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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES  
11 PROBATE DIVISION

13 IN RE: [REDACTED] G [REDACTED], DENIS [REDACTED],

Case No. 16STPB03172

16 **AMICUS BRIEF OF THE ATTORNEY  
GENERAL OF CALIFORNIA**

17 Date: September 7, 2017  
18 Time: 10:00 a.m.  
19 Dept: 67  
Judge: Honorable William P. Barry

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1 **STATEMENT OF INTEREST**

2 The questions presented in this matter are important to the California Attorney General and  
3 to the State of California as a whole because they relate directly to the permanence, security, and  
4 wellbeing of California children. At issue are undocumented immigrant children present in  
5 California who may be eligible to apply for legal immigration status through the “Special  
6 Immigrant Juvenile” (“SIJ”) process. As part of that process, vulnerable children who immigrate  
7 to the United States and cannot reunify with a parent outside of the country because of abuse,  
8 neglect, or abandonment are required to obtain a “predicate” order from state court. Thousands of  
9 California children may satisfy the SIJ criteria, including many who sought refuge here after  
10 fleeing crime and violence in their home countries.

11 California has a *parens patriae* interest in protecting the welfare of these youth and  
12 ensuring they can pursue potential claims for remaining lawfully in the country. In addition, the  
13 California Attorney General has an interest in ensuring that California’s laws are correctly  
14 interpreted and applied. This interest includes consistent application of Code of Civil Procedure  
15 section 155, which governs judicial determinations regarding the issuance of an SIJ “predicate”  
16 order, a necessary precondition for seeking SIJ status. This interest also includes ensuring that  
17 state courts who are asked to issue such an order are guided by the appropriate controlling state  
18 statutes defining abuse, neglect, or abandonment.

19 **PROCEDURAL HISTORY**

20 On August 9, 2016, Petitioner Denis G. (“Denis”) filed documents necessary to appoint his  
21 sister Estela as his legal guardian and to make the findings necessary for him to apply for SIJ  
22 status. (Petition for Appointment of Guardian, *In re the Guardianship of Denis* ██████████  
23 G ██████████ (“*In re Denis G.*”) (Aug. 9, 2016) (No. 16STPB03172); Petition for Special Immigrant  
24 Juvenile Findings, *In re Denis G.* (Aug. 9, 2016) (No. 16STPB03172).) At the hearing on  
25 Denis’s petitions, the Court granted the guardianship but declined to issue a predicate order.  
26 (Reporter’s Transcript of Proceedings, *In re Denis G.* (Oct. 7, 2016) (No. 16STPB03172).)

27 Denis initially filed a petition for writ of mandate in the California Court of Appeal seeking  
28 a writ directing the Court to make the SIJ predicate findings. (Petition for Writ of Mandate, *In re*

1 *Denis G.* (Dec. 6, 2016) (No. B279348).) In a letter, counsel for this Court declined to file an  
2 opposition. (Frederick R. Bennett, Court Counsel, letter to Shirley Stahl, Clerk, Division One,  
3 Court of Appeal, Second Appellate District at p. 1 (Dec. 22, 2016).) On February 23, 2017, the  
4 Court of Appeal summarily denied the writ petition. (Order, *In re Denis G.* (Feb. 23, 2017) (No.  
5 B279348).)

6 Denis then sought review in the California Supreme Court. (Petition for Review, *In re*  
7 *Denis G.* (Mar. 6, 2017) (No. S240470).) On April 26, 2017, the California Supreme Court  
8 granted the petition for review and transferred the matter back to the Court of Appeal with  
9 directions to vacate the previous order denying the writ petition and to issue an order directing  
10 this Court to show cause why an SIJ predicate order should not issue. (Order, *In re Denis G.*  
11 (Apr. 26, 2017) (No. S240470).) The California Supreme Court directed this Court to pay special  
12 attention to Code of Civil Procedure section 155, the statute setting forth the appropriate functions  
13 of a superior court in making SIJ findings, as well as the statutory definitions of neglect and  
14 abandonment. (*Id.*) The California Supreme Court also suggested that this Court could invite  
15 briefing from the California Attorney General. (*Id.*)

16 Thereafter, on May 15, 2017, this Court issued a Minute Order inviting the California  
17 Attorney General to file a brief regarding the SIJ issues. (Minute Order, *In re Denis G.* (May 15,  
18 2017) (No. 16STPB03172).) The order also directed Denis to file a brief addressing the  
19 procedures and statutes identified by the California Supreme Court (*id.*), and on June 13, 2017,  
20 Denis renewed his request for an SIJ findings with this court. (Memorandum of Points and  
21 Authorities and Supplemental Declaration in Support of Petition for SIJ Findings, *In re Denis G.*  
22 (June 13, 2017) (No. 16STPB03172).)

## 23 ARGUMENT

### 24 **I. # CALIFORNIA HAS A STRONG INTEREST IN ENSURING THAT INDIVIDUALS CAN** 25 **PURSUE VALID CLAIMS FOR SIJ STATUS**

#### 26 **A. # State Courts Are Integral to the SIJ Process**

27 As with adult immigrants present in the United States, unaccompanied children may be  
28 deported unless they are granted permission to stay. (*In re Y.M.* (2012) 207 Cal.App.4th 892,

1 914.) In the Immigration Act of 1990, Congress created SIJ status to protect certain abused,  
2 neglected, or abandoned children and set forth a procedure to determine who qualifies for this  
3 classification. (*Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319, 326 (*Eddie E.*.) Since  
4 its initial enactment, the SIJ statute has been amended twice, in 1997 to add the abuse, neglect, or  
5 abandonment language at issue in this matter, and in 2008 to expand eligibility to a larger group  
6 of juvenile immigrants. (*Eddie E., supra*, 234 Cal.App.4th at p. 326 [internal citations omitted].)  
7 Receipt of an SIJ visa permits an immigrant to remain in the country and apply for lawful  
8 permanent resident status with United States Citizenship and Immigration Services (“USCIS”).  
9 (*Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 344 (*Leslie H.*.)<sup>1</sup> After five years as a  
10 legal permanent resident, the individual may apply to become a naturalized citizen. (*Ibid.*)

11 Unlike other types of immigration relief, the SIJ procedure requires applicants to navigate  
12 both state and federal legal systems. (See generally Judicial Council of Cal., Memorandum (Sept.  
13 30, 2016) (“Judicial Council Memorandum”), pp. 3-6 <[http://www.courts.ca.gov/documents/jc-](http://www.courts.ca.gov/documents/jc-20141028-item1.pdf)  
14 [20141028-item1.pdf](http://www.courts.ca.gov/documents/jc-20141028-item1.pdf)> [as of June 26, 2017] [detailing SIJ application process].) While the  
15 federal government retains the authority to grant or deny an SIJ petition, state courts “play an  
16 important and indispensable role in the SIJ application process.” (*Leslie H., supra*, 224  
17 Cal.App.4th at p. 348.) Congress has delegated certain tasks to state courts in light of their  
18 “institutional competence . . . as the appropriate forum for child welfare determinations regarding  
19 abuse, neglect, or abandonment, and a child’s best interests.” (*In re Israel O.* (2015) 233  
20 Cal.App.4th 279, 284.) The SIJ statute “commits to a juvenile court only th[is] limited,  
21 factfinding role.” (*Leslie H., supra*, 224 Cal.App.4th at p. 344.)

22 In order to apply for SIJ with the federal government, an individual must first obtain a state  
23 court order finding that:

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24  
25  
26 <sup>1</sup> Individuals who are already in removal proceedings in immigration court must submit  
27 their application for permanent residency to the immigration court, which adjudicates it. (See 8  
28 C.F.R. § 1245.2(a)(1).)

1 (1) the child is “dependent” upon a juvenile court or has been “committed to, or placed  
2 under the custody of” a state entity or other individual or entity;<sup>2</sup>

3 (2) the child cannot be reunified with “1 or both” parents outside the United States “due to  
4 abuse, neglect, abandonment, or a similar basis found under state law”; and

5 (3) it is not in the child’s “best interest to be returned to [his] or [her] parent’s previous  
6 country of nationality or country of last habitual residence.”

7 (8 U.S.C. § 1101(a)(27)(J).) Upon receipt of a predicate order from a state court, the child may  
8 file an SIJ petition with USCIS. (*Israel O.*, *supra*, 233 Cal.App.4th at p. 285.) USCIS then  
9 conducts its own inquiry into whether the child satisfies the SIJ criteria, and if so, USCIS may  
10 grant the petition. (*Ibid*; see generally U.S. Citizenship and Immigration Services, Policy  
11 Manual, Volume 6, Part J, (“USCIS Policy Manual”) Chapter 4 – Adjudication  
12 <<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter4.html>> [as  
13 of June 26, 2017].) Approval of an SIJ petition does not guarantee approval of an application for  
14 adjustment to become a legal permanent resident. Therefore, “[s]tate courts play *no role* in the  
15 final determination of SIJ status or, ultimately, permanent residency or citizenship, which are  
16 federal questions.” (*Leslie H.*, *supra*, 224 Cal.App.4th at p. 351, italics added.)

### 17 **B. Thousands of Children in California May Qualify for SIJ Status**

18 California has an interest in the safety and security of all children residing in the State,  
19 including large numbers of newly arrived unaccompanied immigrant children. Since the initial  
20 surge of unaccompanied immigrant children arriving in the country in the past few years, the  
21 United States has continued to see an increase in children arriving at its borders.<sup>3</sup> Most children  
22 arrive from El Salvador, Guatemala, Honduras, and Mexico, and identify crime, violence, and  
23 lack of educational and economic opportunity as reasons for migration.<sup>4</sup>

24 <sup>2</sup> Since this Court has appointed a legal guardian for Denis, he satisfies this first  
25 requirement. (See Code Civ. Proc., § 155, subd. (b).)

26 <sup>3</sup> Compare United States Border Patrol, U.S. Border Patrol Fiscal Year 2011 Sector  
27 Profile at p. 2, <<https://go.usa.gov/xXx6p>> [as of June 26, 2017] [16,067 unaccompanied minors  
28 apprehended] with United States Border Patrol, U.S. Border Patrol Fiscal Year 2016 Sector  
Profile at p. 2, <<https://go.usa.gov/xXx6e>> [as of June 26, 2017] [59,757 unaccompanied minors  
apprehended].

<sup>4</sup> See United States Border Patrol Southwest Family Unit Subject and Unaccompanied  
(continued...)



1 As the number of immigrant children arriving in the United States has increased, so too  
2 have the numbers of SIJ petitions received and granted by USCIS, but federal law caps the  
3 number of “special immigrant” visas that USCIS may issue at approximately 10,000 per year. (8  
4 U.S.C. § 1153(b)(4).)<sup>5</sup> Federal law also limits the number of visas USCIS may grant to “natives  
5 of any single foreign state . . . .” (See 8 U.S.C. § 1152(a)(2).) As a result, during 2016, USCIS  
6 stopped issuing SIJ visas to most youth from El Salvador, Guatemala, Honduras, and Mexico.<sup>6</sup>  
7 Further, because a visa must “be immediately available” in order for an individual to apply for  
8 status as a permanent resident (8 C.F.R. §245.2), this backlog of SIJ petitions means that many  
9 children are unable to obtain permanent resident status.<sup>7</sup> These children are placed in a legal  
10 purgatory where they are unable to proceed with the process to obtain legal status and remain  
11 exposed to the risk of deportation at any time. (Order Denying Request for Emergency Relief,  
12 *Osorio-Martinez v. Sessions* (E.D. Pa. May 23, 2017) (No. 17-1747) at p. 5 [noting that for a

13  
14 \_\_\_\_\_  
15 (...continued)

16 Alien Children Apprehensions Fiscal Year 2016

17 <<https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>> [as  
18 of June 26, 2017]; see also *ibid.* [reporting similar statistics for 2012-2014]; U.S. Government  
19 Accountability Office, Central America: Information on Migration of Unaccompanied Children  
20 from El Salvador, Guatemala, and Honduras (Feb. 2015), at p. 4,  
21 <<http://www.gao.gov/assets/670/668749.pdf>> [as of June 26, 2017] [“Information on  
22 Unaccompanied Children from El Salvador, Guatemala, and Honduras”].

23 <sup>5</sup> See U.S. Citizenship and Immigration Services, Number of I-360 Petitions with a  
24 Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year and Case Status 2010-2016,  
25 <<https://go.usa.gov/xXx6u>> [as of June 26, 2017] (“USCIS Statistics”). Both accompanied and  
26 unaccompanied minors may apply for SIJ status. (See Judicial Council Memorandum at p. 3, fn.  
27 6.)

28 <sup>6</sup> See U.S. Citizenship and Immigration Services, Employment-Based Fourth Preference  
(EB-4) Visa Limits Reached for Special Immigrants From El Salvador, Guatemala and Honduras  
<https://go.usa.gov/xXYba> [as of June 26, 2017]; U.S. Citizenship and Immigration Services,  
Employment-Based Fourth Preference (EB-4) Visa Limits Reached for Special Immigrants from  
Mexico <https://go.usa.gov/xXYbC> [as of June 26, 2017].

<sup>7</sup> Visa Bulletin for June 2017, available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-june-2017.html> [as of June 26, 2017] [SIJ applicants  
from El Salvador, Guatemala, Honduras, and Mexico must have a final action date prior to July  
15, 2015, in order to be able to file an application for adjustment of status with USCIS].

1 number of the minor plaintiffs, an SIJ visa is “currently unavailable” such that “their Applications  
2 to Adjust Status are ‘pending’ indefinitely”].)

3 California has a “*parens patriae* interest in preserving and promoting the welfare” of all  
4 children who live in California, including the thousands of unaccompanied minors who were  
5 released by the federal government to adult sponsors here.<sup>8</sup> (*In re Sade C.* (1996) 13 Cal.4th 952,  
6 989, quoting *Santosky v. Kramer* (1982) 455 U.S. 745, 766.) Many of the 20,642 unaccompanied  
7 minors released in California in recent years may have a substantial claim that they satisfy the SIJ  
8 criteria. For these children, the consequences of returning to their home country can be deadly.<sup>9</sup>  
9 Allowing these children, who are now California residents, to pursue valid claims for SIJ status,  
10 which may allow them to avoid the harmful consequences of removal and achieve permanence, is  
11 consistent with the State’s obligation to “protect children.” (See *In re Phillip B.* (1979) 92  
12 Cal.App.3d 796, 801.)

## 13 **II. # THE CALIFORNIA LEGISLATURE HAS DELINEATED THE APPROPRIATE PROCESS** 14 **FOR OBTAINING AN SIJ PREDICATE ORDER FROM A STATE COURT**

15 In recent years, California has moved to make it easier for individuals to obtain an SIJ  
16 predicate order from a state court. In 2012, the passage of Senate Bill 1064 required the

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17 <sup>8</sup> The federal Office of Refugee Resettlement is responsible for the care and custody of  
18 unaccompanied immigrant children and is required to release unaccompanied minors from  
19 immigration facilities into the custody of qualified parents, guardians, relatives, or other adult  
20 “sponsors” during the pendency of removal proceedings. (See Office of Refugee Resettlement,  
21 Children Entering United States Unaccompanied, Section 2, <[http://www.acf.hhs.gov/orr/  
22 resource/children-entering-the-united-states-unaccompanied-section-2](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2)> [as of June 26, 2017].)  
23 Of the 160,053 unaccompanied minors released to sponsors between October 2013 and January  
24 2017, 20,642—more than 12% of the total—were released to sponsors in California. (Office of  
25 Refugee Resettlement, Unaccompanied Children Released to Sponsors by State  
26 <<http://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors>> [as of June 26,  
27 2017].)

28 <sup>9</sup> Cf. Sibylla Brodzinsky & Ed Pilkington, *US Government Deporting Central American Migrants to Their Deaths*, *The Guardian* (Oct. 12, 2015) <[https://www.theguardian.com/us-  
29 news/2015/oct/12/obama-immigration-deportations-central-america](https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america)> [documenting the cases of  
30 three youths sent back to Honduras or Guatemala who were killed within four months of being  
31 removed]; Sergio De Leon, *Guatemalan Youth Slain 17 Days After Being Deported From U.S.*,  
32 *Los Angeles Times* (May 9, 2004) <<http://articles.latimes.com/2004/may/09/news/adfg-deport9>>  
33 [youth removed to Guatemala found dead within 17 days of his return].

1 Department of Social Services to provide written guidance to counties to assist children with SIJ  
2 petitions. (Stats. 2012, ch. 845, § 17, codified at Welf. & Inst. Code, § 10609.97.) In 2014, the  
3 Legislature sought to eliminate a number of procedural barriers to obtaining an SIJ predicate  
4 order from a state court. (Stats. 2014, ch. 685, § 1.) For example, it added Code of Civil  
5 Procedure section 155, which outlines the statutory scheme applicable to lower courts in making  
6 SIJ findings, and Evidence Code section 757, which clarifies the authority to provide interpreters  
7 in state court proceedings related to SIJ status. In 2015, Assembly Bill 900 permitted probate  
8 courts to extend their jurisdiction and appoint guardians for unmarried individuals between the  
9 ages of 18 and 21 “to make the necessary findings regarding special immigrant juvenile status.”  
10 (Stats. 2015, ch. 694, § 3, codified at Probate Code § 1510.1, subd. (a); see also 8 C.F.R. §  
11 204.11(c)(1) [allowing individuals up to the age of 21 to apply for SIJ status].)

12 As adopted and amended by the Legislature, Code of Civil Procedure section 155 provides  
13 guidance to California courts about the state component of the SIJ process. *First*, section 155  
14 provides that “[a] superior court has jurisdiction under California law to make judicial  
15 determinations regarding the custody and care of children within the meaning of the federal [SIJ  
16 statute].” (Code Civ. Proc., § 155, subd. (a)(1).) Consistent with court practice before the statute  
17 was enacted, section 155 specifies that the superior court includes “the juvenile, probate, and  
18 family court divisions,” which may make the SIJ factual findings “at any point” during a legal  
19 proceeding. (*Id.*, at subd. (a)(1), (a)(2); see also *Eddie E. v. Superior Court* (2013) 223  
20 Cal.App.4th 622, 629; *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 629.)

21 *Second*, section 155 requires a court to issue an SIJ predicate order as long as there is  
22 evidence to support the findings. (Code Civ. Proc. § 155, subd. (b)(1).) The Legislature has since  
23 amended the statute to provide that this evidence may consist “solely” of a declaration of the  
24 individual seeking the order. (See Stats. 2016, ch. 25, § 1.)

25 *Third*, section 155 provides that lower courts may make additional findings that are  
26 supported by the evidence, but “only if” they are requested by a party to the proceeding. (Code  
27 Civ. Proc. § 155, subd. (b)(2).) In determining whether SIJ findings should issue, the “asserted,  
28 purported, or perceived motivation of the child seeking the classification . . . shall not be

1 admissible.” (*Id.*) Accordingly, under no circumstances should courts inquire into the  
2 motivations of a youth seeking a predicate order. (*Ibid.*; see also *In re Y.M.*, *supra*, 207  
3 Cal.App.4th at p. 916 [noting “nothing in federal immigration law that permits a state juvenile  
4 court to determine which route, if any, an unaccompanied child or minor may explore to lawfully  
5 remain in the United States”].)

6 Therefore, in making a determination here, section 155 directs that this Court should issue  
7 an SIJ predicate order so long as Denis’s declarations contain sufficient evidence to support the  
8 required SIJ findings. (See Code Civ. Proc. § 155, subd. (b)(1).) The Court should not make any  
9 additional findings unless they are requested by a party, and it should not consider or reference  
10 the petitioner’s “asserted, purported, or perceived motivation.” (*Id.*, subd. (b)(2).)

11 **III. # CALIFORNIA COURTS SHOULD RELY ON THE APPROPRIATE STATE STATUTES IN**  
12 **EVALUATING WHETHER A YOUTH HAS BEEN ABUSED, NEGLECTED, OR**  
13 **ABANDONED**

14 During the SIJ process, state courts must determine whether a youth satisfies the  
15 requirements necessary for a predicate order. As discussed above (see, *supra*, at section I.A.),  
16 federal law recognizes the expertise of state courts in making child welfare determinations. (See  
17 8 U.S.C. § 1101(a)(27)(J)(i).) Indeed, “federal courts have long recognized that state courts have  
18 jurisdiction over child welfare determinations, including matters pertaining to undocumented  
19 minors, absent an express federal provision to the contrary.” (*In re Y.M.*, *supra*, 207 Cal.App.4th  
20 at p. 908.) Similarly, USCIS avoids weighing in on questions regarding the substantive  
21 application of state statutes. (See USCIS Policy Manual, *supra*, at Chapter 2 – Eligibility  
22 Requirements.) USCIS cautions that “[t]here is nothing in USCIS guidance that should be  
23 construed as instructing juvenile courts on how to apply their own state law.” (*Id.*)

24 State courts from other jurisdictions have held that “the trial court must apply the state law  
25 definitions” of abuse, neglect, and abandonment. (See, e.g., *In re Dany G.* (Ct. App. Md. 2015)  
26 223 Md.App. 707, 717 [trial court should apply state law “as we would in Maryland, without  
27 taking into account where the child lived at the time the abuse, neglect, or abandonment  
28 occurred”]; *H.S.P. v. J.K.* (Supreme Ct. N.J. 2015) 223 N.J. 196, 215 [family court “obliged to  
determine whether [child] cannot be reunited with either or both of his parents due to abuse,

1 neglect, or abandonment under New Jersey law”]; *In re Pedro J.C.* (App. Ct. Conn. 2014) 154  
2 Conn.App. 517, 534 [“Having adjudicated the petitioner neglected under Connecticut law, it was  
3 inappropriate for the court to revisit the undisputed allegations which formed the factual basis for  
4 its neglect adjudication and compare the petitioner’s neglected status to other children in his  
5 Guatemalan community.”].) Although no published California decisions to date have expressly  
6 referenced the California statutory definitions of abuse, neglect, and abandonment in the SIJ  
7 context, the approach followed by courts in other States should be followed here as well. This  
8 would be consistent with both the federal SIJ statute (8 U.S.C. § 1101(a)(27)(J)(i) [recognizing  
9 reunification may not be viable due to “abuse, neglect, or abandonment, or a similar basis found  
10 under State law”]), and the directions from the California Supreme Court in this matter. (Order,  
11 *In re Denis G.* (Apr. 26, 2017) (No. S240470) [instructing that the court “pay special attention to  
12 California’s statutory definitions of neglect and abandonment (Fam. Code, §§ 3402, subd. (a),  
13 7822, subd. (a); Welf. & Inst. Code, § 300, subds. (b)(1), (g)”].) That is, California courts should  
14 be guided by California statutes in deciding whether a youth has been abused, neglected, or  
15 abandoned.

16 The Welfare and Institutions Code section 300, subdivisions (b) and (g), sets forth the  
17 statutory definition of neglect that may aid courts in making SIJ predicate findings. Specifically,  
18 the Welfare and Institutions Code defines a neglected child as one who has suffered or is at a  
19 substantial risk of “serious harm or illness, as a result of the failure or inability of his or her parent  
20 or guardian to adequately supervise or protect the child.” (Welf. & Inst. Code, § 300, subd.  
21 (b)(1).) Under our state law, neglect also includes “the willful or negligent failure . . . to provide  
22 the child with adequate food, clothing, shelter, or medical treatment” (*ibid.*), or leaving a child  
23 “without any provision for support.” (Welf. & Inst. Code, § 300, subd. (g).)

24 California law also guides courts in determining whether a potential SIJ applicant has been  
25 abandoned. The Family Code defines abandonment as leaving a child “without provision for  
26 reasonable and necessary care or supervision,” (Fam. Code, § 3402). And a failure to provide  
27 identification, to provide support, or to communicate is “presumptive evidence of the intent to  
28

1 abandon.” (Fam. Code, § 7822, subd. (b).) Where a parent has only made “token efforts to  
2 support or communicate with the child,” the court may find the child has been abandoned. (*Ibid.*)

3 California law also provides timelines that courts can use to determine whether a child has  
4 been abandoned by one or both parents. When a child has been left without any provision for  
5 support by both parents for six months, or left by one parent in the custody of another for one  
6 year, a court may determine the child to be abandoned. (Fam. Code, § 7822, subds. (a)(2), (3).)  
7 In determining abandonment, the statute does not “require an intent to abandon permanently,” and  
8 “an intent to abandon for the statutory period is sufficient.” (*In re Daniel M.* (1993) 16  
9 Cal.App.4th 878, 885.) Rather, courts recognize “a child’s need for a permanent and stable home  
10 cannot be postponed for an indefinite period merely because the absent parent may envision  
11 renewing contact with the child sometime in the distant future.” (*Id.* at pp. 884-885 [citations  
12 omitted].)

13 When evaluating a request for SIJ findings, the trial court is in the best position to analyze  
14 the facts before it and to apply state law to those allegations. (See, e.g., *Leslie H.*, *supra*, 224  
15 Cal.App.4th at p. 344.) Recognizing that California law explicitly states youth can satisfy the  
16 criteria necessary for SIJ predicate findings based “solely” on a declaration (Code. Civ. Proc., §  
17 155, subd. (b)(1)), the trial court should limit its analysis to whether the facts present in such a  
18 declaration meet the threshold requirements set forth in the California law, as discussed *infra*.  
19 Here, Denis alleges neglect and abandonment by his parents based on their inability to protect and  
20 support him. (Supplemental Declaration at ¶¶ 4-5, *In re Denis G.* (June 13, 2017) (No.  
21 16STPB03172); Declaration at ¶¶ 8-12, *In re Denis G.* (Oct. 7, 2016) (No. 16STPB03172).)  
22 Therefore, under the circumstances of this case, Denis appears to have met the evidentiary burden  
23 necessary to establish abandonment and neglect by his parents sufficient to be granted the order  
24 he seeks.

## 25 CONCLUSION

26 This court should follow the applicable provisions of Code of Civil Procedure section 155,  
27 and consider the statutory definitions of abuse, neglect, and abandonment contained in the  
28

1 Welfare and Institutions Code and the Family Code, in evaluating whether to issue the predicate  
2 order necessary for Denis to apply for an SIJ visa.

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4 Dated: July 13, 2017

Respectfully Submitted,  
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