No. 22-251

IN THE

Supreme Court of the United States

MICHAEL CHUI,

Petitioner,

v.

BENJAMIN TZE-MAN CHUI AS TRUSTEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

REPLY BRIEF OF PETITIONER

SAM P. ISRAEL
Counsel of Record
TIMOTHY SAVITSKY
SAM P. ISRAEL, P.C.
32 Broadway, 11th Floor
New York, New York 10004
(646) 787-9880
admin@spi-pc.com

Counsel for Petitioner

317307

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

INTRODUCTION

Some states require a court to hold an evidentiary hearing before binding a ward to a settlement agreement, others do not. The question posed in Michael's opening brief was whether state laws that permit judicial approval of such settlements without a hearing conform with the due process standard set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). At specific issue here are California's rules permitting judges to approve settlements without notice and without a hearing "*ex parte*, in chambers," since judges are deemed to be the ultimate guardians of minors. Michael seeks a ruling from this Court that—particularly where a settlement turns in part on expert testimony, complex financial forecasts, property/tort-claim waivers, reputational interests, and myriad tradeoffs—an evidentiary hearing must be held to determine if a settlement is in a ward's best interest before his rights are adjudicated without his consent or, as was the case here, against his wishes.

ARGUMENT

A. Michael's Citations to State and Federal Law Show a Division Among States as to Whether Evidentiary Hearings Are Required Before a Minor Can Be Bound to a Settlement Without His Consent.

In their opposition brief, Respondents Benjamin Tze-Man Chui and Margaret Lee ("Respondents") miss the forest for the trees. They try to factually distinguish each of the state-law cases cited by Michael which show many states require an evidentiary hearing when a minor's rights are

affected by a settlement, even where it is approved by a court-appointed guardian ad litem. Resp. Brf. at pp. 18-23. Regardless of the precise factual contours of those cases, however, they all demonstrate the same point: Many states have recognized that some extra level of legal process is required when a guardian ad litem waives a minor's interests in property. These states, through either legislation or common law, have stepped in to make evidentiary hearings explicitly required for the protection of wards. *See, e.g, Am. Guar. & Liab. Ins. Co. v. ACE AM. Ins. Co.*, 990 F.3d 842, 848-49 (5th Cir. 2021) (In Texas, "even if a guardian . . . agrees to [a] settlement, a judgment ratifying the compromise cannot be rendered without a hearing and evidence that the settlement serves the minor's best interest.") (internal quotation omitted). Michael asks this Court to recognize that such state-mandated protections are achievable and necessary due process measures for wards that should be universally applied in accordance with *Mathews*, 424 U.S. 319. California's "no notice, no hearing" procedure falls below what the 14th Amendment requires. *See* P.A. 61a ("None of [California's laws] requires notice or an adversary hearing to approve a minor's compromise.").

The facts here expose the potential for injury to a ward under California law. In the nine cases resolved by the Second GAL Agreement, Michael and Jacqueline were represented by their mother in some cases, GAL Chen (a stranger) in others, and by no one in the rest. P.A. 23a, 27a, 58a, and 60a. When Christine, Michael's mother, filed objections to and repudiations of the Second GAL Agreement, the trial court simply struck them based upon her supposedly

conflicted status. *See* P.A. 134a, 145a. Yet when Michael and Jacqueline filed their *own* repudiations and objections, the trial court struck those too. 21 A.A. 8962 (trial court striking repudiations as signed but unverified as "improper and irrelevant"); P.A. 23a (appellate court explaining the repudiations were corrected and re-submitted as verified but remained stricken as irrelevant). If a trial judge is to be the ultimate guardian of a ward's interests, she should at least be required to critically consider the facts that affect those interests at a genuine evidentiary hearing.

B. Michael Did Not Waive His Due Process Rights.

The Respondents' other argument is that Michael waived his right to receive due process. Resp. Brf. at 18, 22. The question is: How? The lower court acknowledged that "the Minors contend that the court erred" in confirming the settlement "because (1) the court failed to hold an evidentiary hearing on the motion[.]" P.A. 38a. Yet when addressing the argument of whether the Petitioners[1] were "denied due process because the court failed to hold a full evidentiary hearing," the appellate court only ever held that *Christine* had supposedly waived the ability to request an evidentiary hearing of the Second GAL Agreement. P.A. 39a. Michael, on the other hand, had filed a verified objection which the trial court struck as "improper and irrelevant." The reality is that there was no evidentiary hearing not because Michael (a

[1] Michael, Jacqueline Chui (No. 22-247) and Christine Chui (No. 22-253), "Petitioners."

minor at the time) never requested one, but because California law does not provide for one. *See* P.A. 61a. Michael could not have intentionally waived what he was never entitled to under Californian law—notice and a hearing. What he did do, however, was object to the Second GAL Agreement and preserve his right to challenge the trial court's refusal to so much as consider his repudiation by appealing the decision, in part, on due process grounds. *See* 20 A.A. 8175 (Michael's Jan. 31, 2020 repudiation declaration); P.A. 38a-39a.

C. The Deprivation of Michael's Due Process Rights Was Not Harmless.

The failure to hold a hearing was not harmless. Christine's expert opined in a declaration that the settlement agreement resulted in a net loss to Jacqueline and Michael of $25,251,430. P.A. 25a. Moreover, the fact that Christine had *assigned* all of her interest in the Sycamore and Three Lanterns properties to Michael was mostly ignored by the lower courts. P.A. 23a, 24a, 78a. They reasoned that since Christine was already assigning all of her interests in the two multi-million dollar properties to the Trust residue under the Second GAL Agreement, she had no ability to then assign that same property to Michael. Yet the courts' reasoning here is circular because Christine's settlement was contingent on GAL Chen and the Court's approval. If either GAL Chen or the trial court had rejected the Second GAL Agreement, Michael would have received all of Christine's rights to those properties. GAL Chen's adoption, and the Court's approval, of the Second GAL Agreement is

what caused Christine's assignments to Michael to have no effect.

Further, Michael and his family have suffered reputational harm. In January 2020, Michael, then 16, tried to repudiate the Second GAL Agreement, in part, because it waived any accounting by the Co-trustees who Michael had reason to believe mismanaged millions of dollars in Trust assets and who had spent years accusing his late father of fraud. 20 A.A. 8175 (Michael's Jan. 31, 2020 repudiation declaration). The desire to avoid a reputational stigma lends support to the need for heightened due process. *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971) ("Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him,' the minimal requirements of the Clause must be satisfied."); *But see Paul v. Davis*, 424 U.S. 693, 700, 701-02 (1976) (clarifying that while reputational interests may weigh on the due process analysis, they are insufficient to require due process without some other property or liberty deprivation).

Preventing these issues from being probed at a hearing and through GAL Chen's cross-examination or Michael's own testimony was not harmless. In fact, at an earlier settlement hearing for a proposed settlement, GAL Chen took the stand to explain the reasoning behind his sworn declaration that the First GAL Agreement was in Michael and Jacqueline's best interests. Despite GAL Chen's championing of that settlement in his paper submissions, the trial court noted that at the live hearing GAL Chen "could not testify to the rough monetary value [that] the wards

will receive by way of the agreement—not even by way of approximation." 19 A.A. 7496. Evidently, paper submissions do not always tell the whole story. GAL Chen should have been required to take the stand with respect to the Second GAL Agreement and subjected to cross-examination concerning the deal he had negotiated. Similarly, Christine's expert accountant should have been permitted to testify as to his reasoning and Michael should have been permitted to testify about his own interests and concerns.

JOINDER

Michael joins all arguments from Jacqueline and Christine on this Writ and Reply.

CONCLUSION

This Court should certify the petition. Across the United States, hired guardians ad litem negotiate and settle matters on behalf of wards with whom they have never once spoken. Meanwhile, trial judges are empowered to render such settlements permanently binding, even in the face of written repudiations by the wards themselves and their parents. Michael does not challenge this guardianship system on Constitutional grounds. Instead, he asks only that this Court recognize that without an evidentiary hearing as to whether a settlement is in a ward's best interest, trial courts in California are failing to provide appropriate and due process. That is exactly why so many states have implemented statutory rules requiring an evidentiary hearing to approve a minor's

settlement. Under the framework set out in *Mathews*, 424 U.S. 319, the Constitution requires no less.

Respectfully submitted,

Dated: November 29, 2022

By: Sam P. Israel, Esq.
Counsel of Record
Timothy Savitsky, Esq.

Sam P. Israel, P.C.
32 Broadway, 11th Fl.
New York, NY
(646) 787-9883
admin@spi-pc.com