

Applying Motions and Briefs to the Hypothetical

Example: In the case of Lilliana and Ms. Fong, Ms. Fong’s attorney can effectively use the *Memorandum of Arguments and Authorities in Support of Release of Child, Challenging Reasonable Efforts, and Arguing Caseworker Implicit Bias (#3)* to argue that Lilliana should be returned to the care of Ms. Fong.

In the case of Ms. Fong and Lilliana, the social worker’s implicit bias prevented her from making any efforts to prevent or eliminate the need for removal. The social worker’s responses stemmed from an automatic association that Lilliana must be at risk because her adult Fijian brother would be returning to the home. Such unconscious associations are often made about racial groups and are activated by racial cues present in the environment. This “[i]mplicit racial bias can cause individuals to unknowingly act in discriminatory ways.” (Maryfield, Justice Research and Statistics, December 2018, pg. 1.) The social worker’s automatic, unconscious association resulted in an immediate response to remove Lilliana from Ms. Fong’s care out of fear that Lilliana’s older brother, a Fijian male, would return to the home. Furthermore, it caused the worker to call law enforcement and to stand idling while Lilliana was handcuffed and forced into the back seat of a police car. The social worker’s failure to enter the family home to verify the older brother’s absence was a failure to make reasonable efforts to prevent or eliminate the need for removal. Failure to intervene to keep Lilliana from being handcuffed and placed in a police car was a failure to make reasonable efforts to prevent the need for removal. Failure to recognize that the social worker’s response was not due to an imminent risk of harm to Lilliana, but rather to the racial cues present in the environment, was a failure to protect Lilliana’s well-being.

Example: If Lilliana was removed from the home at the initial hearing, Ms. Fong’s attorney could utilize the *Parent’s Motion for Reunification (#2)*, reframe CSV’s arguments supporting the reasons for removal, and argue in support of family reunification from an anti-racist perspective.

Ms. Fong’s decision to attend to Lilliana’s injury with an over-the-counter treatment, rather than taking her to the hospital, is reasonable when viewed from a lens that takes into account the family’s culture and its relationship with the child welfare system. Research has illuminated that poor parents, especially poor parents of color, have negative associations with child protective services and fears of the punitive repercussions - including swift separation - that may befall their families and children if they seek services, including medical care. See, e.g., Dorothy E. Roberts, The Racial Geography of Child Welfare: Toward a New Research Paradigm, 87 CHILD WELFARE 2 (2008) (finding, through in-depth interviews with 25 African-American women in a predominantly Black neighborhood in Chicago, that “[t]he residents were all aware of intense child welfare involvement in their neighborhood and identified profound effects on family and community social relationships, including interference with parental authority, damage to children’s ability to form social relationships, and distrust among neighbors.”); Kelley Fong, Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement, 97 SOCIAL FORCES 4, ag 1-2 (2019) (sociological researchers from Harvard University finding, in a study of 83 poor

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mothers in Providence, Rhode Island, that mothers were acutely aware of their interactions with mandated reporting systems, including healthcare, educational, and social service systems, and accordingly, “sought to shield areas of perceived vulnerability from view.”) (Pgs. 15-16).

It is in the best interest of Lilliana to be reunified with Ms. Fong. Monique B. Mitchell and Leon Kuczynski, Does Anyone Know What is Going On? Examining Children’s Lived Experience of the Transition into Foster Care, 32 CHILD AND YOUTH SERV. REV. 437, 442-43 (2010) (finding that children can be confused by the uncertainty of the situation of being placed in foster care; the child often has little to no understanding of the reasons she entered foster care, what “foster care” means, and how long she will have to stay in foster care); Catherine R. Lawrence, et al., The Impact of Foster Care on Development, 18 DEVELOPMENT AND PSYCHOPATHOLOGY 57, 58-59, 71-72 (2006) (finding that the removal and placement into foster care has been associated with negative developmental consequences that place children at risk for behavioral, psychological, developmental and educational issues that persist even after their time in foster care has concluded). Lilliana has a loving, capable mother in Ms. Fong, and Lilliana wishes to live with her mother. Accordingly, it is in Lilliana’s best interests to be reunified with her mother.

Example: Ms. Fong can utilize the *Memorandum of Points and Authorities on Harm of Removal and Separation of Children From Families (#10)* to educate the court on the harm of removal, particularly in BIPOC families.

The harm caused by the removal of Lilliana from the home of her mother, Ms. Fong, cannot be understated. “Children who have a consistent, positive relationship with their primary caregiver tend to become healthy, happy, engaged and productive members of society. Children whose attachment has been ruptured often become mistrusting, fearful, angry and emotionally volatile adults.” See https://www.huffpost.com/entry/opinion-carnes-family-separation-trauma_n_5b2bf535e4b00295f15a96b2. Separation from family leaves children more vulnerable to exploitation and abuse, no matter what the care setting. In addition, traumatic separation from parents creates toxic stress in children and adolescents that can profoundly impact their development. Strong scientific evidence shows that toxic stress disrupts the development of brain architecture and other organ systems, and increases the risk for stress-related disease and cognitive impairment well into adult years. Studies have shown that children who experience such traumatic events can suffer from symptoms of anxiety and post-traumatic stress disorder, have poorer behavioral and educational outcomes, and experience higher rates of poverty and food insecurity.
