

Nos. 22-247, 22-251, and 22-253

In the Supreme Court of the United States

JACQUELINE CHUI, PETITIONER

v.

BENJAMIN TZE-MAN CHUI, ET AL.

MICHAEL CHUI, PETITIONER

v.

BENJAMIN TZE-MAN CHUI, AS TRUSTEE, ET AL.

CHRISTINE CHUI, PETITIONER

v.

BENJAMIN TZE-MAN CHUI, ET AL.

*ON PETITIONS FOR WRITS OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT*

**BRIEF FOR RESPONDENTS BENJAMIN TZE-MAN CHUI
AND MARGARET LEE IN OPPOSITION**

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QUESTIONS PRESENTED

Whether the California Court of Appeal erred in rejecting petitioners' due process challenges to the approval of a guardian ad litem's settlement of the minor petitioners' claim based on the court's determination that, on the particular facts of this case, the additional procedures that petitioners requested would not have led to a different outcome because petitioners could not identify any arguments or evidence that the trial court had failed to consider and address on the merits, as well as the court's conclusion that the minor petitioners' right to be present during the approval proceedings had been validly waived.

PARTIES TO THE PROCEEDING

Petitioners Jacqueline Chui and Michael Chui were appellants below. Petitioner Christine Chui was a defendant-appellant below.

Respondents Benjamin Chui and Margaret Lee were plaintiffs-respondents below.

Respondents Esther Shou May Chui Chao, Ruth Chui, Helena Chui, and Jackson Chen, Esq. were respondents below.

ADDITIONAL RELATED PROCEEDINGS

California Court of Appeal (2d Dist.):

Chui v. Chui, No. B286548 (Feb. 31, 2019) (staying appeal pending determination of the proceedings before the probate court)

In re King Wah Chui, No. B296150 (July 3, 2019) (dismissing appeal as premature)

Chui v. Chui, No. B288425 (Jan. 29, 2020) (staying appeal pending determination of the proceedings before the probate court)

Chui v. Chui, No. B301214 (Jan. 31, 2020) (staying appeal pending determination of the proceedings before the probate court)

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OPINIONS BELOW

The opinion of the California Court of Appeal (22-251
Pet. App. 3a-88a) was certified for publication only in part;

it is reported at 291 Cal. Rptr. 3d 213.¹ The opinions of the California Superior Court (Pet. App. 89a-107a, 108a-148a, 149a-166a; 22-247 Pet. App. 92-130) are unreported.

JURISDICTION

The judgment of the California Court of Appeal was entered on March 2, 2022. Petitions for rehearing were denied on March 28, 2022 (22-247 Pet. App. 1-3). Petitions for discretionary review were denied by the California Supreme Court on June 15, 2022 (Pet. App. 1a-2a). The petitions for writs of certiorari were filed on September 12, 2022 (No. 22-253) and September 13, 2022 (Nos. 22-247 and 22-251). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

This case arises from a global settlement of long-running litigation among members of an extended family relating to a trust established in 1988 by King Wah Chui and his wife, Chi May Chui. King and Chi May had three children: Robert, respondent Margaret, and Esther. Pet. App. 5a.² Robert married Helena Chui, and together they had one child, respondent Benjamin Chui. *Ibid.* Robert and Helena divorced in 2002. *Ibid.* Robert then married petitioner Christine Chui in March 2003. Pet. App. 6a. Robert and Christine had two children, petitioners Jacqueline Chui and Michael Chui. *Ibid.*³

In the decisions below, the California Superior Court enforced a settlement of the parties' disputes (the May

¹ Unless otherwise specified, all "Pet. App." citations refer to the appendix to the petition in No. 22-251.

² Consistent with the parties' and lower courts' practice below, this brief refers to members of the Chui family by their first names for the sake of clarity.

³ The courts below referred to Jacqueline and Michael collectively as the "Minors."

2018 Settlement) against petitioner Christine, who had sought to disavow the settlement shortly after agreeing to its terms in open court. The May 2018 Settlement provided that the terms affecting petitioners Jacqueline and Michael, who were minors at the time, would require approval by the guardian ad litem who had been appointed to represent their interests. The Superior Court initially declined to approve the first settlement that the guardian ad litem negotiated on the minors' behalf (the First GAL Agreement), but subsequently approved a revised version of the minors' settlement (the Second GAL Agreement) and thereafter denied attempts by Christine to set aside that approval. The California Court of Appeal affirmed, and the California Supreme Court denied petitions for discretionary review.

1. a. King and Chi May established a revocable trust in 1988. Pet. App. 6a. After Chi May's death in 2002, King served as sole trustee and continued to make amendments favorable to Robert, Christine, and Christine's children. *Id.* at 6a-7a.

King resigned as trustee in February 2011 after a period of cognitive decline. Pet. App. 8a. Pursuant to the trust document's succession provision, Robert and Margaret became co-trustees. *Ibid.* King eventually died in June 2014. *Ibid.*

Meanwhile, Robert became incapacitated due to illness and eventually died in June 2013. Pet. App. 8a. While Robert was incapacitated, Esther filed a petition in Los Angeles County Superior Court alleging that Robert had improperly delegated his duties as co-trustee to Christine, Robert's second wife. *Id.* at 9a. At the time, petitioners Jacqueline and Michael—Robert and Christine's children—were minors. Esther accordingly requested appointment of a guardian ad litem for the two minor children on the grounds that Robert, their father,

was “in a coma and not expected to survive,” and that their “mother Christine is alleged to have mismanaged the trust.” 3 Appellants’ App. 867.⁴ The Superior Court appointed respondent Jackson Chen, Esq. as guardian ad litem for both children from the court’s guardian ad litem panel, following a hearing in which Christine objected to the appointment of a guardian ad litem for her children. 3 Appellants’ App. 868 (minute order); 1 Appellants’ App. 58 (order appointing guardian ad litem).

In March 2013, with Robert still incapacitated, the Superior Court appointed Benjamin as co-trustee in Robert’s place pursuant to the trust document’s succession plan. Pet. App. 8a. King died in June 2014. *Ibid.*

b. Litigation among the parties intensified in the wake of King’s death. Benjamin and Margaret filed petitions in the Superior Court, principally alleging that Robert had breached his duties as trustee by making unauthorized disbursements of trust assets, and that Christine and Robert had together committed elder financial abuse against King, taking advantage of his diminished mental state to misappropriate trust assets for their own benefit. Pet. App. 9a-10a.

Esther filed a similar petition alleging that King had suffered from dementia since 2004, and that Christine and Robert had taken advantage of the situation to misappropriate approximately \$10 million of trust assets. Pet. App. 10a-11a. Meanwhile, Christine had filed petitions seeking removal of Benjamin and Margaret as trustees. *Id.* at 10a. The Superior Court deemed these petitions regarding the trust related to several other pending probate proceedings involving other Chui family trusts or estates. *Id.* at 90a n.2.

⁴ Citations in the form “Appellants’ App.” refer to the Appellants’ Appendix in the California Court of Appeal, Case No. B312525.

c. The related trust proceedings were set for trial on May 14, 2018. Pet. App. 12a. As set forth in their trial brief, Benjamin and Margaret were prepared to put on evidence showing that Christine and Robert had stolen approximately \$12.2 million in cash and reallocated \$12.5 million in property from the trust by exercising improper influence over King. 1 Resp. App. 168.⁵ That evidence would have shown that Christine’s abusive behavior included protracted elder abuse against King following Chi May’s death. *Id.* at 161-162. Among other acts, Christine recorded videos of conversations with King in which Christine coaxed King into stating that the trust assets were meant for Christine and Christine’s children, and that other members of the Chui family were bad people who deserved nothing, *ibid.*, which her own expert witness acknowledged were “disturbing,” 3 Resp. App. 1282. The trial evidence would also have shown that as of 2004 at the earliest, King was suffering from progressive dementia and impaired cognition, had increasingly lost the ability to participate in meaningful conversations, and had largely stopped speaking altogether. 1 Resp. App. 161-162. The evidence would have further shown that King’s score on a mental examination was so low as to indicate “severe cognitive impairment.” *Id.* at 162. Throughout this period, moreover, King remained sole trustee of the trust and made several amendments that principally benefitted Christine and Robert, *ibid.*, which Christine’s trial counsel described as “worrisome,” Resp. C.A. Br. 22; see also Pet. App. 5a-7a.

On the day trial was originally scheduled to begin, Benjamin, Margaret, Esther, and Christine agreed to the May 2018 Settlement, which served as a global settlement

⁵ Citations in the form “Resp. App.” refer to the Respondents’ Appendix in the California Court of Appeal, Case No. B306918.

of the trust litigation. They memorialized its terms orally before the Court in accordance with California Code of Civil Procedure § 664.6, with Christine’s counsel reciting the settlement’s terms on the record. See Pet. App. 12a..

Among the settlement agreement’s terms, the parties each disclaimed various trust interests and waived certain present and future litigation claims. Pet. App. 12a-14a. As part of this mutual exchange, Christine expressly “disclaim[ed] any rights as a beneficiary of King’s trusts” and agreed that “[t]he minor children’s claims, if any, can only be brought by their guardian ad litem Jackson Chen, his designee, or his court appointed successor” until the children reached the age of majority. *Id.* at 13a. The settlement agreement also provided that any of the terms affecting Jacqueline and Michael’s rights were subject to approval by the guardian ad litem on their behalf. *Id.* at 14a.

After confirming with the parties that they understood and agreed to the settlement’s terms, 22-253 Pet. App. 206-210, the court concluded that a binding agreement had been reached, subject to guardian ad litem Chen’s agreement on behalf of Jacqueline and Michael, Pet. App. 15a. Shortly thereafter, Christine delivered \$3 million and certain jewelry to respondent Benjamin’s counsel, in performance of one of her settlement obligations. *Id.* at 16a.

d. Within weeks, however, Christine sought to disavow her agreement to the May 2018 Settlement. She first filed a motion to set aside the settlement in which she alleged that she had been “under the influence of codeine, as well as ill and sleep deprived” at the time. Pet. App. 16a. The court denied that motion as procedurally defective. *Ibid.*

On July 23, 2018, Chen, in his capacity as guardian ad litem for Jacqueline and Michael, reported on the status

of negotiations regarding a proposed long-form agreement to implement the May 14 Settlement. Chen reported that the then-current draft agreement (but not the May 14, 2018 Settlement terms themselves) was not, in his view, “in the best interests of the Minors” “as drafted,” and listed specific changes that would improve the agreement. Pet. App. 17a. By August 10, 2018, Chen had reached agreement with Benjamin, Margaret, and Esther on the First GAL Agreement, in which Chen assented to the May 2018 Settlement on behalf of Jacqueline and Michael. *Id.* at 153a. The First GAL Agreement resolved some, but not all, of the issues that Chen had mentioned in his July 23 submission. *Id.* at 17a-18a.

Respondents Benjamin and Margaret then filed a motion, in which Chen joined, to enforce the May 2018 Settlement pursuant to California Code of Civil Procedure § 664.6. Pet. App. 18a, 150a. Christine filed an opposition to that motion, supported by over one hundred pages of supporting declarations, exhibits, and evidentiary objections to Benjamin and Margaret’s submission. 4 Resp. App. 1524-1699. Christine’s arguments principally concerned the enforceability of the settlement agreement under California contract law and California Code of Civil Procedure § 664.6. See 4 Resp. App. 1524-1699; Pet. App. 154a-165a.

Following oral argument, the court rejected Christine’s contentions and granted Benjamin and Margaret’s motion to enforce the May 2018 Settlement. The court noted that the settlement agreement itself “still remain[ed] subject to Court approval of the minors’ compromise,” *i.e.*, Chen’s assent on behalf of Jacqueline and Michael. Pet. App. 166a. The court also noted that, although “Chen was appointed initially as [guardian ad litem] in just one case, thereafter the parties stipulated that the pending petitions in all these related cases were

to be tried together,” and consequently “[t]he court understood that he was [guardian ad litem] for all of these cases.” *Id.* at 165a n.4.

Christine proceeded to file multiple motions alternately seeking reconsideration of the court’s order enforcing the May 2018 Settlement and entry of an order appointing herself as guardian ad litem for Jacqueline and Michael in place of Chen. Pet. App. 20a-21a. The court denied those motions. *Ibid.*

e. In November 2018, Chen petitioned the court for approval of the First GAL Agreement. Pet. App. 21a. The court held a trial over six days in April and May 2019, during which Chen put on evidence in support of approval, and Christine and her expert testified against approval. 22-253 Pet. App. 162, 174. Midway through trial, and before Christine was cross-examined, the court granted Christine’s motion for nonsuit and denied Chen’s approval petition. *Id.* at 161-184. The court found that Chen could not testify regarding the approximate value that the minors stood to gain from the settlement, either in rough monetary terms or in comparison to what they would have received without the settlement. *Id.* at 165-166.⁶ At

⁶ Having denied Chen’s petition for approval of the First GAL Agreement, the court also ordered that Margaret and Benjamin be suspended as co-trustees, and issued an order to show cause why they should not be removed from that position. 22-253 Pet. App. 185-193. The court would later discharge the order to show cause, noting that the suspension was “never effectuated.” Pet. App. 146a-147a. The California Court of Appeal refused to entertain Christine and Michael’s argument that the trial court had erred in discharging the order to show cause. *Id.* at 87a. Before this Court, Christine nonetheless continues to improperly rely on purported findings from that order, despite the fact that the order was abrogated by the trial court and never reinstated. See 22-253 Pet. 24; see also 22-253 Pet. App. 90 (noting that the trial court “had the inherent authority to change its interim rulings”).

subsequent hearings, the court clarified that its rejection of the First GAL Agreement had been without prejudice to consideration of a revised agreement, and the court encouraged the parties to mediate in an effort to reach a revised agreement that adequately addressed the court's stated concerns. 8 Reporter's Tr. 1592-1601 (Cal Ct. App. No. B306918); Pet. App. 22a.

The parties accepted the court's invitation to mediate the dispute. The mediation resulted in the Second GAL Agreement, a renegotiated agreement that addressed some of the concerns that the court had expressed with respect to the First GAL Agreement. Pet. App. 23a. Benjamin and Margaret assented to the Second GAL Agreement, as did Chen on behalf of Jacqueline and Michael—but Christine did not. *Ibid.* Christine instead filed a purported repudiation of the Second GAL Agreement before the agreement was memorialized in writing and without knowing all of its terms. *Id.* at 25a.

Chen, joined by Margaret and Benjamin, returned to the court to seek approval of the executed Second GAL Agreement. Pet. App. 113a. The parties fully briefed Chen's new petition and submitted renewed evidentiary materials. Pet. App. 113a-114a. Meanwhile Christine filed a second purported repudiation of the Second GAL Agreement on her own behalf, and had her attorney submit unverified purported repudiations of the Second GAL Agreement on behalf of Jacqueline and Michael. *Id.* at 113a.

The Superior Court approved the Second GAL Agreement. Pet. App. 121a-148a. The court noted that it had "declined to approve the previous agreement without prejudice to any future agreement." *Id.* at 135a. The court also addressed Chen's appointment as guardian ad litem in the related cases. Characterizing Chen's lack of formal appointment in all of the related cases as a "clerical issue,"

the court “remed[ied] [the] administrative defect” by appointing Chen as guardian ad litem for Jacqueline and Michael in each of the related cases except for two cases unaffected by the Second GAL Agreement. Pet. App. 131a-132a. The court also observed that Chen’s authority to negotiate the Second GAL Agreement was supported by the May 2018 Settlement, in which Chen, with Christine’s express agreement, was vested with authority to pursue and settle the minors’ claims and Christine had waived any right to represent the interests of the minors. *Id.* at 126a, 128a. Separately, the court found that Christine had “a conflict of interest independently precluding her from acting on the Minors’ behalf in this litigation,” *id.* at 126a-127a, and that she “appear[ed] to be using the Minors for her own agenda,” *id.* at 130a. In light of those findings, the court concluded that Jacqueline and Michael’s expressed desire to have Christine represent their interests was “irrelevant.” *Id.* at 126a.

The court also considered and rejected each of Christine, Michael, and Jacqueline’s attempts to repudiate the Second GAL Agreement. Pet. App. 132a-133a. The court struck Jacqueline and Michael’s unverified purported repudiations as “ineffective and improper,” because they had been submitted through Christine’s attorney rather than through Chen, the minors’ court-appointed guardian ad litem. Pet. App. 132a. The court additionally held, citing California law, that “a repudiation may be ineffective when not in the best interest of the minors,” and concluded that the minors’ supposed repudiations “bear minimally on the Minors’ best interests and instead serve to further Christine’s agenda of setting aside settlements and extending litigation.” *Ibid.* The court also rejected Christine’s attempts to repudiate the Second GAL agreement on Jacqueline and Michael’s behalf, based on its conclusion

that Christine was not entitled to represent the minors' interests in the litigation. *Id.* at 133a.

On the merits of Chen's petition for approval of the Second GAL Agreement, the court considered the parties' renewed briefing and evidentiary submissions, and concluded that the Second GAL Agreement "largely addresse[d] the Court's previously stated concerns" with the First GAL Agreement. Pet. App. 140a. The court found "several benefits over the previous Agreement," including "substantially better economic terms for the Minors." *Ibid.* The court also noted that "Chen has clearly and precisely laid out what each Minor would recover." *Id.* at 141a. The court concluded that "Chen has substantially improved the Minors' recovery" compared to the First GAL Agreement and the pre-settlement status quo, adding \$5 million to Jacqueline and Michael's recovery and eliminating significant estate tax and other liabilities. *Id.* at 144a. The court was therefore "persuaded that the Agreement provides meaningfully more money" along with "genuine peace and complete separation from the litigation and Co-Trustees," and accordingly approved the Second GAL Agreement. *Ibid.*

In doing so, the court noted that "an evidentiary hearing or trial appear[ed] to be unnecessary," in part because "proceedings on a Petition for Approval are generally non-adversarial in nature, as the proceeding is purely between the Court and its officer, the [guardian ad litem], to determine whether a proposed agreement is a good deal for the minors." Pet. App. 139a. The court further emphasized that the Second GAL Agreement addressed concerns that the court had noted based on the prior trial proceedings on the First GAL Agreement. *Ibid.* The court also cited California precedent holding that a guardian ad litem controls litigation on behalf of a minor child and "may waive the parent's right to a contested

hearing.” *Ibid.* (quoting *In re Esmerelda S.*, 80 Cal. Rptr. 3d 585, 591 (Ct. App. 2008)).

In response to the court’s approval of the Second GAL Agreement, Christine filed a motion for reconsideration and a motion for a new trial, both of which were “supported by voluminous evidence.” Pet. App. 63a. The Superior Court rejected Christine’s attempt to set aside the Second GAL Agreement, issuing written rulings that “addressed Christine’s arguments * * * on the merits and at length.” *Ibid.*; see 22-247 Pet. App. 92-130; Pet. App. 89a-107a. Although the court adhered to its prior ruling that Christine was not entitled to represent the minors’ interests in the litigation, the court also considered Christine’s evidentiary contentions and explained that they did not alter its conclusion that the Second GAL Agreement was “in the Minors’ best interests.” 22-247 Pet. App. 120; see also *id.* at 121-128 (responding in detail to Christine’s factual contentions).

2. A unanimous panel of the California Court of Appeal affirmed. Pet. App. 3a-88a. The Court of Appeal rejected Christine’s challenges to the Superior Court’s decision enforcing the May 2018 Settlement, see *id.* at 38a-57a, and rejected Christine’s, Michael’s, and Jacqueline’s challenges to the Superior Court’s approval of the Second GAL Agreement, see *id.* at 57a-82a. The court concluded that the Second GAL Agreement was a reasonable resolution of the minors’ claims and was in the minors’ best interests, *id.* at 64a-70a; that Chen could negotiate the Second GAL Agreement on the minors’ behalf even though he had not been formally appointed as guardian ad litem in each of the related cases that were resolved by the settlement, *id.* at 58a-61a; and that neither Christine nor the minors could block approval of the Second GAL Agreement by filing purported repudiations with the trial court, *id.* at 73a-82a.

As is relevant here, the Court of Appeal rejected procedural challenges to the approval of the Second GAL Settlement in portions of its opinion that were not designated for publication. Pet. App. 3a n.1, 61a-64a, 70a-72a.⁷ In response to Christine’s argument that the trial court had erred by failing to hold an evidentiary hearing on the Second GAL Agreement, the Court of Appeal observed that the trial court had denied Christine standing to represent the minors’ interests. Pet. App. 57a, 61a. The court noted arguments on both sides of that issue, but ultimately had no need to “decide whether the court erred in determining that Christine lacked standing,” because it determined that any error in declining to hold an evidentiary hearing was harmless. *Id.* at 62a. The Court of Appeal emphasized that the trial court had addressed Christine’s written submissions on the merits, both before and after approval of the Second GAL Agreement. *Id.* at 62a-63a. Because Christine could not “point to any evidence or argument that the trial court failed to consider and address,” it was “not reasonably probable that, in the absence of the alleged error, Christine would have obtained a more favorable result.” *Id.* at 63a-64a.

The Court of Appeal also rejected Jacqueline and Michael’s objections that they had been denied notice of the petition for approval of the Second GAL Agreement. Pet. App. 70a-72a. First, the court held that the Superior Court had validly “dispense[d] with” Jacqueline and Michael’s right to be present at the hearing on approval

⁷ Although the Court of Appeal designated certain portions of its opinion for publication, those portions expressly excluded the court’s disposition of petitioners’ challenges to the trial court’s decision not to hold an evidentiary hearing on the Second GAL Agreement and to the alleged absence of notice to the minor petitioners. See Pet. App. 3a n.1.

of the Second GAL Agreement “for good cause.” *Id.* at 71a. In particular, the court observed, Christine’s counsel had expressly waived Jacqueline and Michael’s presence at the hearing on the First GAL Agreement, and Christine never sought to withdraw that waiver or to bring her children to the hearing on approval of the Second GAL Agreement. *Ibid.*

The Court of Appeal further held that, even if the minors’ absence from the hearing had been error, that error was harmless. Pet. App. 71a. Jacqueline and Michael did not “point to any argument they would have asserted if they had been present,” and in light “the benefits to the Minors provided by” the Second GAL Agreement, the Court of Appeal held that they had “not established that [their] absence at the hearing was prejudicial.” *Id.* at 72a.

3. The California Court of Appeal denied petitions for rehearing filed by Christine and Michael. 22-253 Pet. App. 88-90. In its order denying rehearing, the court modified its opinion by adding an additional footnote in which it rejected Christine and Michael’s continued reliance on the trial court’s “interim rulings” made in connection with the rejection of the First GAL Agreement. *Id.* at 89-90. The Court of Appeal explained that the trial court “had the inherent authority to change its interim rulings.” *Id.* at 90.

4. The California Supreme Court denied petitions for discretionary review. Pet. App. 1a-2a.

ARGUMENT

Petitioners principally contend that the California Court of Appeal erred by endorsing a “no notice, no hearing rule” that invariably permits a trial court to approve a guardian ad litem’s settlement of a minor’s claims without providing notice to the minor or holding an evidentiary hearing. 22-251 Pet. 24; see also 22-247 Pet.

21; No. 22-253 Pet. 38.⁸ But that characterization of the decision below is not correct. The Court of Appeal did not resolve the merits of the due process challenges that petitioners now press before this Court. Instead, it relied on case-specific waiver and harmlessness determinations, which petitioners do not meaningfully challenge. The Court of Appeal’s non-precedential disposition of petitioners’ procedural objections does not implicate any conflict of authority among state courts of last resort, and this case would be an unsuitable vehicle for further review in any event. The petitions for writs of certiorari should accordingly be denied.

1. The California Court of Appeal correctly rejected petitioners’ contentions that due process principles required reversal of the trial court’s judgment approving the Second GAL Settlement. That fact-bound conclusion does not warrant further review.

a. In their critique of the decision below, petitioners repeatedly emphasize (22-251 Pet. 4, 21, 28; 22-253 Pet. 13, 22) a portion of the Court of Appeal’s opinion in which the court stated that the relevant California statutes and rules do not “require[] notice or an adversary hearing to

⁸ In addition to purporting to join the arguments set forth in Michael’s petition, petitioners Christine and Jacqueline press a series of additional contentions, which appear to raise broad challenges to the use of guardians ad litem in court proceedings and various fact-bound challenges to the decision of the California Court of Appeal in this case. Those undeveloped contentions lack merit. For example, Christine repeatedly refers (*e.g.*, 22-253 Pet. 8, 15, 21, 25) to claims against respondents for \$100 million. As the Court of Appeal correctly explained, however, those “purported claims” are “unsubstantiated in [the] record.” Pet. App. 69a. In any event, Christine and Jacqueline’s contentions do not implicate any conflict of authority, and further review of those contentions by this Court is therefore unwarranted. See Sup. Ct. R. 10. Because the many misstatements of fact and law underlying those contentions are not material to this Court’s decision whether to grant certiorari, we do not endeavor to respond to them.

approve a minor's compromise," Pet. App. 61a, and that "it would appear that a petition to approve or disapprove a minor's compromise may be decided by the superior court, ex parte, in chambers," *id.* at 62a (quoting *Pearson v. Superior Ct.*, 136 Cal. Rptr. 3d 455, 457 n.2 (Ct. App. 2012)). But the Superior Court's decision approving the Second GAL Agreement was the product of extensive adversarial litigation, rather than any form of summary procedure. With respect to the Second GAL Agreement, Christine filed a lengthy demurrer and multiple post-judgment motions accompanied by voluminous evidence, which the trial court addressed in detailed written rulings. *Id.* at 63a. Moreover, the court had previously held a six-day trial during which the court took evidence on the First GAL Agreement. The court then invited the parties to submit a revised agreement that would address the concerns that the court had noted based on that evidentiary presentation, which necessarily informed the court's consideration of the Second GAL Agreement. See *id.* at 139a. Any suggestion that the relevant proceedings were conducted "ex parte" or "in chambers" is flatly inconsistent with the record.

Moreover, the Court of Appeal did not rest its decision on the reasoning that petitioners challenge. As the Court of Appeal explained, the trial court had declined to hold an evidentiary hearing on the Second GAL Agreement based on its conclusion that petitioner Christine lacked standing to object to the Second GAL Agreement. Pet. App. 61a. The Court of Appeal acknowledged, however, that Christine was "arguably entitled to participate in the hearing at which her children and wards [had] much at stake." Pet. App. 62a. At the same time, the court explained, any such entitlement was "arguably diminished" by the trial court's finding that Christine "had a conflict of interest with the Minors." *Ibid.*

Faced with those competing arguments, the Court of Appeal did not “decide whether the [trial] court erred in determining that Christine lacked standing with respect to the petition for approval,” Pet. App. 62a, and hence that an evidentiary hearing on the Second GAL Agreement was not necessary. The Court of Appeal had no need to decide that question because it concluded that, “[e]ven if the court erred, Christine * * * failed to establish prejudice.” *Ibid.* The Court of Appeal noted that the trial court had considered Christine’s response to the petition for approval on the merits, and that the court subsequently addressed the merits of Christine’s motions for reconsideration and for a new trial, which were “supported by voluminous evidence, including the declaration of an accounting expert addressing the economic aspects of the second GAL agreement.” *Id.* at 62a-63a. On appeal, Christine did not “point to any evidence or argument that the trial court failed to consider and address,” and she failed to “explain how she has been prejudiced.” *Id.* at 63a-64. Accordingly, the Court of Appeal determined that it was not “reasonably probable that, in the absence of the alleged error, Christine would have obtained a more favorable result,” and as a result any error by the trial court “was harmless.” *Id.* at 64a.

The Court of Appeal relied on similarly narrow grounds in rejecting the argument that the minor petitioners were entitled to notice of the petition for approval of the Second GAL Agreement. The Court of Appeal acknowledged that, under California Rule of Court 7.952, a minor generally must not only receive notice of the proceedings, but also has a right to be present at the approval hearing. Pet. App. 71a (citing Cal. R. Ct. 7.952(a)). As the Court of Appeal observed, however, that right “can be ‘dispense[d] with’ for good cause,” and

the trial court had done so “at the request of Christine’s counsel.” Pet. App. 71a (quoting Cal. R. Ct. 7.952(a)).

As an alternative holding, the Court of Appeal concluded that, even if the absence of the minor petitioners was error, they had “fail[ed] to establish that the error was prejudicial.” Pet. App. 71a. Any error was harmless because Jacqueline and Michael could “not point to any argument they would have asserted if they had been present,” other than the arguments that they had pursued on appeal and that the Court of Appeal held to be meritless. *Id.* at 71a-72a.

b. Petitioners do not meaningfully engage with the narrow grounds on which the Court of Appeal ruled, which provide the appropriate focus of inquiry here because this Court “reviews judgments, not statements in opinions.” *Black v. Cutter Labs.*, 351 U.S. 292, 297 (1956). Petitioners do not even acknowledge the Court of Appeal’s holding that the minors’ presence had been validly waived, much less offer any sound basis for rejecting that conclusion. To the extent that petitioners challenge the Court of Appeal’s harmless-error determinations, moreover, they do so only obliquely. Petitioners do not argue that an alleged deprivation of due process is exempt from harmless-error review, and they do not challenge the Court of Appeal’s sound logic that an alleged due process error is harmless if a litigant cannot identify some way in which the challenged procedure might have altered the outcome. See, e.g., *Tennessee Secondary Sch. Athletic Ass’n v. Brentwood Acad.*, 551 U.S. 291, 303 (2007).

Petitioners instead assert in conclusory fashion (22-251 Pet. 29) that “the lack of due process did cause injury here.” But the Court of Appeal directly confronted the two arguments that petitioners contend were overlooked by the lower courts. See Pet. App. 69a (holding that the

trial court “reasonably * * * declin[ed] to give * * * any weight” to “unsubstantiated” allegations of misconduct by respondents in evaluating the Second GAL Agreement’s reasonableness); *id.* at 78a (recognizing that Christine’s purported assignment of certain properties to Michael “had no legal effect” because Christine had previously waived her rights to those properties). Petitioners thus fail to demonstrate any error in the Court of Appeal’s harmlessness conclusion. In any event, petitioners’ fact-bound disagreement with the Court of Appeal’s non-precedential decision merits no further review. See Sup. Ct. R. 10.

2. Contrary to petitioners’ contentions (22-251 Pet. 19-22), this case does not implicate any conflict among States’ highest courts with respect to the due process requirements governing a court’s approval of a minor’s settlement. The decisions that petitioners cite do not demonstrate that other jurisdictions would have granted them appellate relief under the circumstances of this case, much less that they would have done so on federal due process grounds.

The only decision of a state court of last resort that petitioners cite, *Large v. Hayes ex rel. Nesbitt*, 534 So. 2d 1101 (Ala. 1988), does not establish any conflict with the decision below. In *Large*, the Alabama Supreme Court observed that, under its precedent, the approval of a minor’s settlement requires “a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor.” *Id.* at 1105. But neither *Large* nor the prior decision on which it relied, *Abernathy v. Colbert County Hospital Board*, 388 So. 2d 1207 (Ala. 1980), considered whether a failure to hold such a hearing would require reversal in a case in which the record demonstrates that a hearing would not have altered the outcome. Indeed, *Large* did not involve a

failure to hold a hearing at all; the trial court had conducted a hearing before approving the settlement at issue, and the Alabama Supreme Court held that this procedure insulated the settlement from collateral attack. 534 So. 2d at 1105. In *Abernathy*, the trial court had apparently received no evidence at all before approving the settlement at issue. 388 So. 2d at 1209. The Alabama Supreme Court held that the trial court's failure to undertake "a more extensive examination of the facts" justified reopening the judgment, *ibid.*, without confronting any argument that a hearing would not have changed the outcome. The result in *Abernathy* thus does not conflict with the Court of Appeal's waiver and harmless-error determinations in the decision below.

Moreover, even if the rule announced by the Alabama Supreme Court in *Abernathy* were not subject to ordinary harmless-error review, that rule still would not conflict with the decision below because the *Abernathy* court did not attribute the obligation to hold a hearing to federal law. Indeed, the court did not cite the federal Constitution at all. Instead, the court relied on one of its own prior decisions that had addressed the scope of the authority of a "next friend * * * to compromise and settle a minor's claim," 388 So. 2d at 1208 (citing *Tennessee Coal, Iron & R.R. Co. v. Hayes*, 12 So. 98 (Ala. 1892)), and on an *American Jurisprudence* annotation, see *id.* at 1209 (discussing 42 Am. Jur. 2d *Infants* § 47 (1978)). It therefore appears that the court was interpreting Alabama law, as the Eleventh Circuit has concluded in the course of holding that "Alabama law requiring a fairness hearing in order to bind a minor to a settlement agreement is a matter of state substantive law" that must be given effect in diversity actions litigated in federal court. *Burke v. Smith*, 252 F.3d 1260, 1266 (11th Cir. 2001); see also *ibid.* (explaining that "*Alabama law*

imposes the additional requirement of a fairness hearing when a representative seeks to settle the claim of a minor” (emphasis added)); *Burlington N. R.R. Co. v. Warren*, 574 So. 2d 758, 762 (Ala. 1990) (stating that trial court’s failure to comply with *Abernathy*’s requirements rendered a settlement voidable “under Alabama law”).

Petitioners additionally cite (22-251 Pet. 20-21) three decisions of intermediate state appellate courts that purportedly conflict with the decision below. But the decisions of intermediate state courts generally do not establish a conflict warranting review by this Court. See Sup. Ct. R. 10(b) (certiorari is appropriate where “a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals”). In any event, the cited decisions do not establish any conflict on the question presented.

There is no conflict between the decision below and *Bowden v. Hutzel*, 652 N.W.2d 529 (Mich. Ct. App. 2002). There, a guardian ad litem who had been appointed to represent a minor’s interests “withdrew his recommendation approving [a] settlement.” *Id.* at 532. The trial court entered a judgment approving the settlement without holding a hearing, and without requiring the minor to appear before the court or making a finding of “good cause” that would have authorized the court to dispense with the minor’s personal appearance under Michigan law. See *id.* at 532-533. A panel of the Michigan Court of Appeals held that, under those circumstances, the trial court had failed to discharge its obligation to undertake “an independent assessment of whether the resultant agreement was ‘fair’ and thus served the minor child’s best interests.” *Id.* at 532. The court therefore remanded with instructions for the trial

court to conduct a hearing on the fairness of the settlement. *Id.* at 533.

In reaching that case-specific conclusion, however, the *Bowden* court did not announce a broad rule that a trial court must *always* hold a hearing before approving a minor's settlement. To the contrary, the court noted at one point that a trial court "*may* set the matter for a full evidentiary hearing," 652 N.W.2d at 532 (emphasis added), thereby suggesting that, in appropriate cases, a trial court will have discretion to forgo a hearing. Nor did the court consider the waiver and harmless-error grounds that the California Court of Appeal relied upon in the decision below. And in all events, the *Bowden* court attributed its decision exclusively to the Michigan rules of court that govern approval of a minor's settlement. See 652 N.W.2d at 532-533 (emphasizing the requirement in Michigan Court Rule 2.420(B) that the trial court "pass on the fairness of the proposal"). The court's interpretation of state law could not lead to any conflict on an issue of federal law that would warrant review by this Court.

For similar reasons, the decision below does not conflict with *Byrd v. Woodruff*, 891 S.W.2d 689 (Tex. App. 1994). In that case, a panel of the Texas Court of Appeals stated that, "[w]ith minors, * * * even if the parties and court-appointed guardian ad litem agree to the settlement, a judgment ratifying the compromise cannot be rendered without a hearing and evidence that the settlement serves the minor's best interest." *Id.* at 705. But the court did not suggest that its general statement represented an unyielding rule of law that would not be susceptible to ordinary principles of waiver and harmless-error review. Moreover, the court attributed its statement to a Texas rule of court, rather than to any interpretation of the federal Constitution. See *ibid.* (citing Tex. R. Civ. P. 44).

Nor does the decision below conflict with the unpublished decision of the Iowa Court of Appeals in *In re Fagan*, No. 17-0785, 2017 WL 5185449 (Nov 8, 2017). As petitioners appear to acknowledge (22-251 Pet. 20), that non-precedential decision addressed the obligations imposed by Iowa law on an attorney who is appointed to represent a proposed ward in guardianship and conservatorship proceedings, including a duty to interview the proposed ward. See *Fagan*, 2017 WL 5185449, at *1. The court's decision, which merely summarized the terms of Sections 633.561 and 633.575 of the Iowa Code, has no bearing on the question presented here.

Finally, petitioners err in relying (22-251 Pet. 20) on the Sixth Circuit's unpublished decision in *Watkins v. Bailey*, 484 Fed. Appx. 18 (2012). There, the Sixth Circuit noted that a Tennessee trial court had heard testimony in connection with a hearing to approve the settlement of a minor plaintiff's underlying personal injury claims, which later became the subject of a federal action for legal malpractice. See *id.* at 19. The court's purely factual statement, which was part of the opinion's summary of the case's procedural background, did not suggest that the trial court had been *required* to hold an evidentiary hearing, and it plainly does not reflect a holding that federal due process principles imposed any such obligation. Thus, as with petitioners' other cases, the Sixth Circuit's decision in *Watkins* does not demonstrate any division of authority that would justify further review in this case.

3. In all events, further review is unwarranted because this case would not be a suitable vehicle for resolution of the question presented.

First, petitioners' notice-based challenge is not cleanly presented in this case because Jacqueline and Michael had actual notice of the petition seeking approval of the

Second GAL Settlement. As respondents argued before the California Court of Appeal, because the minors had sought to participate in the trial court proceedings by executing purported repudiations of the Second GAL Settlement, they could not credibly complain that they lacked notice of those proceedings. See Resp. C.A. Br. 99. It was presumably for this reason that the Court of Appeal analyzed petitioners' argument not as an objection to a lack of notice (which the minors had plainly received), but rather as an objection to the trial court's decision not to require the minors to appear in person before approving the settlement. See Pet. App. 70a-71a. In any event, respondents would press the same argument before this Court as an alternative ground for affirmance if certiorari were to be granted, which would complicate the Court's ability to reach and resolve the question presented.

Second, this case is a poor vehicle because the California Court of Appeal did not reach the merits of the due process arguments that petitioners now press before this Court. Having concluded that petitioners' arguments could not justify reversal in any event based on the court's case-specific waiver and harmlessness determinations, the court had no need to decide whether the trial court had erred. See Pet. App. 62a, 71a. The court's opinion therefore did not analyze that question.

This Court generally acts as "a court of review, not of first view," *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), in part to ensure that that it will have the benefit of a lower court's reasoning in analyzing the parties' contentions. See, e.g., *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 79-80 (1988) (plurality opinion). Thus, even if the Court of Appeal's waiver and harmlessness determinations did not entirely preclude further review, the absence of any reasoned analysis

below on the merits of the question presented would still weigh strongly against this Court exercising its discretion to grant certiorari in this case.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2022