to reach Ms. Dominguez five times by phone and two times by mail to arrange for Jasmine's care after Jasmine had been hospitalized. R. at 4. Jasmine's health and welfare was in substantial risk of harm. Rather than providing her with proper care and supervision, Ms. Dominguez disappeared to Guatemala because she "became overwhelmed by Jasmine's health condition." R. at 3. Because Ms. Dominguez was unable to arrange for Jasmine's care at the time of the jurisdictional hearing, the Whittier Court of Appeal properly determined that Jasmine was a dependent of the court.

Second, unlike the child in *S.D.* who was "healthy and happy", Jasmine suffers from a rare cardiac condition, which has put her in and out of the hospital all her life. *Id.* Jasmine has suffered serious physical harm due to Ms. Dominguez's inability to provide adequate care. She is a young child with complex medical needs and is dependent on her caregivers to meet those needs. In January 2013, Jasmine underwent open-heart surgery. R. at 3. A mere six months after the surgery, Ms. Dominguez left for Guatemala in the middle of the night without saying goodbye to Jasmine because she was overwhelmed by Jasmine's condition. *Id.* Ms. Dominguez's actions demonstrate that she is not capable of protecting a child with such acute medical needs. Her pattern of neglect is so egregious that it poses a serious threat to Jasmine's well being. Accordingly, the Whittier Court of Appeal properly found that Jasmine's circumstances fall within Whittier Juvenile Code § 100(b).

Ms. Dominguez contends that Jasmine was not neglected or abandoned because Ms. Ortiz gladly accepted her role as caretaker for Jasmine. R. at 9. However, Ms. Dominguez's argument lacks merit. Substantial evidence in the record demonstrates that Ms. Dominguez left Jasmine in the United States without a realistic plan that would ensure that Jasmine would

receive proper medical care. Similarly, the court in *In re Pedro J.C.* held that the respondent's actions in encouraging the child's arduous, illegal journey from Guatemala to the United States "can be compared to the action of a mother who abandons her children on a doorstep, leaving him dependent on the kindness of strangers, and exposing him to unknown risks without a realistic plan to insure his welfare and protection." *In re Pedro J.C.*, 154 Conn.App. 517, 535 n. 15 (2014). As such, the Juvenile Court properly found that Jasmine was abandoned.

2. Jasmine is a neglected and abandoned child pursuant to Whittier Juvenile Code § 100(g) because Ms. Dominguez failed to maintain a parental relationship with Jasmine.

Under § 100(g) of the Whittier Juvenile Code, a child will fall within the jurisdiction of the juvenile court if the child has been left without reasonable support and the parent has failed to maintain regular contact with the child, including normal supervision. Whitt. Juvenile Code § 100(g). Abandonment occurs "where a parent fails to visit a child, does not display love or affection for the child, [and] does not personally interact with the child." *In re Justin F.*, 137 Conn.App. 296, 301-302 (2012). A parent must maintain a reasonable degree of interest or concern in the welfare of his or her child. *Id.*

Ms. Dominguez argues that she had no choice but to leave Jasmine because her visa was expiring and thus she did not create the circumstances that resulted in the Juvenile Court's jurisdiction. R. at 9. The Whittier Court of Appeal properly determined that Ms. Dominguez's argument was untethered to any evidence in this case and that Jasmine was in fact abandoned pursuant to Section 100(g). *Id.* In *In re Oreoluwa O.*, the father made a similar and equally unsuccessful argument. *In re Oreoluwa O.*, 157 Conn.App. 490 (2015).

There, the mother traveled to the United States while pregnant for the purpose of birthing their child, Oreoluwa, in the United States. *Id.* at 493. After he was born, Oreoluwa was

diagnosed with several complex heart conditions that prevented him from traveling to Nigeria to be united with his father. The father failed to maintain contact with his son. The Connecticut court had the father's parental rights terminated on the grounds that he had abandoned the child because he had no ongoing parent-child relationship. *Id.* at 495-496. The father, who lived in Nigeria, filed an appeal arguing that he was unable to obtain a visa to travel to the United States and that he did nothing to create separation or lack of parental involvement. *Id.* at 503. The appellate court rejected the father's argument, holding that he had abandoned Oreoluwa. *Id.* at 495. The court reasoned that absence from the country does not excuse a parent from doing all that he can to "demonstrate a reasonable degree of interest, concern and responsibility" in his child. *Id.* at 496.

Here, like the father in Oreoluwa, Ms. Dominguez failed to maintain contact with her child. In *Oreoluwa*, the court found that the father had not "expressed his love and affection to the child on a consistent and continuing basis." *Id.* at 469. Similarly, Ms. Dominguez only had limited correspondence with Jasmine and did not even inquire about Jasmine's health. R. at 5. Such conduct constitutes abandonment under Section 100 (g). Whit. Juvenile Code § 100(g); See also *In re Justin F.*, 137 Conn.App. 296, 302 (2012) (holding that a sporadic showing of the indicia of interest or concern for the welfare of a child constituted abandonment). Most notably, Ms. Dominguez disappeared from the United States, leaving Jasmine without any notice. R. at 3. The totality of the evidence thus supports the Appellate Court's finding that Ms. Dominguez abandoned Jasmine.

3. California law also supports the Juvenile Court's finding that Jasmine has been abandoned by Ms. Dominguez.

The Whittier Court of Appeal properly determined that California law also supports the finding that Ms. Dominguez abandoned her daughter. Pursuant to § 7822(a)(2) of the California

Family Code, a child may be freed from parental custody where the child has been abandoned. The elements of abandonment are: (1) the child must be “left” by parent in care and custody of another person for a period of six months; (2) child must be left without any provision for support or without communication from parent; and (3) parent must have acted with the intent to abandon child. *In re Jacklyn F.*, 114 Cal.App.4th 747, 754 (2003).

First, the court properly determined that Jasmine was “left” by Ms. Dominguez. A parent “leaves” a child when she voluntarily surrenders the child to another person’s care and custody. *In re Amy*, 132 Cal.App.4th 63, 69 (2005). Here, Ms. Dominguez willingly left Jasmine in the care and custody of Ms. Ortiz for the last two years. Such time exceeds the six-month period allocated by both *Jacklyn F.* and Whittier Juvenile Code § 100(g). In January 2014, the Juvenile court ordered Ms. Ortiz as the legal caretaker for Jasmine. R. at 4. Accordingly, substantial evidence establishes that Jasmine was “left” by her parent.

Second, the court appropriately found that Jasmine has largely been without provision, support, or communication from Ms. Dominguez. In July 2013, Ms. Dominguez voluntarily left the United States and returned to Guatemala because she was “overwhelmed by Jasmine’s health condition.” R. at 3. While she was in Guatemala, Ms. Dominguez made only token efforts to communicate with Jasmine. The California Court of Appeal in *Adoption of Oukes*, has held that if the evidence indicates that a parent has made “only token efforts to support or communicate with the child, the court may declare the child abandoned by such parent.” *Adoption of Oukes*, 14 Cal.App.3d 459, 466 (1971). In *Oukes*, the mother opposed the adoption of her children, arguing that the evidence failed to prove that she had abandoned her children. *Id.* at 467. The court disagreed and found that three communications with the child by letter and phone over a one-year period constituted “token communications” and thus supported the finding of abandonment.

Id. at 466. The court also noted that emotional and mental strain does not constitute a legal excuse for failure to communicate. *Id.* at 467. Similar to the mother in *Oukes*, every year while in Guatemala, Ms. Dominguez sent Jasmine a birthday card on Jasmine’s birthday and made a phone on Christmas. R. at 2. Beyond that however, Ms. Dominguez did not communicate with Jasmine, provide any financial support or inquire about Jasmine’s health. R. at 2.

Third, the court properly determined that Ms. Dominguez acted with the intent to abandon Jasmine. A parent’s “failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon.” Cal.Fam Code § 7822(b). Here, Ms. Dominguez failed to communicate with Jasmine on a regular basis and made no genuine efforts to maintain a parent-child relationship. R. at 5. Such evidence, coupled with the fact that Ms. Dominguez left Jasmine in the middle of the night without any notice establishes intent to abandon. Although Ms. Dominguez purportedly intended to return to the United States after leaving Jasmine, the parent need not intend to abandon the child permanently; rather, it is sufficient that the parent had the intent to abandon the child during the statutory period. *See In re Amy A.*, 132 Cal.App.4th 63, 67 (2005); *see also In re Daniel M.*, 16 Cal.App.4th 878, 884 (1993). (holding that Congress clearly did not intend to allow an absent parent to “desert his child for years at a time without fear of [losing] parental rights simple because he had the intent to reestablish the parent-child relationship at some indefinite time in the future”). Accordingly, substantial evidence supports the Whittier Court of Appeal’s finding that Jasmine was abandoned pursuant to *Jacklyn F.* and § 7822(a)(2) of the California Family Code.

B. The Juvenile Court Made A Proper Order For Special Immigrant Juvenile Status Pursuant To 8 U.S.C. § 1101(a)(27)(J).

Special Immigrant Juvenile Status provides a pathway for undocumented children to obtain lawful permanent residency when they are vulnerable due to neglect or abuse and when it

would not be in their best interest to return to their home country. *See* 8 U.S.C. § 1101(a)(27)(J). SIJS allows a juvenile immigrant to remain in the United States if authorities conclude that certain statutory conditions are met. The federal government tasks state courts with making three findings before a child can apply for SIJS: (1) that the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of an agency or department or an individual or entity appointed by a state or juvenile court; (2) that the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis; and (3) that it is not in the child's best interests to be returned to his or her country of nationality or last habitual residence. *Id.* Congress created SIJS classification to "protect abused, neglected, and abandoned unaccompanied minors through a process that allows them to become permanent legal residents." *In re Y.M.*, 207 Cal.App.4th 892, 915 (2012). Here, the Juvenile Court considered each of the SIJS criteria and properly made an order for Special Immigrant Juvenile Status.

1. Jasmine is dependent upon the Juvenile Court because she has been adjudicated neglected and abandoned.

First, the Juvenile Court found that Jasmine is and has been a dependent child because she has been adjudicated neglected and abandoned pursuant to Whittier Juvenile Code §§ 100(b) and 100(g). R. at 7. Ms. Dominguez argues that because Jasmine was purportedly neither neglected nor abandoned, that Jasmine does not qualify for SIJS. R. at 8. Ms. Dominguez's assertion, however, is not grounded in law or in fact. For purposes of SIJS, the facts demonstrate that Ms. Dominguez has neglected and abandoned Jasmine by leaving her in the United States and failing to provide financial or emotional support. Therefore, Jasmine has properly been deemed a dependent child.

2. Reunification with Ms. Dominguez is not viable because Jasmine has been neglected and abandoned.

Second, the Juvenile Court appropriately determined that because Jasmine is a neglected and abandoned child, reunification with Ms. Dominguez is not viable. R. at 7. Special Immigrant Juvenile Status was designed by Congress to protect the most vulnerable population of immigrant children, like Jasmine, who are unable to reunify with one or both parents due to abuse, neglect or abandonment and allow them to legally remain in the United States. 8 U.S.C. § 1101(a)(27)(J). Here, the DCW attempted to reunify Jasmine and her mother but reunification efforts were terminated when Ms. Dominguez failed to meet any of the court ordered steps in her reunification plan. R. at 6. Ms. Dominguez failed to contact her daughter on a regular basis, did not attend any of the required parenting classes, did not send any financial support for Jasmine's care, and most notably, failed to obtain a visa to return to the United States to be with her daughter who was unable to travel. R. at 5-6. As such, reunification is not viable.

3. It is in Jasmine's best interest to remain in the United States where she can obtain life saving medical care.

Finally, the Juvenile Court properly determined that it is not in Jasmine's best interest to return to Guatemala. R. at 7. In making the best interest determination, courts should consider: the child's health and safety, the parent child relationship, the home environment, the child's preferences, and opportunities for educational achievement. *See Loebel v. Loebel*, 77 Mass. App. Ct. 740, 747 (2010). In Jasmine's case every relevant factor indicates that it is in her best interest to remain in the United States.

In Guatemala, Jasmine lived in a dangerous environment that was injurious to her health and safety. R. at 1. When Jasmine returned to Guatemala in 2005, life was very difficult. Homelessness plagued Jasmine and Ms. Dominguez. R. at 2. If forced to return, Jasmine will

face living in a perilous neighborhood where her own father was killed in a shooting. R. at 1. Ms. Dominguez continues to struggle in Guatemala where she has a difficult time finding work and occasionally goes without food. R. at 6.

Additionally, no advanced medical care was available in Guatemala to properly treat Jasmine's rare cardiac condition. R. at 1. At Jasmine's birth, Ms. Dominguez was advised to take Jasmine to the United States. R. at 1. While in the United States, Jasmine's health was stabilized and remained stable under the care of Ms. Ortiz, who provided for all of Jasmine's medical needs. R. at 2. However, when Ms. Dominguez took Jasmine back to Guatemala in 2005, her health took a turn for the worse. R. at 3. Fearing heart failure, doctors advised that Jasmine return to the United States immediately for necessary medical care. R. at 3. Although Jasmine did receive open-heart surgery upon her arrival, doctors warned Ms. Ortiz that Jasmine's heart would eventually fail and that a transplant was required. R. at 3. Jasmine's doctor has even notified the court that "Jasmine would likely die if she returned to Guatemala." R. at 6. The transplant screening committee barred Jasmine from receiving a new heart until her immigration status changed. R. at 3. It is thus *imperative* that Jasmine be granted SIJS or she will not be able to obtain the life saving heart transplant that she needs.

Furthermore, if Jasmine were forced to return to Guatemala, she would face an uncertain future. In contrast, in the United States, Jasmine has been in the care of her aunt, Ms. Ortiz, who has provided financial support and ensured her health and safety. Ms. Ortiz works as a nurse and lives in a safe neighborhood in a 2-bedroom apartment. R. at 2. Ms. Ortiz has administered all of Jasmine's medication and taken her to all of her monthly appointments. In the United States, Jasmine attends school on a regular basis, but in Guatemala, Jasmine only occasionally went to school. R. at 2-3. Jasmine has testified "she liked living with Ms. Ortiz and that she felt she could

get reliable health care while living in Ms. Ortiz's home." She also testified "she did not want to return to Guatemala where she regularly witnessed violence and did not attend a good school."

R. at 6. The record is replete with evidence establishing that it is in Jasmine's best interest to stay in the United States. As such, the Juvenile Court properly determined that it was not in the best interest of Jasmine to return to Guatemala.

II. THE JUVENILE COURT PROPERLY TERMINATED REUNIFICATION SERVICES BECAUSE THE DEPARTMENT OF CHILD WELFARE MADE REASONABLE EFFORTS AT REUNIFICATION AND REUNIFICATION WOULD NOT BE IN JASMINE'S BEST INTEREST.

There is substantial evidence in the record to support the Whittier Court of Appeal's findings. Specifically, the court properly found that the Department of Child Welfare used reasonable efforts to reunify Jasmine and Ms. Dominguez and that the Juvenile Court properly terminated reunification services. R. at 6. Accordingly, this Court should affirm the Whittier Court of Appeal's findings.

A. The Department Of Child Welfare Used Reasonable Efforts To Reunify Jasmine And Ms. Dominguez.

Pursuant to the Adoption and Safe Families Act, reasonable reunification services are required to reunite children with their parents before parental rights may be terminated. 42 U.S.C. § 671 (15)(A). Although reasonableness is not defined by statute, the Supreme Court has held that the term "reasonable efforts" is "a directive whose meaning will obviously vary with the circumstances of each individual case." *Suter v. Artist M.*, 503 U.S. 347, 390 (1992).

However, in determining reasonable efforts to be made with respect to a child, "the child's health and safety shall be the paramount concern." 42 U.S.C. § 671 (15)(A). As such, although the State is required to make reasonable efforts to reunify parent and child, this duty does not extend indeterminately if not in the child's best interest.

Furthermore, a reasonable effort towards reunification is not required when the parent has subjected the child to aggravated circumstances. 42 U.S.C. § 671. The definition of aggravated circumstances may include, but is not limited to, abandonment, torture, chronic abuse, and sexual abuse. *Id.* Here, substantial evidence establishes that Ms. Dominguez subjected Jasmine to an aggravated circumstance by abandoning her. Although the DCW was under no federal obligation to create a reunification plan for Ms. Dominguez, it did so per Ms. Dominguez's request.

State courts have determined that services shall be found reasonable if the Department has: (1) identified the problems leading to the loss of custody and offered services designed to remedy those problems; and (2) maintained reasonable contact with the parents during the course of the service plan and made reasonable efforts to assist the parents. *In re Alvin R.*, 108 Cal.App.4th 962, 972 (2003) (referencing *In re Riva M.*, 235 Cal.App.3d 403, 414 (1991)). Here, substantial evidence supports the court's finding that the DCW used reasonable efforts to reunify Jasmine and Ms. Dominguez.

1. The DCW offered a reunification plan designed to remedy the problems, which lead to Jasmine's removal.

Ms. Dominguez's continuous pattern of neglect and abandonment was the motivating factor for Jasmine's removal. Pursuant to Whittier Juvenile Code § 100, Jasmine was declared a dependent of the court because she was neglected and abandoned. R. at 4. Ms. Dominguez's reunification plan was specifically tailored to address these issues. She was required to maintain regular contact with Jasmine, provide financial support and even take parenting class on how to care for a medically fragile child. R. at 5. As such, it is evident that the DCW acted in earnest in their efforts to create a reunification plan designed to remedy Ms. Dominguez's obstacles with neglect and abandonment.

2. The DCW maintained continuous contact with Ms. Dominguez and made reasonable efforts to offer her assistance.

Furthermore, the DCW also maintained continuous contact with Ms. Dominguez in order to assist her in achieving the requirements of her reunification plan. Ms. Dominguez argues that the DCW's efforts at reunifying her with Jasmine were not sufficient. R. at 12. She states that the DCW should have provided her with funds to use the phone and send letters, assisted her with obtaining a visa, and offered her required classes online. R. at 12. The court properly determined that Ms. Dominguez's argument had no merit. R. at 12.

In *Oreoluwa*, the father made similar and equally meritless arguments. *Oreoluwa*, 157 Conn.App. at 498. There, the father was living in Nigeria while his child resided in Connecticut. *Id.* at 493. He argued that the social services agency did not make reasonable efforts towards reunification before terminating his services. He claimed that the social services should have provided him with immigration counsel, facilitated Skype visitation, investigated the possibility of reunification in Nigeria, and established a plan that he would be able to satisfy. *Id.* at 498. The court acknowledged that the father's absence from the country had limited the type of services that the department had provided him. *Id.* at 495. The court agreed that, "when a parent is not available to participate in services, the reasonable of the department's efforts must be judged in that context." *Id.* However, the court ultimately rejected the father's argument holding that "reasonable efforts means doing everything *reasonable*, not everything *possible*." *Id.* at 498 (emphasis added).

Here, the DCW made reasonable efforts at reunification. Ms. Dominguez was offered similar, if not more, services than the father in *Oreoluwa*. In *Oreoluwa*, the state provided the father the contact information for the Nigerian consulate for immigration aid, maintained communication with him, and attempted, unsuccessfully, to set up visitation via Skype. *Id.* at

495. Here, the DCW social worker, Mr. Wells maintained regular contact with Ms. Dominguez. R. at 5. He was willing to work with Ms. Dominguez from afar to help set up a call schedule between Ms. Dominguez and Jasmine. R. at 5. When it became clear that Ms. Dominguez would need more time to comply with the reunification plan, Mr. Wells even recommended that the court offer Ms. Dominguez a sixth month extension to comply with the reunification order, something the father in *Oreoluwa* was not offered. R. at 5.

While Ms. Dominguez takes issue with the fact that her required classes were not offered online, this argument is misguided. Although the DCW may have been able to investigate the possibility of offering parenting classes online, Ms. Dominguez did not have access to a reliable phone or computer, nor could she be located on countless occasions. Therefore investigating the possibility of an online class would have been futile. The law does not require a futile act. *Oreoluwa*, 157 Conn.App. at 500.

B. The Juvenile Court Properly Terminated Ms. Dominguez's Reunification Services.

Not only were reasonable efforts made to reunify Ms. Dominguez and Jasmine, but the reunification plan was properly terminated when Ms. Dominguez failed to comply with the steps of the plan. The reunification plan given to Ms. Dominguez had two main elements: (1) taking a class on parenting medically fragile children and a class on employment skills; and (2) maintaining regular contact with Jasmine. R. at 5. Ms. Dominguez failed to comply with either of these elements. As such, this Court should affirm the appellate court's finding and find that reunification services were properly terminated.

1. Ms. Dominguez did not comply with her reunification plan because she failed to complete the required classes.

One component of Ms. Dominguez's reunification plan was to complete classes on employment skills and classes on parenting medically fragile children. R. at 5. Ms. Dominguez

did attend three classes on basic parenting skills but no classes on employment skills. In *In Interest of Angelica*, Maria was also required to take parenting classes, and was told that she would have to find the classes herself. *In re Interest of Angelica L.*, 277 Neb. 984, 996 (2009). The court found that the Department of Health and Human Services could have done more to assist Maria in taking the required parenting courses, but did not specify what more could have been done. *Id.* Here, offering the courses online could be a viable alternative but Ms. Dominguez did not have regular internet access to take these courses.

Additionally, the DCW did take some efforts to aid Ms. Dominguez in complying with the plan and yet Ms. Dominguez still failed. Ms. Dominguez was given a year to complete these required classes. Though these classes may not have been available to Ms. Dominguez in Guatemala, Ms. Dominguez did not take the initiative to work with DCW to find another way to complete this requirement. Ms. Dominguez did tell Mr. Wells that she was having trouble finding the required classes, but Mr. Wells was finding it impossible to set up a call schedule for Ms. Dominguez to speak with Jasmine, let alone set up some alternative method for Ms. Dominguez to complete the classes. R at 5.

As the court in *Oreoluwa* has stated, DCW should not be required to engage in a futile act. Even if the course could be offered online, Ms Dominguez did not have regular computer access nor was she willing to work with DCW to find an alternative method to complete the courses. As such, the Juvenile Court properly terminated Ms. Dominguez's reunification services because she could not comply the plan.

2. Ms. Dominguez did not comply with her reunification plan because she failed to maintain regular contact with Jasmine.

A key element of Ms. Dominguez's reunification plan was to maintain regular contact with Jasmine. Ms. Dominguez failed to do so. Ms. Dominguez did not contact her daughter for

over year after leaving Jasmine in the middle of the night a mere six months after Jasmine had open heart surgery. It was only after Ms. Dominguez was told that she had only six months to comply with her reunification plan that she attempt to create some contact with Jasmine. Even then, Ms. Dominguez merely called Jasmine mere three times over the course of those six months. R. at 5-6.

In *Oreoluwa*, the court terminated the father's reunification services because he had not done "all that he could to demonstrated a reasonable degree of interest, concern and responsibility for Oreoluwa." *Oreoluwa*, 157 Conn.App. at 496. Although the department had provided the father with information to facilitate the sending of letters, gifts, or cards to Oreoluwa, the father failed to do so. *Id.* at 505.

Ms. Dominguez, like the father in *Oreoluwa*, knew how to contact her daughter but chose not to until it became apparent to Ms. Dominguez that her reunification services may be terminated. R. at 6. Ms. Dominguez left Jasmine six months after having open-heart surgery in July of 2013 had no contact with her sick daughter until August 2014. R. at 4-5 During this time Jasmine was hospitalized for over 20 days and Ms. Dominguez failed to contact her even once. R. at 4-5. Ms. Dominguez only began making phone calls in August 2014 because her attorney, Ms. Sanchez, informed Ms. Dominguez that she only had six more months to comply with the reunification order. R. at 5-6. Even then, Ms. Dominguez maintained mere "token communication" by calling Jasmine only three times in a sixth month period. R. at 6. The reality that Ms. Dominguez made only minimal efforts to communicate with Jasmine, militates against removing Jasmine from the stability of Ms. Ortiz's care.

Further, Ms. Dominguez points to *J.B. v. DeKalb County Dept. of Human Resources*, 12 So.3d 100 (Ala. Civ. App. 2008), in support of her argument that reunification services were

erroneously terminated. However, the facts of *J.B.* are clearly distinguishable from this case. In *J.B.*, the father left his children in the care of their mother while he traveled to Guatemala to obtain his visa. He thought the process would take 20-60 days, when in fact it took nine months. *Id.* at 104. During his time away, the father called the children weekly at their home. The court found that the father did not “intentionally with[hold] his presence from the children” and that “[l]egal and economic realities restrained the father” from returning to the United States to act as a parent to the children. *Id.* at 113.

Ms. Dominguez’s situation is easily distinguished from the father’s in *J.B.* The father in *J.B.* called his children once a week up until they were adopted and would have continued to call them if the adoptive parents would have allowed him to do so. Ms. Dominguez did not contact her daughter until the threat of losing her became real. R at 6. Unlike the father in *J.B.*, Ms. Dominguez took no efforts to communicate with her daughter for over a year. R at 4-6. Despite having the knowledge that Jasmine had undergone open-heart surgery and suffered from a life threatening medical condition, Ms. Dominguez took no affirmative steps on her own initiative to communicate with Jasmine.

Ms. Dominguez, also, has a history of not contacting her daughter regularly when Jasmine was in the United States. Ms. Dominguez illegally left Jasmine in the United States under the care of Ms. Ortiz from June 2002 to June 2005. R at 2. During those three years, the only communication that Ms. Dominguez had with Jasmine was a birthday card and a phone call on Christmas. Ms. Dominguez did not contact Ms. Ortiz nor did she inquire about Jasmine’s health at all during those three years. R at 2. Ms. Dominguez continued this pattern once again when she left Jasmine after only caring for her for a month; overwhelmed by her medical needs. Ms. Dominguez has shown no significant departure from her past behavior to warrant this court

to find that Ms. Dominguez will, in future, have regular contact to maintain the parent-child relationship.

Even if this court were to find that Ms. Dominguez's reunification services were improperly terminated, Ms. Dominguez and Jasmine could not be reunified because Ms. Dominguez failed to obtain a visa to return to the United States. Though this is not part of Ms. Dominguez's reunification plan, if Ms. Dominguez wants to be reunified with her daughter it is essential that she obtain a visa. Jasmine cannot return to Guatemala without risking her life. Her doctors have even testified that Jasmine would likely die were she to return to Guatemala. R. at 6. The "child's health and safety shall be the paramount concern" in a reunification matter. 42 U.S.C. § 671 (15)(A). Here, it would be to Jasmine's detriment to be reunified with her mother in Guatemala where her health welfare would continuously be in substantial risk. It is thus in Jasmine's best interest to remain under the stability of Ms. Ortiz's care, where she can continue to live a healthy, prosperous lifestyle. Accordingly, this Court should uphold the ruling of the appellate court and find that the DCW made reasonable efforts to reunify Jasmine and Ms. Dominguez and that Ms. Dominguez reunification services were properly terminated.

CONCLUSION

Respondent thereby respectfully urges this Court to affirm the orders of both the Juvenile and Appellate Courts.

Dated: January 5, 2016

Respectfully Submitted,

Team #25
Counsel for Respondent

APPENDIX A

STATE OF WHITTIER – JUVENILE CODE § 100 - Conditions of Abuse or Neglect

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

- (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.
- (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or 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, or by the willful or negligent failure of the parent or guardian to provide the child with adequate and appropriate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.
- (c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.
- (d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.
- (e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act

of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse.

- (f) The child's parent or guardian caused the death of another child through abuse or neglect.
- (g) The child has been left without reasonable support; the parent has failed to maintain regular contact with the child, including normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.
- (h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.
- (i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.
- (j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

APPENDIX B

8 U.S.C.A. § 1101

§ 1101. Definitions

(a) As used in this chapter--

(27) The term "special immigrant" means--

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

APPENDIX C

42 U.S.C.A. § 671

Excerpt from § 671. State plan for foster care and adoption assistance provides that--

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

APPENDIX D

28 U.S.C.A. § 1257

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.