S280572

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re: Ja.O., a person coming under the Juvenile Court Law.	Supreme Court No. _____
San Bernardino County Children and Family Services, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	Court of Appeal No. E079651 Superior Court Nos. J291030-035

APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

Honorable Steven A. Mapes, Judge

PETITION FOR REVIEW

After the Published Decision of the Court of Appeal, Fourth Appellate District, Division Two Affirming the Judgment

---

Janelle B. Price #162791
960 N. Tustin St., #401
Orange, CA 92867
Janelle@PriceLegalPractice.com
(714) 485-3987
Attorney for Appellant, A.C.
By Appointment of the Court of Appeal under the Appellate Defenders, Inc. Program

TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

CASES **PAGE(S)**

CALIFORNIA STATUTES

Welfare and Institutions Code

CALIFORNIA RULES OF COURT

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re: Ja.O., et al., persons coming under the Juvenile Court Law. San Bernardino County Children and Family Services, Plaintiff and Respondent, v. A.C. Defendant and Appellant.	Supreme Court No. _____ Court of Appeal No. E079651 Superior Court Nos. J291031-035

PETITION FOR REVIEW

After the Published Decision of the Court of Appeal, Fourth Appellate District, Division Two Affirming the Judgment

---

TO THE HONORABLE CHIEF JUSTICE PATRICIA GUERRERO AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant Mother, A.C., respectfully petitions this Court to grant review under California Rules of Court, Rule 8.500, following the issuance of published decision of the Court of Appeal, Fourth Appellate District, Division Two, filed on May 17, 2023. A copy of the opinion is attached to this petition as Appendix A.

ISSUES PRESENTED

1. Whether the mandate of Welfare and Institutions Code section 224.2, subdivision (b), to inquire of extended family members and others about a child's potential Indian ancestry apply to all children taken into and maintained in temporary custody, rather just those children who were taken into temporary custody by way of a warrantless removal and thereby excluding the same level of inquiry for children who were taken in by a protective custody warrant and later surrendered to the child welfare agency?

2. Whether the limitation of the application of section 224.2 subdivision (b) by the Court in as held in *In re Ja.O.* (May 17, 2023) ___Cal.App.5th___, and the creation of two separate classes of dependent children are contrary to the goals to promptly identify children with Indian ancestry at the earliest possible opportunity?

3. Whether the interpretation that the "plain language" of section 224.2 applies only to children removed by a child welfare agency without a warrant and not to those children were removed by way of warrant and later surrendered to a child welfare agency to take into temporary custody lead to absurd results?

NECESSITY FOR REVIEW

Review of this case is necessary to secure uniformity of decision and to settle important questions of law. (California Rules of Court, rule 8.500, subd. (b)(1).) Furthermore, review is necessary to promote the administration of justice and consistent execution of the mandates set forth in the Indian Child Welfare Act (ICWA) and related California statutes.

1. This Case Presents a Novel Issue for Which Review Is Necessary to Settle the Important Question of Whether a Child Welfare Agency Assumes Temporary Custody of a Child Delivered by Law Enforcement After Execution of a Protective Custody Warrant.

Whether a child is removed by a child welfare worker or by law enforcement pursuant to a protective custody warrant, the child ends up in the custody of the child welfare agency for further investigation. (§§ 306, 309, 340.) By its plain language, section 224.2 requires an "extended" duty of inquiry which includes extended family members and others when the child is placed in the "temporary custody" of the child welfare department. The issue in conflict is whether a child delivered to a child welfare agency by law enforcement after execution of a warrant is in the temporary custody of the agency or some different classification which absolves the agency from conducting the "extended" duty of inquiry.

In re Ja.O. (May 17, 2023) ___Cal.App.5th___ (*Ja.O.*), and

its predecessors *In re Robert F.* (2023) 90 Cal.App.5th 492 (*Robert F.*) and the concurring opinion of *In re Adrian L.* (2022) 86 Cal.App.5th 342 (*Adrian L.*) hold that a child removed by way of warrant does not fall under the provisions of section 224.2 as that child comes within the "protective custody" of law enforcement and it is not an emergency removal contemplated by section 306.

Appellant contends that when a child is removed by way of protective custody warrant, law enforcement maintains protective custody only until such time as the child is delivered to the child welfare agency, who then assumes temporary custody of the child pending further investigation. As such, Appellant contends children who were removed by a warrant or warrantless removal end up in the temporary custody of the child welfare agency, thus triggering the provisions of section 224.2 for all.

Review is required to settle the important question of law of whether the duties of initial inquiry imposed by the ICWA and related California statutes differ for children who were subject to a warrantless removal by a social worker as opposed to a law enforcement removal pursuant to a warrant but subsequently released to the custody of the child welfare agency.

2. Review Is Necessary to Settle the Split of Authority of Whether the Codification of Section 224.2 Created Two Classes of Children with Respect to the Duty of Inquiry Required Under the ICWA.

The limitation of the application of section 224.2 subdivision (b) articulated by the Court in *Ja.O.* and its

predecessors *Robert F.* and the concurring opinion in *Adrian L.* created two separate classes of dependent children with respect to the duty of initial inquiry under the ICWA and section 224.2. According to these opinions, children who were removed from their home by way of warrantless removal should be afforded a much more in-depth inquiry of potential Indian heritage than those children removed by warrant.

This disparate treatment is incompatible to the goals to promptly identify children with Indian ancestry at the earliest possible opportunity, contrary to the goals of statutory amendments to the Welfare and Institutions Code in 2018 as explained in *In re S.S.* (2023) 90 Cal.App.5th 694 (*S.S.*), and in conflict with precedent.

Review is required to address the split of authority of the impact, if any, the method of taking a child into custody has on the child welfare agency's duty of initial inquiry set forth in the ICWA and related California statues.

3. Review Is Necessary to Determine Whether the Imposition of Dissimilar Obligations of the Duty of Inquiry Based on the Method of Removal Would Lead to Absurd Results Necessitating Reversal to Ensure Uniformity of Application.

In *Adrian L.*, Justice Kelley stated in his concurring opinion, "if the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Adrian L., supra,* 86 Cal.App.5th at p. 356 [citation], (conc. opn. of Kelley,

J.). *Adrian L., Robert F.,* and *Ja.O.* all propose that the child welfare agency follow different rules of inquiry as to potential Indian ancestry and require the trial court to judge the sufficiency of the agency's inquiry based not on the agency's actions or efforts, but on the manner in which the children were removed.

Review is required to address whether differing obligations for initial inquiry based on method of removal is in furtherance the intent of the ICWA, the related California laws, and the subsequent amendment of section 224.2, or whether the reading of the statute as held by the Court in *Ja.O., supra,* has or will produce absurd results that the legislature did not intend.

PETITION FOR REHEARING

Mother did not file a petition for rehearing. (Rules 8.500, subd. (c)(2) and 8.504, subd. (b)(3).

STATEMENT OF CASE AND FACTS

For purposes of this petition only, Petitioner Mother adopts the background set forth in the opinion of the Court of Appeal, *In re Ja.O.* (fld. May 17, 2023; E079651) appended hereto as Appendix A consistent with the advisement contained in California Rule of Court, rule 8.500, subd. (c)(2).

/ / /

/ / /

DISCUSSION

I.

THE APPLICATION OF SECTION 224.2(b) SHOULD NOT DEPEND ON AN INCIDENTAL FACT OF WHICH OFFICIAL INITIALLY REMOVED A CHILD FROM THE CHILD'S HOME.

Should the efforts to identify possible Indian ancestry be less exhaustive if a child welfare agency requests removal by way of protective custody warrant? Does the removal by way of protective custody warrant somehow result in the inquiry of extended relatives and others sufficient to eliminate subsequent efforts by the child welfare agency? The answer to both questions is "no."

Whether a child is removed by a child welfare worker or by law enforcement (who then releases the child to a child welfare worker), the end result is the child welfare agency has temporary custody of the child pursuant to section 306. Thus, the provisions of section 224.2 are triggered.

Further, in the minutes or hours it takes for the law enforcement officer to surrender the child to the child welfare agency, the law enforcement agency is under no obligation to make any inquiry of the family or any other persons about potential Indian heritage and does not engage in such. If the child welfare agency is not held accountable for that inquiry in the same manner as if the child were removed without a warrant, the opportunity to identify potential Indian ancestry at the

earliest opportunity is squandered, and meaningful information on the child's Indian heritage may be lost. There is no rational reason for this disparate application and treatment.

A. When a Child is Taken into Custody via Warrant or via Warrantless Removal, the Child is Placed or Remains in Temporary Custody of the Child Welfare Agency.

If a child is removed from a parent prior to the judicial determination made at the initial or detention hearing pursuant to section 319, the child is either taken into temporary custody or protective custody. By the plain language of the various statutes, protective custody is authorized by warrant and requires the transfer of the child to a different authority (here a social worker), whereas temporary custody allows the official (law enforcement or a social worker) to determine whether return to a parent is appropriate, with or without further court intervention. (§§ 306; 307; 309; 340.)

When a law enforcement or child welfare worker takes a child into custody without a warrant, the child is taken into temporary custody. (§§ 306, subds. (a)(1) and (2); 307.) In these warrantless removals, law enforcement and/or the child welfare agency have the authority to release the child back to a parent with or without further court intervention. (§§ 306, subd. (f); 307 subd. (a); 309 subd. (a).)

However, when a protective custody warrant is issued for the child, law enforcement is authorized to take the child into

protective custody. Under section 340, once a law enforcement officer has taken a child into protective custody, the law enforcement officer does not have the authority to release a child back to the parent. Instead, the child must "immediately be delivered to the social worker" who shall receive the child and commence an investigation pursuant to section 309. (§ 340, subd. (c).) Only the social worker can determine at that point whether release to a parent is appropriate.

Nothing in section 340 permits a social worker to accept custody. In contrast, section 306 specifically addresses receipt of custody from a law enforcement officer.

A child welfare agency may "[r]eceive and maintain, pending investigation, temporary custody of a child who is described in Section 300, and who has been delivered by a peace officer." (§ 306, subd. (a)(a).) Once that child has been received by the child welfare agency, the child is now under "temporary custody" of the agency pending the determination of whether to release or further detain the child. (§ 309, subd. (a).) By this transition, the law enforcement delivers the child it has taken into protective custody and the child welfare agency assumes temporary custody of the child to determine what further action is necessary.

Furthermore, this reading of the statutory scheme does not render portions of section 340 as surplusage. Under section 340, a judicial officer has determined that a warrant should issue for the child. However, this does not commence proceedings and

does not automatically trigger the filing of a petition and the calendaring of a subsequent initial or detention hearing. Instead, by the terms of subdivision (c), the child welfare agency is vested with the authority to determine whether a less restrictive option is suitable than continued custody, and whether the case should even be filed with the court. (§§ 306, subd. (a)(1); 309, subd. (a); 329; 332.)

In executing a warrant, law enforcement must follow the order of the court to take the child into protective custody. However, once that child is delivered to the child welfare agency, the agency assumes temporary custody, and is allowed to determine whether the child can safely be released prior to or in lieu of seeking court intervention. This reading of the statutory scheme is in harmony.

B. Once the Child Welfare Agency Has Assumed Temporary Custody Over the Child by Warrantless Removal or Receiving the Child from Law Enforcement, Section 224.2(b) Applies.

Section 306 allows a social worker to take and maintain temporary custody of a child, and allows the social worker to receive and maintain, pending investigation, temporary custody of a child who had been delivered by law enforcement. (§ 306, subd. (a)(1)-(2).)

Section 224.2 states that for any child in the temporary custody of the child welfare department, the department has a duty to inquire of extended family members and others whether

the child may have Indian ancestry. (§ 224.2, subd. (b).)

By the plain language of Section 224.2, the duty of inquiry applies to extended relatives of any child for whom the child welfare agency has assumed temporary custody. This is consistent with the legislative scheme and amendments to promptly identify Indian children and to protect the rights of Indian children and Tribes.

II.

THERE IS A SPLIT OF AUTHORITY ON WHETHER SECTION 224.2(b) CREATES TWO CLASSES OF CHILDREN WITH RESPECT TO PARAMETERS OF THE DUTY OF INQUIRY.

On many occasions, the first contact may be the only contact with a relative or family friend. It is imperative that duty of initial inquiry be consistent for all children who have been brought into custody, regardless of what door they came through to end up in the temporary custody of the child welfare agency. The tribes and children with potential Indian ancestry deserve no less.

In *Robert F., supra* 90 Cal.App.5th at pp. 502-503, the Court justified its interpretation of section 224.2 on the legislative history related to the amendments adopted in 2018 to section 224.2, and its interpretation of the requirements of section 306. The Court in *Ja.O.* subsequently adopted this reasoning on both grounds. (*Ja.O., supra,* ___Cal.App.5th at [p.10].)

In *Ja.O.*, the court stated that the expanded duty of initial inquiry was applicable only to warrant-based detentions as

"warrantless detentions trigger various time-sensitive ICWA-related requirements that are otherwise inapplicable[.]" (*Ibid.*) However, this argument fails if the child is in the temporary custody of the child welfare agency regardless of removal by warrant or warrantless process as stated in section I, *ante*, as all of those time-sensitive requirements must be adhered to.

Further, the legislative history as articulated in *Ja.O.* and *Robert F.* suggests the amendment to section 224.2 in 2018 was meant to expand the duty of inquiry solely to warrantless removals which is at odds with the statement of legislative intent as articulated in *S.S, supra.*

In *S.S.*, a recitation of the legislative history unveils that the suggested amendment to require inquiry of extended family members arose from the tribes themselves in response to the continual failure of implementation of the ICWA. (*S.S., supra,* 90 Cal.App.5th 694, 699.) "The California Tribal Families Coalition was the amendment's sponsor and source. (Assem. Com. on Judiciary, Rep. on Assem. Bill No. 3176 [2017-2018 Reg. Sess.] April 17, 2018, pp. 1 &10.)" (*Id.* at p. 700.)

In its discussion, the Court in *S.S.* repeatedly emphasized the inquiry of extended relatives was critical to identifying Indian ancestry because asking the parents was simply not often enough to protect the interests of the Tribes, the real parties in interest. (*S.S., supra,* 90 Cal.App.5th at pp. 700.) "To the extent the law has been interpreted to restrict inquiry to parents, the Tribal Report explained, 'It should be amended.' (Citation.)" (*Id.* at p.

701.)

Nothing was said about the limitation of the inquiry of extended family members to a certain class of children. To the contrary, *S.S.*'s recitation of the legislative history emphasized expansion of the duty of inquiry is warranted. "This purpose shows that, although costs may be slight, the payoff can be large for tribes, whose children carry their cultures into the future. The inquiry required by the 2018 amendment is vital -- literally: it can help keep cultures alive. This inquiry indispensably serves the goal of preserving and transmitting native cultures because there is a chance extended family members may have otherwise-unavailable information the child has Indian ancestry." (*Id.* at p. 705.)

The split of authority on the statement of legislative intent seems irreconcilable. Per *S.S.*, we are not doing enough, we are failing in the implementation of the ICWA which was designed to identify Indian families, and the remedy is to embrace the amendment sponsored by the tribes to ask extended family members of all children. Per *Robert F.* and *Ja.O.*, the amendment was only to target a certain set of children, a percentage of those children that come before the court, with no rational relation between the line drawn in the sand and the goal of protecting Indians' rights. Review is warranted.

Additionally, the finding in *Ja.O.* is inconsistent with the multitude of published cases addressing how to assess prejudice caused by the failure of the child welfare agency to discharge its

duty of inquiry. (*In re Ezequiel G.* (2022) 81 Cal.App.5th 984; *In re A.R.* (2022) 77 Cal.App.5th 197; *In re J.C.* (2022) 77 Cal.App.5th 70; *In re Antonio R.* (2022) 76 Cal.App.5th 421; *In re S.S.* (2022) 75 Cal.App.5th 575; *In re Darian R.* (2022) 75 Cal.App.5th 502; *In re H.V.* (2022) 75 Cal.App.5th 433; *In re Dezi C.* (2022) 70 Cal.App.5th 769 (review granted September 21, 2022, No. S275578); *In re Benjamin M.* (2021) 70 Cal.App.5th 735; *In re A.C.* (2021) 65 Cal.App.5th 1060; *In re Rebecca R.* (2006) 143 Cal.App.4th 1426). In each of these published cases addressing how to assess prejudice[1], none held the "extended" duty of inquiry under section 224.2 applied solely to those children taken into temporary custody by way of warrantless removals. To that end, *Ja.O.* departs from well-established precedent, which is an additional reason review is warranted.

III.

COURTS NEED NOT FOLLOW THE PLAIN MEANING OF THE STATUE IF A LITERAL INTERPRETATION WOULD RESULT IN ABSURD CONSEQUENCES.

In *Adrian L.*, Justice Kelly stated, "[I]f the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Adrian L., supra,* 86 Cal.App.5th at

[1] This line of cases contains a split of authority on what constitutes reversible error when the child welfare agency fails to execute their duty of inquiry, an issue now before the Supreme Court in *In re Dezi C.* (2022) 70 Cal.App.5th 769 (review granted September 21, 2022, No. S275578).

p. 356 [citation], (conc. opn. of Kelley, J.). The corollary is also true – if absurd consequences would result from following the plain language of a statute, the courts need not follow the literal interpretation.

If one takes the position that children who are removed by way of warrant and surrendered to the agency are differently situated than those removed by way of warrantless removal when it comes to the scope of duty of initial inquiry about Indian ancestry, the result is indeed absurd.

For example, imagine a mother with two children whose home environment posed an immediate threat to a child. Further imagine one child was removed without a warrant from the mother as the child was home at the time of contact, but a warrant for the second child was issued as she had run away from home. Under these circumstances, the child welfare agency would only be required to inquire of extended family members for the child found at the home, not the child who had run away. And if these children were half-siblings, as is often the case, the inquiry of the extended family members on the first child would not be fully relevant to the second child as there would be no inquiry as to the second child's paternal relatives at all.

The rule set forth in *Ja.O.* which requires the court to determine the scope of the obligation of the duty of initial inquiry based on the manner in which the child was removed from the home will not only lead to absurd consequences as described above, but would also lead to chaos. The social workers assigned

to the case would need to be aware of how each child on their caseload came into the child welfare agency's temporary custody. The judge would similarly have to know how each child was brought into the child welfare agency's temporary custody to determine if the agency discharged their duty of inquiry. In order for the attorneys to make the relevant inquiries or objections, they must also know how each child came into the agency's custody.

It is disingenuous to say this is an "easy" rule that would not create absurd results or cause chaos. The ICWA was enacted in 1978. Child welfare agencies have struggled with compliance ever since. Section 224.2 was amended forty years after the enactment of the ICWA to improve the identification of Indian ancestry, not to cause more confusion about the obligations of the child welfare agency by imposing two different rules for children in the dependency system.

/ / /

/ / /

/ / /

/ / /

CONCLUSION

The sharp and unrelenting conflict over the requirements of the ICWA and related statutes must be addressed with decisiveness and finality. Review by this Court is necessary to address the questions of law which arise in this case, and to provide guidance to ensure uniformity of decisions on the applicable law. For the reasons stated above, the petition for review should be granted.

Dated: June 20, 2023

Respectfully submitted,

Janelle B. Price
State Bar No. 162791
Attorney for Appellant,
A.C.

CERTIFICATION OF WORD COUNT

I, Janelle B. Price, hereby certify in accordance with California Rules of Court, rule 8.360(b)(1), that this brief contains 3.552 words as calculated by the Microsoft Word software in which it was written.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: June 20, 2023

Respectfully submitted,

Janelle B. Price
State Bar No. 162791

APPENDIX A

Filed 5/17/23

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Ja.O. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	E079651 (Super.Ct.Nos. J291031, J291032, J291033, J291034, J291035) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Janelle B. Price, under appointment by the Court of Appeal, for Defendant and Appellant.

Tom Bunton, County Counsel, and Dawn M. Martin, Deputy County Counsel, for Plaintiff and Respondent.

A.C. (Mother) challenges the juvenile court's dispositional finding that the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq. (ICWA)) does not apply to the dependency proceedings as to her five children. Mother contends that San Bernardino County Children and Family Services (CFS) failed to discharge its duty of initial inquiry under Welfare and Institutions Code section 224.2, subdivision (b). (Unlabeled statutory citations refer to this code.) We conclude that Mother's argument lacks merit and therefore affirm.

BACKGROUND

Mother has five children: A.C. (age 14), K.C. (age 12), J.C. (age 12), Je.O. (age 8), and Ja.O. (age 6).

On October 20, 2021, CFS received an immediate response referral from law enforcement as to all five children. On October 21, 2021, CFS detained all five children pursuant to a detention warrant. K.C. and J.C. were placed on an emergency basis in the foster home of their stepmother, Susan. A.C., Je.O., and Ja.O. were placed on an emergency basis in the foster home of nonrelative extended family members Sara and Devin.

On October 25, 2021, section 300 petitions were filed for all five children, containing allegations of sexual abuse, physical abuse, domestic violence, and substance abuse. Attached to each petition is a Judicial Council form ICWA-010(A) stating that Mother was asked by a CFS social worker about the child's Indian status on October 20,

2021, and provided no reason to believe the child is or may be an Indian child.[1] Also attached to the petitions for Je.O. and Ja.O. were forms stating that their father, R.O., when asked on that same day, provided no reason to believe the child is or may be an Indian child.

The detention hearing was held October 26, 2021. Mother and R.O. were both present in court and appointed counsel. Both Mother and R.O. denied Indian ancestry when questioned by the juvenile court and on their Parent: Family Find and ICWA Inquiry forms. Mother also completed, signed, and filed a Parental Notification of Indian Status form (ICWA-020) denying any tribal affiliation or Indian ancestry. R.O. checked box (e) under question (3) on his ICWA-020 indicating "[o]ne or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe," but he left blank the spaces provided to identify the tribe, band, and name and relationship of the ancestor. Maternal aunt Jennifer, who was also present at the hearing, denied Indian ancestry when questioned by the court and on her Relative: Family Find and ICWA Inquiry form.

Mother and R.O. again denied Indian ancestry when interviewed by a social worker on November 9, 2021.

On November 16, 2021, J.T., the alleged father of A.C., filed a Statement Regarding Parentage form (JV-505) requesting paternity testing. J.T. appeared by

---

[1] "[B]ecause ICWA uses the term 'Indian,' we do the same for consistency, even though we recognize that other terms, such as 'Native American' or 'indigenous,' are preferred by many." (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 739, fn. 1.)

telephone at that day's hearing, was appointed counsel, and denied Indian ancestry when questioned by the court. The court ordered paternity testing, but J.T. never provided a DNA sample. The court also ordered J.T. to complete the ICWA-020, but no completed form appears in the record.

A January 2022 mediation resulted in a partial agreement, and the remaining unresolved jurisdictional and dispositional issues were set for contest. The contested jurisdiction and disposition hearing was held on August 2, 2022. The court sustained the domestic violence and substance abuse allegations as amended in accordance with the mediation agreement. The court sustained the remaining allegations concerning R.O.'s sexual abuse of K.C., Mother's failure to protect the children from that abuse, and Mother's excessive use of corporal punishment. In addition, the court sustained the allegation that the whereabouts of A.C.'s father, J.T., were unknown. The court found that ICWA does not apply, ordered the children removed from the custody of their parents, ordered family reunification services for Mother, and bypassed services for R.O., who is not a party to this appeal.

DISCUSSION

Mother argues that CFS is required by subdivision (b) of section 224.2 to ask extended family members and others who have an interest in the children about the children's possible Indian status. Mother contends that CFS erred by failing to make any such inquiry of "various relatives and close family friends" who were readily available, including maternal aunt Jennifer, paternal grandparents of K.C. and J.C., and the godfather of Je.O. and Ja.O. Mother argues that we should vacate the court's finding that

ICWA does not apply and remand for CFS to conduct a proper initial inquiry of extended family members and "family friends."

We disagree with Mother's premise that subdivision (b) of section 224.2 requires CFS, as part of its duty of initial inquiry, to ask extended family members and others who have an interest in the child about the possible Indian status of every child who is or may be the subject of a section 300 petition. (Cf. § 224.2, subd. (a).) By its terms, subdivision (b) of section 224.2 applies only "[i]f a child is placed into the temporary custody of [CFS] pursuant to [s]ection 306 or county probation department pursuant to [s]ection 307."[2] (§ 224.2, subd. (b).) Thus, CFS must ask extended family members and others who have an interest in the child about the possible Indian status of a child only if that child has been placed into CFS's temporary custody pursuant to section 306. (*In re Robert F.* (2023) 90 Cal.App.5th 492, 497 (*Robert F.*); *In re Adrian L.* (2022) 86 Cal.App.5th 342, 357-358 (*Adrian L.*) (conc. opn. of Kelley, J.).) None of the five children here was placed into the temporary custody of CFS pursuant to section 306, so subdivision (b) of section 224.2 did not require CFS to ask the children's extended family members if they are or may be Indian children.

---

2 The provision states in full: "If a child is placed into the temporary custody of a county welfare department pursuant to [s]ection 306 or county probation department pursuant to [s]ection 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled." (§ 224.2, subd. (b).)

Section 306 permits a social worker to take a child into "temporary custody . . . without a warrant" in emergency situations—namely, when "the social worker has reasonable cause to believe that the child has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety." (§ 306, subd. (a)(2).) Peace officers may also take children into "temporary custody" without a warrant when similar exigent circumstances exist (§§ 305, 305.6, subd. (a)), and section 306 also permits the social worker to take "temporary custody" of a child "who has been delivered by a peace officer." (§ 306, subd. (a)(1).) Section 307 likewise concerns warrantless detentions. It applies when the probation department takes custody from an officer who detained the child without a warrant. (§ 307 [referring to section 305, which authorizes warrantless detentions by a peace officer].) The sections that authorize officers and social workers to take warrantless temporary custody of children are in article 7 of the juvenile court law, entitled "Dependent Children—Temporary Custody and Detention" (Article 7). (Welf. & Inst. Code, div. 2, part 1, ch. 2, art. 7; *Adrian L.*, *supra*, 86 Cal.App.5th at p. 357, fn. 7. (conc. opn. of Kelley, J.).)

By contrast, subdivision (b) of section 340 provides for the issuance of "protective custody" warrants, and on a weaker showing than is required for a warrantless detention under section 306. (§ 340, subd. (b)(2); *Robert F.*, *supra*, 90 Cal.App.5th at p. 501.) The statute does not require the danger to the child to be immediate, nor does it require the

threat of physical harm, as opposed to emotional harm. (*Robert F.*, at p. 501.)[3] Further, section 340 is not in Article 7. It is in the following article, entitled "Dependent Children—Commencement of Proceedings." (Welf. & Inst. Code, div. 2, part 1, ch. 2, art. 8; *Adrian L.*, *supra*, 86 Cal.App.5th at p. 357, fn. 7. (conc. opn. of Kelley, J.).)

The statutes authorizing temporary custody without a warrant and protective custody pursuant to a warrant conform to federal case law applying Fourth and Fourteenth Amendment protections to child welfare investigations. (See, e.g., *Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126, 1137, fn. 8.) Under federal law, officials may remove a child from their parents' custody with parental consent, pursuant to a court order, or if exigent circumstances exist. (*Id.* at p. 1138; *Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1237.) The Ninth Circuit has defined exigency for these purposes as "reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury." (*Wallis v. Spencer*, at p. 1138.) The provisions of Article 7 (e.g., §§ 305, 306) authorizing officers and social workers to take temporary custody track that definition of exigent circumstances. (See Seiser & Kumli, 1 Cal. Juvenile Courts Practice &

---

[3] Subdivision (b) of section 340 requires the court to find probable cause to support that (1) the child is described by section 300, (2) there is a substantial danger to the child's safety or physical or emotional health, and (3) there are no reasonable means to protect the child's safety or physical health absent removal. The court in this case made those findings when it issued the warrant. But the warrant identified Penal Code section 1524, rather than Welfare and Institutions Code section 340, as the statutory basis for the warrant. Penal Code section 1524 concerns search warrants and does not require any of the findings that the court made in this case. Regardless of the warrant's citation to Penal Code section 1524, the court's findings show that the statutory basis for the warrant is Welfare and Institutions Code section 340.

Procedure § 2.30 (2023) ["The Ninth Circuit's exigency standard is essentially codified in Welf. & Inst. Code § 305 [law enforcement] and § 306 [social workers], which empower government officials to take a child into temporary custody under certain circumstances, without a warrant, if the child is in immediate danger of serious physical harm"].) Section 340 authorizes removal by court order (a warrant).

All of the children in this case were taken into protective custody pursuant to a warrant under section 340, subdivision (b). They therefore were not taken into temporary custody by CFS pursuant to section 306. Nor were they taken into temporary custody by the probation department pursuant to section 307. The expanded duty of initial inquiry under subdivision (b) of section 224.2 consequently does not apply. (*Robert F.*, *supra*, 90 Cal.App.5th at pp. 497-498, 500, 504.) As a result, Mother's argument that CFS violated its duty of initial inquiry under subdivision (b) of section 224.2 lacks merit.

After providing our tentative opinion to the parties, we allowed them to file supplemental briefs concerning the foregoing analysis. In her supplemental brief, Mother first argues that the analysis "rests on the erroneous assumption that removal by law enforcement under section 340 is an alternative to the child welfare agency taking a child into protective custody under section 306." More precisely, Mother appears to argue that because subdivision (a)(1) of section 306 authorizes a social worker to take a child "who has been delivered by a peace officer" into temporary custody, it follows that whenever a peace officer takes a child into protective custody pursuant to a warrant and then delivers

the child to a social worker, the child is thereby taken into temporary custody pursuant to section 306.

We disagree. Subdivisions (a) and (b) of section 340 provide for the issuance of protective custody warrants. Subdivision (c) of section 340 requires that "[a]ny child taken into protective custody pursuant to this section shall immediately be delivered to the social worker," who must then conduct an investigation "pursuant to [s]ection 309." Thus, when a peace officer takes a child into protective custody pursuant to a warrant and then complies with the statutory obligation to deliver the child to the social worker, the social worker is taking custody of the child pursuant to section 340, subdivision (c).

But subdivision (a)(1) of section 306 has no application when children are detained pursuant to a warrant under section 340, subdivision (b). Section 306 expressly involves "temporary custody," which Article 7 defines, not "protective custody" under section 340. Subdivision (a)(1) of section 306 thus applies to situations in which an officer detains a child pursuant to one of the sections in Article 7 and the officer then delivers the child to the social worker.

Moreover, if Mother's interpretation of sections 306 and 340 were correct, then most of subdivision (c) of section 340 would be surplusage. As discussed, that provision requires the social worker to conduct an investigation pursuant to section 309 when a child has been delivered to the social worker. (§ 340, subd. (c).) Section 309 is in Article 7 and describes the investigation that the worker must conduct when a child "has been taken into temporary custody under this article." (§ 309, subd. (a).) If

subdivision (a)(1) of section 306 referred to a child taken into protective custody under section 340, then there would be no need to specify that the social worker conduct a section 309 investigation. Section 309 would already apply, because the child would have been taken into temporary custody under Article 7. We should avoid statutory interpretations that "render any word or provision surplusage." (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038.)

Second, Mother argues that it would be "absurd" for the scope of the initial inquiry duty to be determined by whether the child was taken into custody pursuant to a warrant, and she asserts that such an interpretation would conflict with the Legislature's intent to conform California law to relevant federal guidelines. We disagree. By imposing an expanded duty of initial inquiry for children taken into custody without a warrant, the Legislature was following the recommendation in the federal guidelines. (*Robert F.*, *supra*, 90 Cal.App.5th at pp. 502-503.) The Legislature's decision to follow the federal guidelines' recommendation is not absurd. Rather, because warrantless detentions trigger various time-sensitive ICWA-related requirements that are otherwise inapplicable (§ 306, subd. (d)), it makes sense in such cases to expand the duty of initial inquiry—confirming whether the child in such a case is an Indian child is particularly urgent. (*Robert F.*, at pp. 501-502.)

The only other issue raised by Mother is that R.O. checked the box indicating Indian ancestry on the ICWA-020 that he filed at the detention hearing. Mother argues that "[t]his discrepancy was never addressed," and in her argument concerning prejudice

Mother adds that "[n]o attempt was made at all to clarify this apparent discrepancy." The argument lacks merit because it does not show that CFS or the juvenile court erred.

R.O. denied Indian ancestry before the detention hearing, orally on the record at the detention hearing, and when interviewed after the detention hearing. There was consequently no failure of initial inquiry as to R.O., who was asked about Indian ancestry before, during, and after the detention hearing. There was also no violation of the "affirmative and continuing duty to inquire" (§ 224.2, subd. (a)), given that CFS followed up with R.O. about Indian ancestry after he filed his ICWA-020. And given R.O.'s repeated denials, his ICWA-020 does not create reason to believe or reason to know that any of his children are Indian children, so the duties of further inquiry and notice were not triggered. (§ 224.2, subds. (e), (f).) Mother does not argue to the contrary, and she does not identify any other potential error in connection with R.O.'s ICWA-020. Her argument therefore fails.

Nothing in this opinion is intended to limit CFS's or the court's "duty of inquiry prescribed by subdivisions (a) and (c) of section 224.2. . . . [T]hose subdivisions describe the duty of inquiry that arises in every dependency case. But the plain language of those subdivisions does not require the county welfare department or the court to question extended family members as part of the initial inquiry in every case." (*Robert F.*, *supra*, 90 Cal.App.5th at pp. 503-504.) In some cases, the circumstances may require the department to interview extended family members under subdivision (a) or (c) of section 224.2. (*Id.* at p. 504.) "For instance, if the parents deny any Indian ancestry, but

a family member later contacts the social worker and volunteers that the family has Indian ancestry, then the department cannot ignore that claim. It has a duty to follow up on the information as part of its 'affirmative and continuing duty to inquire.'" (*Ibid.*) But Mother has not identified any such circumstances here.

DISPOSITION

The juvenile court's findings and orders are affirmed.

CERTIFIED FOR PUBLICATION

MENETREZ
J.

We concur:

CODRINGTON
Acting P. J.

FIELDS
J.

PROOF OF SERVICE

Janelle B. Price SBN 162791
960 N. Tustin St., #401
Orange, CA 92867
(714)485-39987

Supreme Court No. _____
Court of Appeal No. E079651
Superior Court
Nos. J291031-035

DECLARATION OF SERVICE

I, Janelle B. Price, declare: I am over 18 years of age, employed in the County of Orange, California, in which county the within mentioned delivery occurred, and am not a party to the subject case. My business address is 960 N. Tustin St., #401, Orange, CA 92867.

I served the Appellant's Petition for Review of which true and correct copies thereof in a separate envelope for each addressee named hereafter, unless served by email or TrueFiling. Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at Orange, California on 06/20/2023.

I additionally served the below parties on 06/20/2023 at the email address provided or through the TrueFiling system.

I declare, under penalty of perjury that the foregoing is true and correct. Executed on 06/20/2023, at Orange, California.

Janelle B. Price

SERVICE LIST

****Via U.S. Mail**

Court of Appeal, State of California
Fourth Appellate District, Division Two
3389 – 12th Street
Riverside, CA 92501

Mother, A.C.
Address of record

****Via TrueFiling**

Clerk of the Superior Court - County of San Bernardino
Attn: Hon. Steven A. Mapes, Judge
appeals@sb-court.org

Office of the County Counsel
cc-appeals@cc.sbcounty.gov

Clark & Le (trial attorney for the Mother)
Alexander Roa, Esq.
aroa@cllawoffice.com

Children's Advocacy Group
Sara Brockman (Attorney for the Children Jazzmin, Jesse, Jonathan, and Kayla-B)
childrensadvocacygroup@gmail.com

Tu Le (Attorney for Alize)
TLE@FCGattorneys.com

Appellate Defenders, Inc.
eservice-court@adi-sandiego.com

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **In re Ja.O. et al.; San Bernardino County Children and Family Services v. A.C.**
Case Number: **TEMP-LP8XMSZS**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **janelle@pricelegalpractice.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	PETITION FOR REVIEW - E079651 - 06-17-2023 BK

Service Recipients:

Person Served	Email Address	Type	Date / Time
Janelle Price Price Legal Practice 162791	janelle@pricelegalpractice.com	e-Serve	6/20/2023 12:13:41 PM
Superior Court of San Bernardino - Attn: Steven A. Mapes, Judge	appeals@sb-court.org	e-Serve	6/20/2023 12:13:41 PM
San Bernardino Office of the County Counsel COCSBR-01	cc-appeals@cc.sbcounty.gov	e-Serve	6/20/2023 12:13:41 PM
Alexander Roa 273360	ARoa@cllawoffice.com	e-Serve	6/20/2023 12:13:41 PM
Children's Advocacy Group - Sara Brockman	childrensadvocacygroup@gmail.com	e-Serve	6/20/2023 12:13:41 PM
Tu Le 326250	TLE@FCGattorneys.com	e-Serve	6/20/2023 12:13:41 PM
Appellate Defenders, Inc.	eservice-court@adi-sandiego.com	e-Serve	6/20/2023 12:13:41 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/20/2023
Date

/s/Janelle Price

Signature

Price, Janelle (162791)

Last Name, First Name (PNum)

Price Legal Practice

Law Firm