18-8542

ORIGINAL

No.

IN THE SUPREME COURT OF THE UNITED STATES

Selisha and Sharon Nielson—PETITIONERS

VS.

SAN DIEGO HEALTH AND HUMAN SERVICES AGENCY, et al—RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

COURT OF APPEALS OF CALIFORNIA, FOURTH DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

Selisha and Sharon Nielson
P.O. Box 5
Greenville CA 95947
(530) 284-7474
ssnielson@sbcglobal.net

URGENT: STAY REQUESTED OF ANY AND ALL ADOPTION PROCEEDINGS OF OUR NIECE & GRANDDAUGHTER

Record void of any notification (written or otherwise) to Entire Paternal family; Federal & State law violations going ignored by the Agency and court. Proceedings in Juvenile Dependency Court: 2851 Meadow Lark Dr San Diego CA 92123, Dept 9, Judge McKenzie (858) 634-1509

QUESTIONS PRESENTED

- Is it legal for an Agency to proceed to adopt a dependent toddler (A.K.) out of her biological family when the record contains **no "written notification" of child's detention** to ***any*** of her paternal relatives (or any other form of notification) in violation of **US Public Government Law 110-351; California Welfare and Institutions code §309 (e)(1); California Rule of Court 5.695 (e)(1)(2) and (f); and California Rule of Court 5.722 (5)(A-D),**
and despite the Agency having identifying information with which to contact such relatives (i.e. social security numbers, names, dates of birth, an employment location where uncle was manager),
and despite such relatives being on programs the Agency uses for family-finding (i.e. Medi-Cal, HUD, having valid drivers licenses, California IDs, grandmother being on disability, grandfather and uncle both veterans, uncle running a foster care facility and being a pediatric nurse)? *(grandparents, aunt, uncles, sibling, parent of siblings, great-aunts, great-grandparents all denied notification) (2CT 514, 515, 555-562, 525-527, 546-547; 3CT 740-742, 755-756, 620-621, 632-633, 642-651, 654-659, 719-721, 731-732, 727-728, 737-739, 729-730, 746-748, 733-734, 749-751, 735-736, 752-754, 743-745, 757-758; 579-582)*

- Is it legal for a toddler with **worsening medical conditions** that the Agency **directly attributes "to her heavy use of steroids to control her asthma/wheezing,"** such as: **starting to grow "pubic hair" at less than 2 years old**, and recurrent episodes of "oral and pharyngeal thrush" (yeast infection of the mouth) along with continued "visits to immunology," to be denied her state and

federally-guaranteed right to permanence with her biological family when they live in an area **medically documented to improve toddler's asthma in as little as 1 week,** and even reduce or eliminate her need for steroid medications altogether, thus eliminating her current worsening medical conditions, i.e. being in her best medical interests? (4CT 885, 886; 4CT 1083, 959; S253971 Supreme Court Petition for Review Exhibit 3; 4RT 145, 160, 161, 164; 4CT 954-977)

Does A.K.'s immediate medical need, coupled with the fact that none of her paternal family were ever notified, *constitute "a changed circumstance" that would warrant new placement with relatives?* *"Section 388 provides a procedural vehicle to change a child's placement* ***based on changed circumstances,"*** *and "is appropriate for a child who has been* ***freed for adoption...388 encompasses any change in circumstances affecting the dependent child."*** (*In re A.C.* (2010) 186 Cal.App.4th 976, 978.)

(Effects of High Altitude on Bronchial Asthma)
https://www.ncbi.nlm.nih.gov/pubmed/18320497
(Asthma & Mountain Air)
Carlsen KH, Oseid S, Sandnes T, Trondskog B, Røksund O
https://www.ncbi.nlm.nih.gov/pubmed/2042207

- Is it legal for Agency to deny an entire paternal side notification because, as defacto counsel argues: "The Agency was under no legal obligation to notify the paternal grandmother because A.K. was in a stable placement offering permanency"? (4CT 891) And if so, how does this match up with **Rule of Court 5.722 (5) (A-D)** which requires relatives be notified **even post-permanency, post-reunification** in cases like ours where the record reveals no record

of "written notification" to relatives? And how does this harmonize with **Assembly Bill 938—which was sponsored by the Judicial Council**—mandating priority notice to relatives to the 5th degree for placement as part of its FFE (Family Finding & Engagement) process, a process which connects *close and distant relatives* of children in foster care interested in placement specifically to "*improve outcomes*" for children in response to research revealing the benefits of placing children with loving relatives as opposed to taking them out of their biological families/communities." (Assem. Jud. Comm., 3d reading analysis of Assem Bill 938 (2008-2009 Sess.) p. 3) **(4CT 1977, 1078; S253971 Supreme Court Petition for Review Exhibit 5)** http://www.courts.ca.gov/documents/spr10-33.pdf
And how does this harmonize with **US Government Public Law 110-351** Fostering Connections to Success Act of 2008—*the most significant Child Welfare Act in 15 years*—which expressly seeks to prevent "severance of family connections" by making Child Welfare Agencies' federal foster care funding through Title IV-E of the Social Security Act contingent upon the Agency's compliance with FFE? **(3CT 582; S253971 Supreme Court Petition for Review Exhibit 6; 4RT 159)**

- Is it legal for an Agency to use an already disproven allegation of abuse against paternal grandmother as an excuse for having denied an entire paternal side due notification, and refuse to correct the record after the Agency ran abuse checks *later in the case* which returned a **No Abuse History,** and paternal grandmother had passed her RFA? In turn, is it legal for an Agency to allege abuse but then ***not*** run the California Law Enforcement Telecommunications System (CLETS) which §361.4 (a)(2)(3) mandates be ran pursuant to Section 16504.5 **during detention** to

find out whether abuse history exists or not, and which incidentally, is also a locating tool for family for which the Agency claims information was unattainable?

"Everyone with a driver's license or criminal record has information accessible through CLETS."

https://www.eff.org/deeplinks/2018/06/clets-misuse-2017

"CLETS provides law enforcement ***and agencies*** *access to various databases and the ability to transmit and receive point-to-point administrative messages to other agencies* ***within California*** *or via the National Law Enforcement Telecommunications System (NLETS)* ***to other states and Canada."***

https://definitions.uslegal.com/c/clets/

- *To illustrate:* If a grandmother was indeed unreachable, unidentifiable, for valid reasons, say, she was in a coma without ID in another state—would that absolve the Agency of their legal responsibility to notify other relatives, like the grandfather?

- If 366.26(k) caregiver preference is a blanket rule at this juncture of the case that applies **even though the record contains no evidence of due diligence** in notifying any paternal family, what is the significance of Rule of Court 5.722 (5) (A-D) that **even post-permanency and post-reunification** relatives need to be notified *if the record lacks evidence of a due diligence search?*

- Are family-finding laws about the best long-term interest of the child, or the desires of the non-relative caregiver?

- **We're grateful we found out while A.K. is still so young because that will mean a smoother transition into our family**

than if she was older. Whatever momentary adjustment is required will pale compared to the ***long-term preventable*** **emotional trauma that a needless adoption is setting her up for later in life** she asks why no biological family wanted her, only to find out she was adopted out of a family who loves her, and was fighting to keep her. (4RT 134, 159)

- If A.K. is adopted out of her biological family despite no evidence of due diligence or written notification to any paternal relatives, and despite the clear legislative intent of placement with relatives for the child's long-term best emotional interests, **what national message does that send to other Child Welfare Agencies?**

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page

[✓] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Lisa Maldonado
Office of County Counsel, Juv. Div.
5530 Overland Ave Ste 170
San Diego, CA 92123
(858) 492-2536
(lisa.maldonado@sdcounty.ca.gov)

Appellate attorney for A.K., Jamie Moran
402 W Broadway Ste 1890
San Diego, CA 92101-8577
(619) 269-7868
(moran174837@gmail.com)

We declare that we served the above parties by placing a true copy thereof, enclosed in a sealed certified envelope with postage fully prepaid, in the United States mail at Greenville, California.

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

Executed this 15 day of March 2019, at Greenville, California.

Signed: Sabrina Nelson Sharon Nelson

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

FEDERAL LAWS

STATUTES

RULES OF COURT

CASES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari be issued to review the judgment below:

OPINIONS BELOW

The opinion of the Court of Appeals, Fourth District, Division One appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the court of Appeals decided my case was January 8th, 2019. A copy of that decision appears at Appendix A.

A timely petition for Review was thereafter denied by the highest state court on the following date: March 13th, 2019, and a copy of the order denying petition for review appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Agency's failure to provide due legal notification (written or otherwise) to any of A.K.'s paternal relatives regarding her detention is a direct violation of the following federal code: **U.S. Government Public Law, 110-351**—*the most significant Child Welfare Act in 15 years*—and the following State statutes: **California Rule of Court 5.695 (e)(1)(2) and (f);** and **Welfare and Institutions Code §309 (e)(1)** mandating the social worker to conduct, "*within 30 days,* an investigation to identify and locate...all grandparents, adult relatives...parents of a sibling of the child...adult siblings...and provide **written notification** and...also, whenever appropriate, provide oral notification, in person or by telephone."

The Agency's failure to document any purported search efforts in the Jurisdiction/Disposition Report during the 30-day search period further violated **Welfare and Institutions code §361.3 (a)(8)(B)** and provides no verifiable proof of their claims to due diligence upon which the lower court's ruling and the Court of Appeals Opinion was based.

The fact that the reviewed appellate record—which both the Agency and the Superior Court unsuccessfully attempted to block—revealed **no** evidence of due diligence in notifying any paternal family, **but yet no effort was thereafter made** to give the paternal family which had since come forward an opportunity to adopt A.K. further violated **California Rule of Court 5.722 (5) (A-D),** ***a post-permanency and post-reunification rule*** mandating that if the record lacks evidence of due diligence, relatives be

searched for even at this stage of the proceedings. It is a disregard for the clearly stated legislative intent of Juvenile dependency laws *"to preserve and strengthen the minor's family ties whenever possible,"* according to **Welfare and Institutions Code §202 subd. (a).** And it has resulted in a **miscarriage of justice for A.K.,** since the **'result of her case would have clearly been different had the error not been made.' (Cal. Const. Art. VI, §13: SEC. 13)**

Assembly Bill 938—*sponsored by the Judicial Council and recognized by the California Blue Ribbon Commission on Children in Foster Care, the the Child Welfare Council's Permanency Committee, and the Co-Investment Partnership*—**mandates Family-Finding and Engagement (FFE) of close and distant relatives specifically to *"improve outcomes"*** for children in response to research revealing the benefits of placing children with loving relatives as opposed to taking them out of their biological families," as noted by the American Bar Association Center on Children and the Law.

By denying A.K.'s relatives due legal notification of her detention in any form, the Agency has **disregarded the terms of their federal foster care funding through Title IV-E of the Social Security Act,** which is contingent upon the Agency's compliance with Family-Finding and Engagement.

Senate Bill 270 was *supported by Juvenile Judges of California* because it would serve "the best interests of the dependent child" by helping to "ensure the greatest feasible effort is made to place dependent children

with relatives."

The Agency's mischaracterization of grandmother's disability and false assertion that it inhibits her from taking care of her granddaughter, A.K., constitutes a violation of both **Section 504 of the Rehabilitation Act of 1973** and **Title II of the Americans with Disabilities Act of 1990,** which prohibits exclusion of relatives from Child Welfare Services such as adoption and visits.

The Agency's stance is that A.K.'s being freed for adoption somehow diminishes the illegality of their actions in depriving any of A.K.'s paternal family legal notification of her detention and automatically excludes any consideration of placement with relatives. However, Section 388 is *"appropriate for a child who has been freed for adoption...*is broad in scope...**provides a procedural vehicle to change the child's placement based on changed circumstances...**and encompasses **any change in circumstances affecting the dependent child."***" (*In re A.C.* (2010) 186 Cal.App.4th 976, 978.) In this case, the evidence that placement with us would provide **immediate documented medical benefits to A.K. while accomplishing the legislative intent** of placement with relatives—*relatives whom the record reveals were never legally notified of her detention to begin with*—should be a **compelling reason** to place her with us. (PubMed PMID:18320497; PubMed PMID: 2042207) Additionally, **Assembly Bill 381** provides that "consideration for placement with a relative ***subsequent to*** the disposition hearing be given without regard to whether a new placement of a child must be made."

URGENT: STAY REQUESTED OF ANY AND ALL ADOPTION PROCEEDINGS OF OUR NIECE & GRANDDAUGHTER.

Record void of ANY written notification to Entire Paternal family of her detention; Federal & State law violations going ignored by the Agency and court. If the adoption takes place, it will be much harder to reverse.

Juvenile Dependency Court:

Dept 9, Judge McKenzie (858) 634-1509

2851 Meadow Lark Dr

San Diego CA 92123

Address for Court of Appeals Fourth District Division One:

750 B St #300

San Diego, CA 92101

San Diego Health and Human Services Agency:

Child Welfare Services - Adoptions

County of San Diego Health & Human Services Agency

8911 Balboa Avenue

San Diego, CA 92123

STATEMENT OF THE CASE

My niece, A.K., came to the attention of the San Diego Health and Human Services Agency (Agency) when she tested positive for methadone—a drug used by her mother Aimee Jones to overcome her drug addiction—at her birth on 11/19/16. (*1CT 17, 20) However, around 12/9/16, Aimee resumed drug use while living in the house of the friend caring for A.K., Elizabeth. So Casey Nielson (A.K.'s father, our brother and son) called the Agency to protect A.K., and that's when she was detained, as CPS phone records will verify. At no time has A.K. been placed with relatives. **(S253971 Supreme Court Petition for Review Exhibit 1 pg 37, 43;** 1CT 20-22)

Father gave the Agency our names Selisha and Sharon Nielson (paternal aunt and grandmother), grandfather's name (Clarence Knox), and other paternal relatives names **prior** to A.K.'s detention, as ICWA020 forms show, and he asked that A.K. be placed with us or his brother continually and again **prior** to termination of reunification services. (1CT 9, 67, 118, 119; 2CT 281, 321-322) Father didn't have our address, but he did provide the store location at which his brother (Chaz) was a manager—which was closeby the Agency. (2CT 281, 321-322)

However, in the Agency's reports filed *during* the search, there is no record of Agency compliance with §309 (e)(1) or §361.3 (a)(8)(B) in providing "written notification" to any of A.K.'s paternal family to

---

*All CT or RT references are from appellate attorney, proceedings we participated in, or from disclosure granted by court on 10/26/18.

the 5th degree about A.K.'s detention, and absolutely no documentation of the Agency's search for relatives in the Jurisdiction/Disposition Report pursuant to §361.3 (a)(8)(B). §361.3 (a), (b), (d); *In re Maria Q., supra,* Cal.App.5th ; *In re Isabella G.* (2016) 246 Cal.App.4th 708, 719-723; *In re R.T., supra,* 232 Cal.App.4th at pp. 1295-1299; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1030-1034; 1CT 79-110)

In an Addendum Report ***after*** the search (2/16/17), a search was eluded to, but the **Agency didn't report on or provide proofs regarding what efforts it had actually made. Yet, in spite of no record of any attempts/search mechanisms or logs, database search logs, certified return receipts (DMV records, Medi-Cal, military records, criminal records, social security records, etc), the Juvenile court made due diligence findings upheld by the Court of Appeals. Because the Agency did not conduct a due diligence search,** we did not learn that A.K. was detained until she was 17 months old—in April 2018—a year and four months after her detention and 2 months after the 366.26 hearing and ***after*** my brother's parental rights had been terminated. Had we been notified, A.K. would never have been detained. (Court Rule 5.695 (e)(1)(2) and (f), 5.722 (5) (A-D); US Government Public Law 110-351) **(3CT 580-582; 4CT 959)**

The Agency claims our information was unattainable, yet they had my name and date of birth; grandmother's name, date of birth, and social security number (3 RT 309); grandfather's name and date of birth (1CT 116-126; 4CT 957) uncles names and employment location (Keith and Chaz Knox

2CT 281, 321-322); and A.K.'s older sister's name (Natalia Knox) **during** the search. (3CT 642, 646-647; 4CT 906) The Agency says they withheld notification from Natalia because she was a minor. (4CT 906)

However, Natalia turned 18 in the same month as A.K.'s detention hearing, and her mother, Priscilla Illizaliturri, was also denied the notification legally mandated by §309 (e)(1), which requires "parents of a sibling of the child" receive "written notification within 30 days" of the child's detention. (3CT 642-647; 579; 2CT 514, 515, 555-562)

The Agency falsely claims Casey didn't want them to notify us about A.K.'s detention because of a "history of abuse" from our mother and **refused to correct the record** (3RT 307; 4RT 173, 177) **even after:**

1. We filed Casey's handwritten letter at his request (filestamped 6/8/18) correcting his appellate attorney (Mr Knight's) appellate brief in which he made clear he did **not** make those statements, and that it was in fact Casey's **stepmother, not our mother, who had abused him,** and which Mr Knight emailed to A.K.'s trial counsel, Mike Long (3CT 674-684; **S253971 Supreme Court Petition for Review Exhibit 1 pg 36**)

2. and ***even after*** Agency logs the court granted us disclosure to view revealed that the **Agency ran abuse checks** for grandmother and me in June 2018—even in Kentucky and Florida—which returned a **No Abuse History** (SDSVSLOG pg 157, 158; **S253971 Supreme Court Petition for Review Exhibit 2**)

3. and even after grandmother **passed her RFA** background checks (LiveScan, FBI, DOJ, CACI, fingerprinting) (4CT 901).

Because the record was not corrected, these false claims of abuse were used as an excuse for denying the legally required notification to grandmother, and the rest of the paternal family also was excluded from notification, even the paternal grandfather (who also submitted a 388 motion stating he wasn't notified) who is a veteran and whose name appears on the Cherokee ICWA inquiry dated 12/21/16—in violation of §309 (e)(1), which mandates all grandparents and adult relatives to the 5th degree receive "written notification" within 30 days of child's detention, and §361.3 (a)(8)(B) requiring documentation of search efforts in the Jurisdiction/Disposition Report. (1CT 118, 119; 3CT 740-742, 755-756, 579)

We found out from a nephew that Casey had been incarcerated. (By that time he'd been incarcerated nearly a year.) We looked up his facility online and started writing to him. He immediately informed us about A.K.'s detention and that he'd been asking the Agency ***from the beginning*** to place her with us. He sent us some court documents to contact the Agency and the phone number of the caregiver (Kristi) to check on A.K.. However, the social workers were shocked and dismissive when we called, saying: "You're too late. The adoption's in progress. How did you find out?!" (4RT 136) Similarly, the caregiver said: "Nice to meet you. We're adopting A.K.. You didn't know about her, I assume? I'm sorry you weren't notified but it probably wouldn't have made a difference anyway."

When we asked the Social workers to please alert the court that we'd

never been notified, Fatimah Abdullah (Social worker supervisor) said there was a form for that, but we'd just have to find it ourselves, contrary to **§309 (2),** which directs "the social worker shall also provide the adult relatives...with a relative information form...whereby the relative may request the permission of the court to address the court, if the relative so chooses." (3CT 579)

When we finally found the form, (between May—June of 2018) us, the paternal grandfather, several other paternal relatives, and a family friend each submitted 388 motions letting the court know we 'd never been notified and that Rule of Court 5.722 (5) (A-D) allows for placement with relatives up to 24-months post-permanency review hearing in cases such as ours where the record doesn't reflect due diligence in notifying relatives. **A.K. was 17 months at that time.** (3CT 740-742, 755-756, 620-621, 632-633, 642-651, 654-659, 719-721, 731-732, 727-728, 737-739, 729-730, 746-748, 733-734, 749-751, 735-736, 752-754, 743-745, 757-758; 2CT 525-527, 546-547, 555-562) The court denied our 388 motion for placement on 6/12/18 because our RFA process wasn't yet finalized due to a delay on the part of the San Diego Agency in sending our RFA referrals to our county, Plumas County. We were invited to re-file 388 motions once our RFA finalized, which we did on 8/14/18. (4CT 897-902) The court ordered us to send Casey's court documents to the Agency, **although he was still appealing the termination of his rights at that time.** We promptly complied, and the Agency acknowledged receipt of them on 7/3/18. (4RT 128, 129; 3CT 787-839)

We continued to alert the court that family-finding laws have been violated. (4CT 914-933; 954-977; 4RT 124) During that time we found out

that **A.K. is developing serious medical conditions which the Agency and defacto counsel attribute to her "heavy use of steroids to control her asthma/wheezing," and that "despite her treatment and medications, A.K. has wheezing and breathing issues almost daily," and "the prescribed steroids to support her breathing cause side effects, which require additional medical care."** (8/29 Addendum Report pg 3; 4CT 885, 886) Since we had relocated to the mountains in Northern California to improve our environmental illness—and A.K. also has an environmental illness—we alerted the court to the PubMed pediatric studies recommending areas like ours for asthmatic children and documenting **improvement in as little as 1 week of "asthma symptoms and severity, daily symptom score, bronchial responsiveness, and lung function"** along with ***reduction of steroid therapy,*** **profound changes in the immune system...**demonstrated at high altitude," such as "reduction of airway inflammation" and "lessening of airway obstruction" **due to the fact that the air here where we live is tremendously cleaner.** (Asthma & Mountain Air) *https://www.ncbi.nlm.nih.gov/pubmed/2042207* (Effects of High Altitude on Bronchial Asthma) *https://www.ncbi.nlm.nih.gov/pubmed/18320497* **(4CT 1083, 959; S253971 Supreme Court Petition for Review Exhibit 3;** 4RT 145, 160, 161, 164; 4CT 954-977)

In fact during the 9/11/18 hearing Mike Long (A.K.'s trial counsel) admitted that A.K.'s respiratory issues may be addressed by living with us in the mountains. But then he went on to mention "other medical conditions," as though these were unrelated to her asthma. (4RT 149) But after the court granted us disclosure on 10/26/18 to view Agency Addendum reports to which

he was referring, (8/29/18 pg 3) it showed that these "other medical conditions" were actually side effects to steroids, which the PubMed pediatric studies we presented showed A.K. more than likely wouldn't need or could drastically reduce if she lived in our area with us. This is especially concerning since A.K. is noted to be on "inhaled corticosteroids" and has had **"asthma so severe at such a young age,"** and she is being adversely affected hormonally because she has had to be "referred to endocrinology as **she has started to grow pubic hair,"** and her immune system is being affected now because she has had two episodes of "oral and pharyngeal thrush" (yeast infection of the mouth) since July 2018, **"which is attributed to her heavy use of steroids to control her asthma/wheezing,"** and has **"required visits to immunology."** (4CT 885, 886) This could have devastating consequences to A.K.'s future development.

Additionally, we presented pediatric studies that A.K.'s adoption out of biological family will needlessly put her at a "4 times increased risk for suicide," and "**anxiety, depression, feelings of abandonment, and loss, even if the adoption occurs in infancy into the most loving and ideal of homes,"** and especially more in this situation where A.K. has loving family who want her and are fighting to keep her. (Keyes, et al., 2013; Riben, 2015) Evans, M.M. (2013). Understanding Why Adoptees have a Higher Risk for Suicide. Keyes, M.A.; Malore, S.M.; Sharma, A; Iacono, W. & Mcgue, M., (2013) Risk of Suicide Attempt in Adopted and NonAdopted Offspring. Pediatrics Online Riben, M (2015) Toward Preventing Adoption-Related Suicide) **(4CT 1081, 1082, 971; S253971 Supreme Court Petition for Review Exhibit 4;** 4RT 131, 134, 135, 164; 4CT 954-977)

The hearing was continued to 9/11/18. A few days prior (9/7/18) one videochat visit with A.K. was finally allowed ***after 3 months of requesting visits*** from the Agency. (D074844 ProPerWrit Exhibit 6; 4CT 934-937) That was a very touching 5-minute videochat because A.K. looked at us intently and said: **"Dadda? Dadda?"** She seemed to recognize our resemblance to her father or the similarity in our voice to his, although she hasn't seen him since she was a year old. (4RT 135) We blew her kisses, she blew us a kiss as well, and as the visit ended, we asked Lisa Quadros (Social worker) the next visit we could have. She did not respond.

At the 9/11/18 hearing, the Juvenile court denied our 388 petitions to adopt A.K., disregarding the law violations of the Agency never notifying any paternal family, and the evidence of immediate medical benefits to A.K. of placement with us and the long-term documented emotional benefits. (4RT 133, 134, 135, 136, 145, 155-160, 161, 163, 164; 5CT 1185, 1186; 4CT 1100, 1101)

During this same hearing, Mr Long stated the caregivers were willing to "facilitate contact and maintain relationships with relatives," and the court acknowledged the importance of "maintaining some relationship with biological family." (4RT 149, 176) However, only 15 days later, the Agency and caregivers abruptly terminated visits for no reason, stating they were only a "courtesy." (D074844 ProPerWrit Exhibit 9) The Juvenile court denied our 388 motions requesting reinstatement of visits, affirmed by the Court of Appeal on 1/8/19. A petition for review was timely filed in the highest state court on 2/8/19, and subsequently denied on 3/13/19.

REASONS FOR GRANTING THE PETITION

National significance of this case,
the countless other families it is affecting countrywide,
and the message it sends to Child Welfare Agencies

A.K.'s case is by no means an isolated one; it is part of a national problem, according to the American Bar Association Center on Children and the Law, and it is the reason for the enactment of Federal Government Public Law 110-351 Fostering Connections Act ***—the most significant child welfare act in 15 years.***

According to the American Bar Association Center on Children and the Law, there are **"countless compelling stories from around the country of relatives who didn't know that grandchildren, nieces...had been placed into foster care until well after they had been placed or even adopted by a non-relative"** despite the fact that "research has shown that children placed with relatives fare better than children placed with non-related foster families...Despite the preference, however, **not all states were identifying or notifying relatives** when children are removed from their parents' homes. **Without identified and notified relatives, placement preferences were often meaningless.** Now, thanks to the Fostering Connection Act, these two types of policies should work in unison to help grandfamilies come together." **(4CT 582; S253971 Supreme Court Petition for Review Exhibit 6**; 4RT 159)

Assembly Bill 938—which was sponsored by the Judicial

Council—mandates priority notice to relatives to the 5th degree for placement as part of its FFE (Family Finding & Engagement) process, a process which connects *close and distant relatives* of children in foster care interested in placement. This is specifically to "*improve outcomes*" for children in response to research revealing the benefits of placing children with loving relatives as opposed to taking them out of their biological families/communities because "often when children are removed from their parents...they are removed from their families, even when loving relatives could step in and care for them." (Assem. Jud. Comm., 3d reading analysis of Assem Bill 938 (2008-2009 Sess.) p. 3) **(4CT 1077, 1078; S253971 Supreme Court Petition for Review Exhibit 5)** FFE is recognized as an important tool for achieving permanence and stable connections for children and is recognized by many California Child Welfare Policy bodies, including California Blue Ribbon Commission on Children in Foster Care, Child Welfare Council's Permanency Committee, and Co-Investment Partnership. http://www.courts.ca.gov/documents/spr10-33.pdf

So important is Family-Finding and Engagement (FFE) that **US Government Public Law 110-351** Fostering Connections to Success Act of 2008 expressly seeks to prevent "severance of family connections" by **making Child Welfare Agencies' federal foster care funding through Title IV-E of the Social Security Act contingent upon Agency compliance with FFE. (S253971 Supreme Court Petition for Review Exhibit 6**; 4RT 159)

The Legislature's intent to facilitate relative placement is further shown by a report on *Senate Bill 270* by the Assembly Committee on the Judiciary, which referenced a statement by the **Juvenile Court Judges of**

California supporting the legislation because it serves "the best interests of the dependent child" and "helps ensure the greatest feasible effort is made to place dependent children with relatives." http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0251-0300/sb_270_cfa_930816_114351_sen_floor

The Agency is aware that adoption out of A.K.'s biological family will needlessly put her at a "4 times increased risk for suicide"—as documented by pediatric studies—and risk of "anxiety, depression, feelings of abandonment, and loss, ***even if adoption occurs in infancy into the most loving and ideal of homes,"*** and especially more in this situation where A.K. has family who love her and are fighting to keep her. (Keyes, et al., 2013; Riben, 2015) Evans, M.M. (2013). Understanding Why Adoptees have a Higher Risk for Suicide. Keyes, M.A.; Malore, S.M.; Sharma, A; Iacono, W. & Mcgue, M., (2013) Risk of Suicide Attempt in Adopted and NonAdopted Offspring. Pediatrics Online Riben, M (2015) Toward Preventing Adoption-Related Suicide) **(4CT 1081, 1082, 971; S253971 Supreme Court Petition for Review Exhibit 4;** 4RT 131, 134, 135, 164)

Exclusion of relatives from Child Welfare Services such as visits, placements, and adoption is a disability discrimination **under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.** Since A.K.'s grandmother receives disability, she is covered by both above cited federal anti-discrimination codes. The Agency specifically alleged that grandmother's medical condition (EHS) electromagnetic hypersensitivity affects our "ability to leave our residence" and "impedes our functioning outside of the home." ***These are false***

statements. Grandmother's health is no impediment to caring for A.K. or taking her wherever she needs to go, and the fact that the Agency brings it up in such a way **is disability discrimination,** according to the US Dept of Health and Human Services/Office for Civil Rights. https://www.hhs.gov/sites/default/files/ocr-child-welfare-disability-factsheet-september-2016.pdf

EHS is actually in the same class as A.K.'s condition—an environmentally influenced illness, which is the same reason we moved to Northern California—and in fact according to the American Academy of Environmental Medicine (AAEM), people with pulmonary conditions, such as A.K. has, benefit from reducing/avoiding exposure to EMFs, just like grandmother: "Based on double-blinded, placebo-controlled research in humans, medical conditions/disabilities that would more than likely ***benefit from avoiding electromagnetic/radiofrequency exposure include,*** but are not limited to: ***Pulmonary conditions*** including chest tightness, dyspnea, ***decreased pulmonary function.***" **(S253971 Supreme Court Petition for Review Exhibit 8)** https://www.aaemonline.org/pdf/AAEMEMFmedicalconditions.pdf

The Legislature has expressed its opinion that "keeping children in homes where they...can *maintain close familial relationships* should take *precedence over achieving the termination of parental rights*[.]" (§366.26 (c)(1)(A); *In re K.H.* (2011) 201 Cal.App.4th 406, 418.) In fact, "the Legislature has expressed its clear preference for the placement of a dependent child in the home of a relative . . . rather than a traditional foster home." (*In re Summer H.* (2006) 139 Cal.App.4th 1315, 1320; §361.3 (c)(1)

In this case, my brother's rights were *terminated without written notice to the entire paternal family of A.K.'s detention,* thereby denying **an entire paternal side any fair opportunity to object, working against the legislative intent of securing relative placement for the child's long-term best interests. (S253971 Supreme Court Petition for Review Exhibit 1 pg 38, 46, 47)**

Our area is medically documented to address A.K.'s immediate medical needs

"Section [388] is broad in scope, and encompasses **any change in circumstances affecting the dependent child.** Section 388 is **appropriate for a child who has been freed for adoption, and provides a procedural vehicle to change the child's placement based on changed circumstances."** (*In re A.C.* (2010) 186 Cal.App.4th 976, 978.)

The Agency argues there are no changed circumstances, that "there is no evidence that a change in placement would benefit A.K.." (4 RT 145) **However, A.K.'s worsening health conditions constitute a change in her circumstances.** A.K. is noted by the Agency and defacto counsel to be on "inhaled corticosteroids" and has had **"asthma so severe at such a young age,"** and she is being **adversely affected hormonally** because she's had to be "referred to endocrinology as she has started to grow pubic hair," (and she's only 2) and her **immune system is being affected** now because she's had recurrent episodes of **"oral and pharyngeal thrush" (yeast infection**

of the mouth) since July 2018, **"which is attributed to her heavy use of steroids to control her asthma/wheezing,"** and has "required visits to immunology." (4CT 885, 886) This could have devastating consequences to A.K.'s future development.

The pediatric studies we presented orally and in writing before the court document that **"the high mountains (where we live) have been recommended to patients with asthma for many decades"** for the following reasons: **"a reduction of steroid therapy...**improvement of asthma symptoms/severity, daily symptom score, bronchial responsiveness, lung function...**Profound changes in the immune system** have been demonstrated at high altitude," such as "reduction of airway inflammation" and "lessening of airway obstruction" **in as little as 1 week. This is due to the fact that the air here is tremendously cleaner.** We moved here because, like A.K., we have an environmental condition, which has *greatly improved.*

(Asthma & Mountain Air) *https://www.ncbi.nlm.nih.gov/pubmed/2042207*

(Effects of High Altitude on Bronchial Asthma)

https://www.ncbi.nlm.nih.gov/pubmed/18320497

(4CT 1083, 959; S253971 Supreme Court Petition for Review Exhibit 3; 4RT 145, 160, 161, 164; 4CT 954-977)

The fact that placement with us would provide immediate documented medical benefits to A.K. while accomplishing the legislative intent of placement with relatives*—relatives who were never legally notified of her detention to begin with*—should be a **compelling reason** to place her with us. The fact she's been freed for adoption makes no

difference, as 388 is *"appropriate for a child who has been freed for adoption."* (*In re A.C.* (2010) 186 Cal.App.4th 976, 978.)

A.K. is only a toddler and highly adaptable, and from the 9/7/18 videochat visit it was clear she remembers her Father by the way she looked at us intently and said: "Dadda? Dadda?"

Adding to this, Assembly Bill 381 provides that "consideration for placement with a relative ***subsequent to*** the disposition hearing be given **without regard to whether a new placement of a child must be made."**

The Agency also claims our area is "remote from medical facilities." However, **we have a doctor only 2 minutes away, there are hospitals in our area specializing in respiratory treatments/therapy, equipped for emergencies, surgical procedures, imaging, etc. Our county was recognized as having the highest percentage of emergency service success by NorCal EMS. When I went to the ER this past April, the ambulance was at our door in only 2 minutes. A smaller county also means quicker response times.**

California's strong policy in favor of relative placement *not* limited to reunification efforts: State Statute §361.3 (a)(7)(H)(i) 1997 amendment and Rules of Court 5.722. (5) (A-D)

The Agency's interpretation of statute §361.3 (d) is contrary to California's strong policy in favor of relative placement as manifested in subdivision (a) and implemented in numerous California appellate decisions. The 1997 amendment of (a)(7)(H)(i) indicates the Legislature did *not* intend to limit the purpose of relative placement preference to reunification efforts when it added to the factors that must be considered when evaluating a relative for placement: The ability of the relative to "provide legal permanence for the child ***if reunification fails.***" (§361.3, subd. (a)(7)(H)(i) [91 Cal. App. 4th 1033]

Therefore, according to provisions in §361.3 (a)(7)(H)(i), the legislative relative placement preference can apply *even if* reunification fails. **In fact, in cases where the record lacks due diligence** to locate/notify relatives—as in our case—Rule of Court 5.722 (5) (A-D) **mandates** the court order diligent efforts be made to locate relatives, **post-reunification, post-permanency, a hearing that has not occurred yet,** when a child could be in a defacto arrangement, as A.K. is. **(1CT 9, 67, 79-110; 2CT 281, 321-322; 3CT 581; 4CT 959)** This is in keeping with the legislative intent to "improve *outcomes" and "serve the best interest of the dependent child."* **(*Assembly Bill 938* (Com. on Judiciary; Stats. 2009, ch. 261); Sen. Bill 270 (1993-1994 Reg. Sess.) as amended 6/14/93, p. 2)**

However, **defacto counsel states** (4CT 891) that the "Agency was

under no legal obligation to notify the paternal grandmother because A.K. was in a stable placement offering permanency," contradicting the above court rule and state statute.

Additionally, the fact that relatives must be ***located post-permanency*** **and** ***post-reunification*** (Rule of Court 5.722 (5) (A-D) if the Agency did not evidence due diligence in locating them earlier shows that such relatives could **likely be unknown to the child.** It specifically says in the ***RFA training manual***: **"With the emphasis on family-finding, there may be** relatives, **often paternal relatives, who do not know the child,** but upon learning of her/him, seek custody...**the transition may happen suddenly and without warning."** So it wouldn't be considered unusual for relatives unknown to a child to quickly gain placement after motioning for it, **even post-permanency and post-reunification,** in keeping with the legislative intent to ensure the child's long-term best interests. **(4CT 959, 1079, 1080; S253971 Supreme Court Petition for Review Exhibit 9)**

If 366.26(k) caregiver preference was a blanket rule at this juncture of the case, what is the significance of 5.722 (5) (A-D) requiring courts to order a search for relatives *even post-permanency and post-reunification if the record lacks evidence of a due diligence search?*
(3CT 581; 4CT 959; 4RT 157)

Rule of Court 5.722 (5) (A-D) mandates:
"If the child is not returned to his or her parent or legal guardian **and the court terminates reunification services"** and the Agency has **not** made diligent efforts to locate relatives, **"the court must order the agency to make diligent efforts to locate an appropriate relative."** And if "each relative whose name has been submitted to the agency as a possible caregiver has **not** been evaluated as an appropriate placement resource...**the court must order the agency to evaluate as an appropriate placement resource each relative whose name has been submitted to the agency as a possible caregiver."**

"Section 388 is **appropriate for a child who has been freed for adoption, and provides a procedural vehicle to change the child's placement based on changed circumstances."** (*In re A.C.* (2010) 186 Cal.App.4th 976, 978.)

According to ChildWelfare.gov, California is one of 'approximately 11 states requiring in statute or regulation that state agencies give preference to relatives when making *adoptive placements* for children in their custody,' *even if* the *child has been living with the same foster parent for a significant period of time when the child become available for adoption,* unlike the 3 states (Tennessee, Missouri, and New York) where they give preference to an unrelated foster parent. *https://www.childwelfare.gov/pubPDFs/placement.pdf* **(S253971 Supreme Court Petition for Review Exhibit 10;** 4RT 158)

Structural error/Miscarriage of justice/ No notification and attempt to restrict record on appeal and limit due process

A structural error is defined as "an error that permeates the entire conduct of the trial from beginning to end or affects the framework within which the trial proceeds that deprives the party of a fundamentally fair proceeding."

The heart of the structural error here is that erroneous findings of due diligence were made from the onset and at each hearing—despite the fact that the record is actually void of any due diligence by the Agency to locate and notify **any** of our paternal family—which in turn allowed the case to advance onto a permanent placement plan post-termination of parental rights without the paternal family having *any knowledge whatsoever* of the proceedings, effectively excluded from a fair opportunity to object, working against the legislative intent of securing relative placement. (1CT 9, 67; 2CT 281, 321-322)

This has resulted in a miscarriage of justice for A.K., a violation of her federally protected rights to permanence with her biological family.

The **Cal. Const. Art. VI, §13: SEC. 13,** says: "No judgment shall be set aside... *unless,* after an examination of the entire cause, including the evidence, the court shall be of the opinion *that the error complained of has resulted in a miscarriage of justice."* A miscarriage of justice is: "If the result

would have been different had the error not been made." http://www.courts.ca.gov/documents/BTB23_FRI_Writs_1.pdf

It is clear that the result of this case would have been different (the legislative intent to secure placement with loving relatives would've been accomplished because A.K. would've been with us—her biological family—we're RFA certified to adopt her) *had the structural error not been made* (findings of due diligence unsubstantiated by the record), without which the case would not have proceeded). **(1CT 9, 67; 2CT 281, 321-322)**

The Juvenile court specifically ordered the clerk of the superior court not to release the record on appeal. (4RT 177) Although not successful in that attempt, **the fact that they attempted to block the record** and that **the record in turn revealed no evidence of due diligence is disturbing.** To illustrate: In California, there are penalties, not only for *committed* crimes, but also for *attempted* crimes. For instance, robbery, and *attempted* robbery; murder, and *attempted* murder. An attempted crime carries the penalty of ½ the sentence time for a committed crime, because the fact it was attempted, although never carried out, is serious. In this case, the Juvenile court *attempted* to violate the doctrine of separation of powers, hinder our due process rights and fair access to the courts—a mistake of law. "[U]nder the separation of powers doctrine, courts lack power to interfere with legislative action at either the state or local level" (*Friends of H St. v. City of Sacramento* (1993) 20 Cal.App.4th 152, 165.)

Although we were ***not*** represented by an attorney, the Juvenile court ordered us to hardmail all parties, contrary to §297 and 386 and rules 5.524 and 5.570 Rules of Court, which clearly state on the JV-180 form: **"If you *do not have* an attorney, *the clerk* will send notice and copies of your request to all persons required to receive notice..."** This was a hardship financially because we live in Northern California, and not only did hardmailing take days to arrive to parties, but when the Agency submitted a paper 2 business days before the court date alleging an abuse history—even ***after*** their abuse checks returned a **No Abuse history**—we were never allowed to file a response to it, and were cut off in court when we tried to defend ourselves. (4RT 173, 177)

RFA manual directs foster family to support relative placement for the long-term best interest of the child "due to the emphasis on family-finding," even if foster family has "nurtured and cared for a child for months or even years" and "become deeply attached to child" (4CT 1079, 1080)

The resistance of the Agency and caregiver strikes us as strange because the Agency and caregiver know the seriousness of supporting *family placement for the child's long-term best interests* in keeping with the directives in the RFA Training manual, which directs that due to "the emphasis on family-finding," foster families and agencies work "with the biological family" by "reaching out, through visitation, conversations, letters,

phone calls, e-mail" ***even later in dependency proceedings*** when relatives, ***"often paternal relatives who do not know the child but upon learning of him/her seek custody,"*** and this is ***even after a foster family has "nurtured and cared for a child for months or even years"*** *and* ***"become deeply attached to the child."*** **(S253971 Supreme Court Petition for Review Exhibit 9;** 4RT 155-157)

A foster mother's observations regarding placement with relatives later in dependency proceedings, on Adoption.com:

> "Social workers recognize that...it's a great benefit for children to grow up within their birth family. **Sometimes workers know they messed up by 1) not contacting family members** in a timely manner, 2) not exploring the list of relatives provided by the parent...**But i believe cw's (child welfare) and judges are doing the best thing for these children when they check out every possible avenue, even the ones who didn't come forward until 2 years after they came into care, moved in with us, and we declared we wanted to adopt them**...As a foster parent I know it's hard to...think about losing a baby you've cared for...**As my children adopted from foster care get older, they talk more, and I realize just how important their biological family is to them...they talk about how mad they are that no one in their birthfamily could or would care for them...I think it's something they'll always struggle with,** I know it's painful and difficult...I just ran across a photo...of a baby we fostered that we were told we could adopt, who ended up going

home...In the end, I was so very glad he was going to be raised within his family." https://adoption.com/forums/thread/335540/laws-relating-to-relative-placement-preference/

Ways Erroneous

In the Agency's reports filed *during* the search, there is no record of Agency compliance with §309 (e)(1) or §361.3 (a)(8)(B) in providing "written notification" to any of A.K.'s paternal family to the 5th degree about A.K.'s detention, and absolutely no documentation of the Agency's search for relatives in the Jurisdiction/Disposition Report pursuant to §361.3 (a)(8)(B). §361.3 (a), (b), (d); *In re Maria Q., supra,* Cal.App.5th ; *In re Isabella G.* (2016) 246 Cal.App.4th 708, 719-723; *In re R.T., supra,* 232 Cal.App.4th at pp. 1295-1299; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1030-1034; 1CT 79-110) The Agency didn't report on or provide proofs regarding what efforts it had actually made. Yet, in spite of no record of any attempts/search mechanisms or logs, database search logs, certified return receipts (DMV records, Medi-Cal, military records, criminal records, social security records, etc), the Juvenile court made due diligence findings upheld by the Court of Appeals.

The Agency claims our information was unattainable, yet they had my name and date of birth; grandmother's name, date of birth, and social security number (3 RT 309); grandfather's name and date of birth (1CT 116-126; 4CT 957) uncles names and employment location (Keith and Chaz Knox 2CT 281, 321-322); and A.K.'s older sister's name (Natalia Knox) during

the search. (3CT 642, 646-647; 4CT 906) The Agency says they withheld notification from Natalia because she was a minor. (4CT 906) **However, Natalia turned 18 in the same month as A.K.'s detention hearing,** and her mother, Priscilla Illizaliturri, was also denied the notification **legally mandated by §309 (e)(1), which requires "parents of a sibling of the child" receive "written notification** within 30 days" of the child's detention. (3CT 642-647; 2CT 514, 515, 555-562)

The Agency falsely claims Casey didn't want them to notify us about A.K.'s detention because of a "history of abuse" from our mother and **refused to correct the record** (3RT 307; 4RT 173, 177) **even after:**

1. We filed Casey's handwritten letter at his request (filestamped 6/8/18) correcting his appellate attorney (Mr Knight's) appellate brief in which he made clear he did **not** make those statements, and that it was in fact Casey's **stepmother, not our mother, who had abused him,** and which Mr Knight emailed to A.K.'s trial counsel, Mike Long (3CT 674-684; **S253971 Supreme Court Petition for Review Exhibit 1 pg 36)**

2. and ***even after*** Agency logs the court granted us disclosure to view revealed that the **Agency ran abuse checks** for grandmother and me in June 2018—even in Kentucky and Florida—which returned a **No Abuse History** (SDSVSLOG pg 157, 158; **S253971 Supreme Court Petition for Review Exhibit 2)**

3. and even after grandmother **passed her RFA** background checks

(LiveScan, FBI, DOJ, CACI, fingerprinting) (4CT 901).

Because the record was not corrected, these false claims of abuse were used as an excuse for denying the legally required notification to grandmother, and the rest of the paternal family also was excluded from notification, even the paternal grandfather (who also submitted a 388 motion stating he wasn't notified) who is a veteran and whose name appears on the Cherokee ICWA inquiry dated 12/21/16—in violation of §309 (e)(1), which mandates all grandparents and adult relatives to the 5th degree receive "written notification" within 30 days of child's detention, and §361.3 (a)(8)(B) requiring documentation of search efforts in the Jurisdiction/Disposition Report. (1CT 118, 119; 3CT 740-742, 755-756, 579)

Additionally, on 6/6/18, Richard Knight (Casey's former appellate attorney) copied an email he'd sent to Mike Long regarding our character after he received Casey's handwritten letter (dated 6/4/18) correcting Mr Knight's appellate brief (D073572) that it was **in fact Casey's *stepmother,* not our mother, who abused him.** (Note: Brief delayed in reaching Casey because of prison transfer.) Casey wrote:

> **"I would like to make very clear to you I never said my mother was abusive to me. I said that my mother's brother was and my Dad's wife (my stepmother) was...I was burned by a frying pan by this lady, NOT my mother. When my mother left my Father,**

it was the worst time of my life (the split up) I'm sure you can imagine why. My life was great when my Mother and Father were together." (S253971 Supreme Court Petition for Review Exhibit 1 pg 36; 3CT 674-684)

My older brother Keith was an eyewitness to the event and wrote a declaration defending our mother, who wasn't even in town at the time of the incident. **(S253971 Supreme Court Petition for Review Exhibit 1 pg 45)**

Casey asked the Agency in a letter to Fatimah Abdullah (Social worker supervisor) and Jorge De La Toba (Fatimah's supervisor): **"Why my family and mother (Sharon Nielson) and sister (Selisha Nielson) were not contacted,"** and why **"no effort was made whatsoever to look for any members of my family before my rights were removed. I love my daughter very much and this is extremely disturbing and very frustrating that my legal rights have not been met or respected." (S253971 Supreme Court Petition for Review Exhibit 1 pg 38)**

Additionally, Casey specified:

"I am the one who called CPS for the concern for my daughter when she placed with a friend at first and Aimee was staying there. **I was not staying there and I believed that my daughter was in an unsafe environment. I'm writing you because I want the truth about these matters to be stated, especially about the report saying that my mom was abusive to**

me...some of these things have been twisted up or misconstrued if we could rectify these things for the record." (S253971 Supreme Court Petition for Review Exhibit 1 pg 36)

The Agency claims that Casey was very specific that he did not want A.K. placed with us. However, Casey states:

"**I would like to set the record straight asking that I be clearly understood...I have never stated that I did not want my daughter placed with my Mother or sister...**Since I have lost my parental rights and **even well before they were taken from me, repeatedly I have requested that my daughter be placed with my Mother and sister. I have asked...my social workers if they could please find and contact all my family, especially my Mother and sister...Again, it would be my deepest wish and prayer if A.K. can be placed with my mother and sister. I never said or wanted otherwise.** We love my daughter so much...I've loved her since she was conceived...while she was in her mother's womb, we bonded. I would stay up with her most nights, talking to her, singing and playing music for her, she was very responsive and playful to my touch **and my voice.** I would do anything for her and have done everything in my power to secure her safety and security despite my current situation...**I ask that you please consider the facts of this case...I'd also like to be called back to court to testify...concerning these matters." (S253971 Supreme Court Petition for Review Exhibit 1 pg 47-49)**

PATERNAL GRANDFATHER NOT NOTIFIED

§309 (e)(1): "The social worker shall conduct, within 30 days, an ***investigation to identify and locate...all grandparents...*** and provide **written notification** and shall also, whenever appropriate, provide oral notification, **in person or by telephone..." (3CT 579)**

But, even if the Agency thought there was any validity to their claims of abuse, **where in the record did they provide "written notification" to the paternal grandfather, Clarence Knox,** who as a veteran should've been exceptionally easy to locate? Especially since his name and date of birth is on the Cherokee inquiry the Agency submitted 12/21/16, and he submitted a 388 motion stating he wasn't notified, along with a paternal uncle, Keith Knox. (1CT 118, 120, 121; 3 CT 740-742, 755, 756; 3RT 321; Jurisdiction and Disposition Report, January 4th, 2017 pg 3).

PATERNAL UNCLES NOT NOTIFIED

§309 (e)(1): "...an ***investigation to identify and locate... adult relatives."*** **(3CT 579)**

Where in the record did the Agency notify A.K.'s uncle Bartholomew Sykes, who *ran a foster care facility for over a decade,* is also a veteran, and has been a pediatric nurse for 13 years? (3RT 336, 337)

Where in the record did the Agency notify Chaz (A.K.'s uncle) whom they had the store address where he was a manager in San Diego? (2CT 281)

SIBLING/PARENT OF SIBLING NOT NOTIFIED

§309 (e)(1): "...an ***investigation to identify and locate....***

parents of a sibling of the child...adult siblings..."(3CT 579)

The Agency justified not notifying Natalia (A.K.'s older sister) because she was a minor during detention. (4CT 906) However, Natalia turned 18 in the same month as A.K.'s detention hearing (December 2016), so **she was no longer a minor during the "search." And where in the record did the Agency notify Natalia's mother (Priscilla Illizaliturri) which federal law requires?"** (3CT 642-647; 2CT 514, 515, 555-562)

The Agency states they couldn't locate grandmother because of 'Casey's extensive history in placements throughout his childhood.' (1CT 194) **My brother was never in multiple placements** and never taken from our mother; she asked for help from the courts after his behavioral problems and mental disabilities worsened around the age of 16, and Casey was examined at BayView (or BaySide) Mental Institution; he was there at least 2 weeks. Casey was also placed in a group home for a while—the Tucson Teen Center. **(S253971 Supreme Court Petition for Review Exhibit 1 pg 44)**

Also, the very language of the laws involved show that family-finding involves an **actual investigation**—even using internet searches and genograms if necessary—showing that the Agency's investigation doesn't depend solely on leads from the parents, which is logical because in some cases, the parent may have a mental disability, not know who his parents are, or—as was the case in this situation—not know an address or phone number. **(3CT 579-582)**

Reasons Agency justifies denying legally required notification to paternal family:

The Agency claims grandmother "used at least 3 different names," "AKAs," "aliases." (4 CT 906) However, grandmother **never used aliases**—an alias is defined as a "false or assumed identity." The only other names she's ever used have been **2 married names**—Candor and Knox— and of course her maiden name—Russell—and after her divorce from her second husband our names were changed to Nielson due to his abuse, the only name we've used for the past 27 years—no other name—**the same last name Casey gave the Agency that appears on the ICWA inquiries the Agency submitted 12/21/16 and 2/23/17.** (1CT 9, 67; Jurisdiction/Disposition Report 1/4/17 pg 3)

The Agency states our addresses were "more than 5 years old at the time of the search," and none of our phone numbers worked. (4CT 906) However, **at the time of the "search," it had been only a year and a half** since we'd moved from San Diego to Northern California (moved 5/28/15). And we had resided at our previous residence nearly 16 years. **(S253971 Supreme Court Petition for Review Exhibit 7)** The "search" was in December 2016. And since the "search," we haven't changed our number.

The Agency states that "to this date, the paternal grandmother will not provide her physical address to the court or Agency citing it is a confidential address," that 'she would not provide her address to law enforcement," that

our "information was unattainable," and that we "took active steps to remain anonymous and unreachable." **This is false.**

We receive **Medi-Cal** and **HUD**, and grandmother receives disability, programs the Agency uses in their family-finding efforts, according to Social worker Kelly Linder (Permanency Planning Assessment Unit at San Diego Social Services) (858) 650-5854 whom we spoke with on 8/28/18, Briana Cuevas in the RFA department, and several other Agency workers. **Such programs make the recipient's information readily attainable** by governmental agencies during family-finding, who regularly do checks to detect fraud, and also disproves the Agency's claims of "multiple name" usage and "failure to disclose address to law enforcement." If we refused to disclose our address as the Agency claims, we wouldn't qualify for these government programs we receive.

Mrs Linder further stated Agency uses **DMV records** (showing current physical/mailing addresses, easy to pull up with a Social Security number, and they had grandmother's Social Security number during the "search." (3 RT 309) Additionally, she stated that the Agency uses a database called ***CLEAR (Consolidated Lead Evaluation and Reporting)***. CLEAR is a thorough, comprehensive, law-enforcement level database specifically known to be so effective it can even locate a changed name; piece together information from a partial/incorrect street address; track up to 10 layers of interpersonal relationships with a subject; generate a list of relatives; close gaps in investigations; and provide names, social security numbers, and addresses for agencies seeking to locate individuals.
https://legal.thomsonreuters.com/en/products/clear-investigation-

software/child-and-family-services (4RT 132)

So the Agency by their own admission had the necessary family-finding tools with which to notify us.

Please note: Contrary to the statements of the Agency, Plumas County Social Services did ***not*** say they couldn't locate us (4CT 907), which can be verified by Debbie Wingate, Adoptions Manager in Plumas County Social Services. (530) 283-6476 **In fact, she said that a C4 database search would've revealed our information.**

Additionally, the Social Security Administration states it's very easy for an Agency to locate a person's address with a Social Security number and birthdate, especially in cases where the individual is on Social Security, as grandmother has been for over a decade. **She should have been impossible for the Agency to miss.** (4RT 162) Yet, in spite of Agency having grandmother's Social Security number during the "search," the Social Security Administration found no inquiry, subpoena, nor any other request for grandmother's information from Agency. (3RT 309)

The Agency knows our physical address because we gave it to Fatimah Abdullah for the RFA referral in 5/2018. The court has our mailing and physical address by way of JV-182. (2CT 416) We didn't give it verbally during the hearings because the caregiver was present, and like her address is confidential from us, there's no need for her to have ours.

And even if the Agency didn't have a physical address, they knew we receive mail at a P.O. Box, so why didn't they write us a certified letter as mandated by **§309 (e)(1) provide "written notification"**? (4CT 907; 3CT 579)

The Agency claimed that I (Selisha) used "two different last names." However, I've only used the last name Nielson as long as my Mom has—27 years—the change came after Mom's divorce from my father because of his abuse. (4CT 907) The Agency further asserted that I went by my middle name for a time, so they couldn't find me. However, I've used only my current name (Selisha Shannon Nielson) since 2005; that's the time it was officially amended on my birth certificate. The fact that they knew that much—my middle name—makes their inability to find me quite strange. (4CT 907)

CONCLUSION

For the reasons above, we implore this Honorable Court to grant our petition for writ of certiorari in A.K.'s case—**a case of national importance because it is the reason for the enactment of Federal Government Public Law 110-351 Fostering Connections Act—*the most significant child welfare act in 15 years*—**and **according to the American Bar Association Center on Children and the Law,** it's just one of **"countless compelling stories from around the country of relatives who didn't know that grandchildren...had been placed into foster care until well after they had been...adopted by a non-relative."**

Worse yet, lack of due diligence in legally locating and notifying biological family has been more prevalent in paternal family, which is a discrimination not only against the child's legal right to be raised within his/her own family, but also against the paternal relatives who are being excluded from due diligence simply because they are from the father's side. As a matter of fact, the ***RFA training manual*** **states that it is "often paternal relatives" who did not know the child was in custody.** (S253971 Supreme Court Petition for Review Exhibit 9)

The reality is that family-finding laws in A.K.'s case were violated; the record does not support the findings of the lower courts. A.K. was never afforded her legal opportunity to be raised within her own paternal family. This is about A.K.'s long-term ***preventable*** emotional trauma—and right now, she has no way to fight for herself.

When a child is adopted because they have no loving family who can care for them—*adoption in that case is indeed a gift.* But when a child is adopted out of biological family who was never legally notified of the child's detention, and the child has immediate medical needs which placement with relatives would address, and federal laws show that placement with biological family can prevent long-term emotional trauma and even a 4 times increased risk for suicide—*how is adoption in that case anything less than kidnapping?* And how is that working for the best long-term interests of the child?

Please place A.K. with us to adopt her, and while this case is being decided please reinstate the visitation that was abruptly terminated.

Respectfully submitted, Date: March 14 2019

Selisha Nelson
Sharon Nelson