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May 16, 2019

Ms. Molly C. Dwyer  
Clerk, U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, California 94103

Re: No. 18-36082, *Juliana v. United States*

Dear Ms. Dwyer:

On May 8, Plaintiffs filed a letter bringing to the panel's attention the Court's recent opinion in *B.K. v. Snyder*, No. 17-17501, 2019 WL 1868287 (9th Cir. Apr. 26, 2019). There, children in Arizona's foster care system sued state child welfare agencies, alleging that statewide policies violated their constitutional rights. *Id.* at \*3. The case was before this Court on appeal of a class certification order. *Id.* at \*4.

*B.K.* is "pertinent" to no aspect of this appeal. For one, it does not bolster Plaintiffs' standing arguments. *B.K.* agreed that the named plaintiff had standing because she had "been denied [medical] services" to which she was entitled by statute, and "an injunction ordering [defendants] to abate the policies" that harmed her would provide adequate redress. *Id.* at \*11-12. Unlike *B.K.*, Plaintiffs here have not identified particularized injuries, they have not established causation, and they have not shown that a favorable order will address those injuries. Opening Brief at 12-22; Reply Brief at 4-12. *B.K.* is readily distinguishable.

Nor is *B.K.* relevant to the judiciary's authority to evaluate systemic due process cases. The high-water mark for the federal courts' traditional equitable authority has been in institutional reform cases like *B.K.* Reply Brief at 14. The relief sought by Plaintiffs here is of a wholly different scale.

Finally, *B.K.* does not bolster Plaintiffs' deliberate indifference claim. The Court acknowledged that "[d]ue process requires the state to provide children in its care" with reasonable safety, 2019 WL 1868287, at \*6, and it later stated that "proving a substantial risk of harm is all that is necessary to prove the claim," *id.* at \*13. But the cases cited by the Court considered the rights of prisoners and other individuals — including foster children — in *state custody*. *Id.* at \*6, 8, 13. The government "assume[s] some responsibility" for the "safety and general well-being" of individuals in its custody. *DeShaney v. Winnebago County*, 489 U.S. 189, 199-200 (1989). It does not owe the same duties to individuals "in the free world." *Id.* at 201. Thus, *B.K.*'s deliberate indifference discussion is irrelevant.

Sincerely,

s/ Jeffrey Bossert Clark  
Jeffrey Bossert Clark

Counsel for Appellants

cc: All counsel via CM/ECF