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IN THE SUPREME COURT OF CALIFORNIA

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IN RE SERGIO C. GARCIA ON ADMISSION

APPLICATION FOR PERMISSION TO FILE AND PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA AND THE COMMITTEE OF EXAMINERS OF THE STATE BAR OF CALIFORNIA

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APPLICATION OF MICHAEL A. OLIVAS, HOLLY S. COOPER, KAREN MUSALO, HIROSHI MOTOMURA, CRUZ REYNOSO, AND OTHER IMMIGRATION LAW PROFESSORS FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

Professors Michael A. Olivas, Holly S. Cooper, Karen Musalo, Hiroshi Motomura, Cruz Reynoso, and the other professors identified on the list of amici attached as Exhibit A (together, "Amici") apply to the Chief Justice of California for permission to file the attached proposed amicus curiae brief in support of Applicant Sergio C. Garcia.

I. ISSUES PRESENTED

1. Does 8 U.S.C. section 1621, subdivision (c) apply and preclude this Court's admission of an undocumented immigrant to the State Bar of California? Does any other statute, regulation, or authority preclude the admission?

2. Is there any state legislation that provides — as specifically authorized by 8 U.S.C. section 1621, subdivision (d) — that undocumented immigrants are eligible for professional licenses in fields such as law, medicine, or other professions, and, if not, what significance, if any, should be given to the absence of such legislation?

3. Does the issuance of a license to practice law impliedly represent that the licensee may be legally employed as an attorney?

4. If licensed, what are the legal and public policy limitations, if any, on an undocumented immigrant's ability to practice law?

5. What, if any, other public policy concerns arise with a grant of this application?

II. INTEREST OF THE AMICI CURIAE

Professor Michael A. Olivas is the William B. Bates Distinguished Chair in Law at the University of Houston Law Center and Director of the Institute for Higher Education Law and Governance at University of Houston. Professor Olivas teaches immigration, business and education law at the University of Houston Law Center. His research and publication experience focuses on the manner in which state and federal governments address immigration issues, including postsecondary education for undocumented immigrants.

Professor Holly S. Cooper is the Associate Director of the U.C. Davis School of Law Immigration Law Clinic, which provides legal representation to indigent non-citizens in removal proceedings before U.S. Immigration Courts, the Board of Immigration Appeals and federal courts, including the Ninth Circuit Court of Appeals. Professor Cooper has also published numerous academic works regarding United States immigration law.

Professor Karen Musalo is a Clinical Professor and Director of the Center for Gender and Refugee Studies at the University of California

Hastings College of the Law. She has written numerous articles on refugee law issues and has contributed to the evolving jurisprudence of asylum law not only through her scholarship, but through her litigation of landmark cases. Her current work examines the linkage between human rights violations and migration.

Professor Hiroshi Motomura is the Susan Westerberg Prager Professor of Law at the UCLA School of Law, where he teaches immigration and citizenship law. In addition to publishing numerous articles on immigration law and policy, he is a co-author of two immigration-related casebooks. He has testified as an immigration expert in the United States Congress, has served as co-counsel or a volunteer consultant in several cases in the U.S. Supreme Court and the federal appeals courts, and has been a member of the American Bar Association's Commission on Immigration. In the fall of 2008, he was an outside advisor to the Obama-Biden Transition Team's Working Group on Immigration Policy.

Professor Cruz Reynoso is a former Justice of this Court and is currently the Boochever and Bird Professor of Law Emeritus at the University of California at Davis. He regularly lectures on immigration law issues and has devoted much of his professional life to immigration law issues, including serving, upon the appointment of President Carter, on the Select Commission on Immigration and Refugee Policy that issued the seminal recommendations for immigration reform passed into law in 1986.

The other Amici are professors with similar involvement in immigration law and policy scholarship, immigration advocacy, and efforts to provide a legal education to students in this state and around the country. Their work gives them a keen interest in and particular insight into the outcome in this matter. For example, Professor Olivas' scholarship regarding postsecondary education for undocumented immigrants is unrivaled—and has been quoted in the Committee of Bar Examiners of the State Bar of California's opening brief. Similarly, Professor Cooper's advocacy on behalf of detained immigrants provides her with unique insight into the complex interplay between immigration law, policy and reality. Similar points apply to the other Amici as well.

Each year the Amici work hard to provide legal education to hundreds of aspiring attorneys, some of whom may be undocumented immigrants. For this reason, the Amici have a vested interest in ensuring their efforts are not for naught, should the law students whom they train, and who otherwise qualify for membership to the State Bar, be prohibited from obtaining professional licensure.

III. HOW THE PROPOSED AMICUS CURIAE BRIEF WILL ASSIST THIS COURT IN DECIDING THIS MATTER

The parties have correctly explained why 8 U.S.C. section 1621 is inapplicable to Mr. Garcia's admission to the State Bar and the Amici will not repeat those reasons here. Rather, the Amici submit this brief to expand on the parties' explanation of how state and national policies of inclusion necessarily inform the Court's legal analysis, and support the

conclusion that 8 U.S.C. section 1621 is no barrier to granting Mr. Garcia's application.

For example, the Court's questions include: "5. What, if any, other public policy concerns arise with a grant of this application?" The Amici are well-poised to speak to that question.

Legal educators and educators as a whole have many years of experience educating these students, in courses and seminars, as well as in clinical experiences and the many forums that engage law students who will themselves become lawyers. The Amici view themselves as the producers, nurturers, and mentors to such aspiring lawyers, and firmly believe the aspirants should be allowed to take their place so all of society may reap the benefit of their future accomplishments.

Therefore, the Amici raise the concern that if Mr. Garcia and others like him in the pipeline to practice are not given their fair opportunity to put their training, sacrifices, and talents to work, then the benefits that California has conferred on these students will have been completely consumed by the students rather than extended to the communities they would serve if licensed. Graduating with a law or medical or teaching degree and then not being eligible for a license not only would be a cruel end to their dreams, aspirations, and accomplishments, but California society would be the worse for this loss of talent. Therefore, the Amici write to express a Hippocratic principle that is as applicable in law as it is in medicine: "First, do no harm."

IV. DISCLOSURE

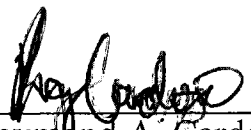
No party, and no counsel for a party, in the matter pending before this Court has authored the proposed amicus curiae brief in whole or in part. Neither has any party, or any counsel for a party, in the pending matter made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity has made a monetary contribution intended to fund the preparation or submission of the brief, other than counsel to the Amici in the pending matter.

V. CONCLUSION

For these reasons, the Amici respectfully request permission to file the attached proposed amicus curiae brief.

Respectfully submitted,

REED SMITH LLP

By 

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PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA AND THE COMMITTEE OF EXAMINERS OF THE STATE BAR OF CALIFORNIA

I. INTRODUCTION

It would be naïve to assert that California has not struggled with answering the complex questions involving undocumented immigrants or that it uniformly has welcomed immigrants—documented or undocumented—throughout its history. California is no different from other states in that regard. But California has led and continues to lead the charge towards the inclusion and integration of immigrants, and has reaped the social and economic rewards as a result. That trend continues to this day.

California's leadership in inclusiveness and the benefits the state has reaped from that approach bear importantly on the questions the Court has posed. As the State Bar and Mr. Garcia have demonstrated in their merits briefs—points not repeated here—the federal law at issue leaves considerable room to the states and does not prohibit Mr. Garcia's admission. The matter thus falls largely within this Court's own powers regarding the legal profession.

In exercising those powers, it is worth noting this Court's leadership in legal rulings that have promoted greater integration of immigrants into California society. Time after time, the Court has struck down laws that prohibit immigrants from fully integrating into society, or limit immigrants' ability to earn a living and contribute to California's economy. In so doing, the

Court consistently has recognized that "the capacity of the members of any race to contribute to a nation's culture depends in large measure on how freely they may participate in that culture" [*Perez v. Lippold*, 32 Cal. 2d 711, 732 (1948)] and that "no man should suffer discrimination in employment because of the irrelevant circumstances of his birth" [*Purdy & Fitzpatrick v. State*, 71 Cal. 2d 566, 585-86 (1969)]. Just recently, the Court recognized this notion of inclusion and its attendant benefits in the context of undocumented immigrants (or "unlawful aliens" as the Court called them), holding that unlawful aliens living in California are entitled to the benefits of in-state tuition at public colleges and universities. *Martinez v. Regents of the Univ. of Cal.*, 50 Cal. 4th 1277, 1300 (2010).

The Legislature has taken up the call as well. Last year, Governor Brown capped a thirteen-year bipartisan effort to make it easier for undocumented immigrants to access California's top-tier higher education system, by signing into law the California Dream Act of 2011. The California Dream Act provides that all students, including undocumented immigrants, who meet certain statutory requirements for nonresident tuition may apply for and receive private scholarships funneled through public universities, state-administered financial aid, university grants and community college fee waivers. Although fiscal concerns derailed earlier versions of the California Dream Act, the importance of its underlying objectives is manifest: the Act ensures that undocumented immigrants can afford higher education in California which would, in turn, allow them to build careers and contribute to California's economy.

California's leadership on these issues reflects a similar national trend. For the last seven years, Congress has attempted to pass the Development, Relief and Education for Alien Minors Act ("DREAM Act"), which, like its California namesake, focuses on the increasing importance of making higher education more accessible to immigrants. At and since its conception, the federal DREAM Act has enjoyed unusual bipartisan support because its purpose is incontrovertible: children raised in this country, who have thrived here and who demonstrate the capacity and drive to continue thriving, should be afforded the opportunity to contribute as adults to the only country that they have ever conceived of as home. *See* Michael A. Olivas, *The Political Economy of the DREAM Act and the Legislative Process: A Case Study of Comprehensive Reform*, 55 WAYNE L. REV. 1757, 1793 (2009). And while passage of the DREAM Act remains snagged on the logistics of implementation, some states—like California—have taken it upon themselves to find legislative solutions so that high school graduates have the incentive to remain in-state and continue their educations, with an eye toward contributing to the state.

The numbers underscore both the benefits of inclusion and the risks of exclusion. Today, immigrants contribute significantly to the economic output of California's largest metropolitan areas. Immigrants gravitate toward different occupations and many of their notable contributions are to professions requiring advanced skills and degrees. For example, on the heels of a relaxed federal immigration policy in the 1960s, highly educated immigrants flocked to California and their entrepreneurial spirit led to explosive growth in Silicon

Valley. Today, the companies that immigrants built add billions of dollars to the California economy and create thousands of jobs for native-born workers.

Not only does California benefit economically from highly educated immigrants, but California needs them. Projected growth in jobs requiring advanced skills and degrees far outpaces projected growth in native-born workers sufficient to fill them, threatening California's position as one of the largest economies in the world. California has worked hard to remove social and economic barriers preventing immigrants from thriving here, and has a vested interest in reaping the benefits of its inclusionary policies. It makes no sense to create an environment that allows immigrants to succeed, only to drive them away when they stand poised to make their contributions to California—particularly when economic growth is slated to outpace native-born population growth.

Because of sound judicial and legislative policy choices, eligible undocumented immigrants shortly will be entitled to attend, receive financial aid for, and graduate from colleges in California—which includes medical schools, law schools, and other professional and academic programs. Mr. Garcia's admission to the State Bar reflects the natural consequence of these choices—a consequence welcomed by the educational system, the State Bar, and California's economy as a whole. But that consequence will never materialize if qualified persons like Mr. Garcia are denied at the final step—licensure—before entering the profession that California has invited and provided financial assistance for them to pursue. Thus, this case is not just

about broad policies favoring inclusion of immigrants—it presents this Court with an opportunity to endorse the important principle that professional schools and licensing bodies (such as this Court) make transitions to practice possible, so that those broad policies can be realized.

The Amici respectfully urge the Court to grant Mr. Garcia's application.

II. ARGUMENT

A. State And Federal Law Has Embraced The Policy Of Inclusion

This Court has a long history of striking down laws that discriminate on the basis of immigrant status, ethnic background, or country of origin. For instance, this Court was the first in the country to reject statutory prohibitions against mixed-race marriages—i.e., those between whites and "Negroes, Mongolians, members of the Malay race, or mulattoes[.]" *Perez v. Lippold*, 32 Cal. 2d 711, 732 (1948). And it struck down a statute that treated undocumented immigrant children as less than a full person for the purpose of calculating certain public benefits. *Darces v. Woods*, 35 Cal. 3d 871, 895 (1984) (enjoining state from enforcing statute which discounted undocumented immigrant children of undocumented immigrant mother who lived in same household as native-born citizen children for purposes of calculating benefits received by native-born children).

This Court has responded similarly to legislation that prevented immigrants from earning a livelihood. *See, e.g., Raffaelli v. Comm. of Bar*

Examiners, 7 Cal. 3d 288, 303 (1972) (voiding statute prohibiting aliens from practicing law in California); *Purdy*, 71 Cal. 2d at 585-86 (invalidating Labor Code provision prohibiting aliens from working on public works projects); *Sei Fuji v. State*, 38 Cal. 2d 718, 737-38 (1952) (striking down California's Alien Land Law, which restricted the ability of aliens who were ineligible for citizenship to own or lease agricultural land).

These cases recognize a common ideal: "[T]he capacity of the members of any race to contribute to a nation's culture depends in large measure on how freely they may participate in that culture." *Perez*, 32 Cal. 2d at 731. This means that immigrants not only have the right to participate in important social institutions of the community [*id.*], but they also "have a right to work for a living in the common occupations of the community." *Sei*, 38 Cal. 2d at 736 (internal citations omitted). In other words, "no [person] should suffer discrimination in employment because of the irrelevant circumstances of his [or her] birth[,]" [*Purdy*, 71 Cal. 2d at 738] and laws arbitrarily denying immigrants, "merely because of their status as aliens, the right to pursue an otherwise lawful occupation," have no place in our books. *Raffaelli*, 7 Cal. 3d at 303.

The principal means of ensuring that undocumented immigrants can participate in and contribute to our society and economy is through education. As the United States Supreme Court explained in striking down a Texas law charging tuition for the otherwise free public education of undocumented immigrant children:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Plyler v. Doe, 457 U.S. 202, 222-23 (1982) (quoting *Brown v. Bd. of Educ.*, 347 U. S. 483, 493 (1954)).

For this reason, the California Legislature passed Education Code section 68130.5, which, among other things, exempts undocumented immigrants who meet certain statutory criteria from paying more expensive nonresident tuition at California's public colleges and universities. *See Martinez v. Regents of the Univ. of Cal.*, 50 Cal. 4th 1277, 1300 (2010) (upholding Education Code section 68130.5). The Legislature then expanded on the goals of this statute by passing the California Dream Act of 2011 ("California Dream Act").[1] The California Dream Act provides that all students, including undocumented immigrants, who meet the criteria of Education Code section 68130.5 may apply for and receive

[1] Certain provisions of the California Dream Act became effective on January 1, 2012 while the remaining provisions will be effective January 1, 2013.

private scholarships funneled through public universities, state-administered financial aid, university grants and community college fee waivers. Several iterations of the California Dream Act were introduced before the dream became reality. *See, e.g.*, A.B. 130, Reg. Sess. (Ca. Jan. 11, 2011); A.B. 131, Reg. Sess. (Ca. Jan. 11, 2011); S.B. 1, Reg. Sess. (Ca. Dec. 4, 2006); S.B. 160, Reg. Sess. (Ca. Feb. 8, 2005); A.B. 1197, Reg. Sess. (Cal. Feb. 26, 1999).

Here, too, the common thread underlying the different versions was to make it easier for immigrants to contribute to California's economy. For example, an earlier version of the California Dream Act recognized up front that "[i]mmigrants are among California's most productive entrepreneurs and have created jobs for tens of thousands of Californians." *See* S.B. 1, Reg. Sess. (Ca. Dec. 4, 2006). Another version of the California Dream Act identified itself as "an 'anti-brain drain' to retain and grow California's investment in its high school students. *See* S.B. 160, Assemb. Comm. (Ca. June 20, 2006). Still another version highlighted the State's need for one million more workers with college degrees, recognizing that California could not afford to exclude people or prevent students from attending college and should instead provide financial assistance to all qualified candidates. *See* A.B. 131, Assemb. Comm. on Appropriations (Ca. Apr. 13, 2011). Finally, as enacted, the California Dream Act recognized that "[i]ncreased access to financial aid for all students in California's universities and colleges increases the state's collective productivity and economic growth." A.B. 130, Ch. 93 (Jul. 25, 2011).

The chronology of the well-publicized federal Development, Relief and Education for Alien Minors Act ("DREAM Act") shows that California's policy of inclusion is making headway on the national level and is impacting legislation in other states as well. Like its California counterpart, the federal DREAM Act focuses on making higher education more accessible to undocumented immigrants who came to the United States as minors, and who in turn, could have used that education to contribute to the land many have known as their only home. *See* Olivas, *The Political Economy of the DREAM Act and the Legislative Process: A Case Study of Comprehensive Reform*, 55 WAYNE L. REV. 1757, 1793 (2009). The federal DREAM Act was introduced in various forms in 2006, 2007, 2008, 2009 and 2010, but ultimately fell short despite some bipartisan support. *See* Elisha Brown, *Recent Development: The Development, Relief, and Education for Alien Minors (DREAM) Act*, 48 HARV. J. ON LEGIS. 623, 636 (2011) (2010 version of federal DREAM Act passed in the House by a vote of 216-198, but fell five votes short of passage in the Senate).

Despite Congress' inability to pass the federal DREAM Act, few would quarrel with its underpinning: children brought to this country by their parents, through no intent of their own, who have grown up here, gone to school here, and developed identities as Americans, should not be punished when they only wish to go to college and hold down jobs here.

Where Congress has sputtered, states have stepped in to write "a deeper story of who belongs." Hiroshi Motomura, *Immigration Outside the Law*, 108

COLUM. L. REV. 2037, 2076 (2008). The National Conference of State Legislatures reports that, in the first quarter of 2011, 1,538 immigration related bills and resolutions were introduced. *See* Chau Lam and Ann Morse, *U. S. Supreme Court Rules on Arizona's Immigration Enforcement Law* (June 25, 2012), *available at* http://www.ncsl.org/issues-research/immig/us-supreme-court-rules-on-arizona-immigration-laws.aspx. At least twelve states (including California) have enacted laws which recognize that even though states cannot make higher education an easier path to permanent residence for undocumented immigrant children, states can at least provide an easier path to higher education. *See* Michael A. Olivas, Univ. of Houston Law Ctr., "The Good, the Bad, and Undocumented College Students: 2012 State and Federal Developments" (June 30, 2012), *available at* http://www.law.uh.edu/ihelg/documents/the-good-the-bad-and-the-undocumented-june30v2.pdf; *see also Basic Facts About In-State Tuition for Undocumented Immigrant Students*, Nat'l Immigration Law Ctr. (Jan. 2012), *available at* http://www.nilc.org/basic-facts-instate.html; *see generally* Olivas, *Political Economy of the DREAM Act* at p. 1771.[2]

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[2] President Obama's administration has also stepped in. Since 2011, the Administration has determined that undocumented college students would not be deported automatically. *See* Memorandum from John Morton, Director of U.S. Immigration and Customs Enforcement to Field Office Directors, Special Agents in Charge and Chief Counsel (June 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf. In June 2012, President Obama announced that the Department of Homeland Security should exercise its prosecutorial discretion and refrain from pursuing action against many undocumented college students who otherwise

(footnote continued on following page)

These policies play a pivotal role in the Court's analysis here. While it is true that this Court "does not make policy" as a general matter [*Martinez*, 50 Cal. 4th at 1284], it equally is true that policy considerations necessarily influence the Court's statutory analysis:

> To seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture. Obviously, a statute has no meaning apart from its words. Similarly, its words have no meaning apart from the world in which they are spoken.

State v. Altus Fin., 36 Cal. 4th 1284, 1295-96 (2005) (citing *Hodges v. Super. Ct.*, 21 Cal. 4th 109, 114 (1999)).

Here, as the parties' merits briefing explains, Section 1621 prohibits only the *unwitting* provision of "benefits" to undocumented immigrants. That is to say, so long as the state recognizes it is providing an undocumented immigrant a given benefit, Section 1621 is satisfied. Section 1621 thus gives states considerable room to determine whether the statute's prohibitions should apply.

(footnote continued from previous page)

would have met the federal DREAM Act's provisions. *See* Andrew Rosenthal, *A Breakthrough on Immigration Policy*, N.Y. TIMES, June 15, 2012, *available at* http://takingnote.blogs.nytimes.com/2012/06/15/a-breakthrough-on-immigration-policy/.

In making that determination, it is vital to understand that Section 1621 operates in a world where "inclusion" is not just a platitude. This Court has embraced the integration of both documented and undocumented immigrants, and recognized the inherent value of permitting their free participation in the social and economic institutions of our State. To varying degrees, the California Legislature, Congress, and recently the legislatures of many other states have shown their willingness to do the same. And all have done so (or attempted to do so) through a specific avenue: by making access to education easier, so that undocumented immigrants have the tools necessary to make meaningful contributions.

Mr. Garcia is the poster child for why this Court and the Legislature have promoted the policy of inclusion. He has taken full advantage of the opportunities presented to him, has developed the tools necessary to practice law, and the State Bar has found him to have the necessary qualifications to make contributions as a practicing lawyer. For this Court to interpret Section 1621 in a manner that prevents Mr. Garcia from finally making that contribution would cut against judicial and legislative policy to date.

On top of that, it will become harder for undocumented immigrants to gain acceptance into law school. One of the important measures of any law school is where its graduates may practice law. Indeed, the entire accreditation apparatus is designed to allow law school graduates to practice in one or another jurisdiction. A state-accredited law school in California, for example, will prepare its graduates for admission to the State Bar, even if they cannot

practice elsewhere, due to reciprocity requirements. *See* Rules of the State Bar, tit. 4, div. 1, Rule 4.3(D). Further, graduation and placement rates and other student data are part of the determination for such accreditation. Therefore, no law school will be interested in recruiting, enrolling, financing, and graduating undocumented immigrants, whose inability to obtain licensure prohibits them from practicing law. That result is hard to reconcile with the Court's and the Legislature's efforts to make access to education easier for undocumented immigrants.

Mr. Garcia's case is the logical extension of California's choice to promote the inclusion and integration of undocumented immigrants. His admission to practice law is the clear result anticipated by this Court's jurisprudence, the Legislature's recent passage of the California Dream Act, California's postsecondary education system, and the State Bar licensing process. His admission would allow professional schools and licensing bodies (such as this Court) to make transitions to practice possible, so that California's policy of inclusion can be realized. For these reasons, Section 1621 is no impediment to Mr. Garcia's admission to the State Bar.

B. The Policy Of Including Immigrants Reflects Sound Economics

Nearly 10 million immigrants currently reside in California. Cal. Immigrant Policy Ctr., *Looking Forward: Immigrant Contributions to the Golden State* (June 2012), *available at* https://caimmigrant.org/contributions.html (follow "Looking Forward:

Immigrant Contributions to the Golden State" hyperlink) [hereinafter *Looking Forward*]. From 2005 through 2007, immigrants accounted for 34 percent of total economic output in Los Angeles, 29 percent in San Francisco, 25 percent in Riverside and 23 percent in San Diego. *See* Fiscal Policy Inst., *Immigrants and the Economy: Contribution of Immigrant Workers to the Country's Largest Metropolitan Areas* (Dec. 2009) at 11, *available at* http://www.fiscalpolicy.org/ImmigrantsIn25MetroAreas_20091130.pdf. Studies of these and other cities have shown that growth in immigrants' share in the labor force generally accompanies economic growth in metropolitan areas. Fiscal Policy Inst., *Across the Spectrum: The Wide Range of Jobs Immigrants Do* (Apr. 2010) at 14, *available at* http://www.fiscalpolicy.org/FPI_ImmigrantsAndOccupationalDiversity.pdf [hereinafter *Across the Spectrum*].[3]

While immigrants generally contribute positively to the California economy, they tend to fill jobs spanning the labor spectrum, from low-skilled laborers to career professionals requiring advanced training and degrees. For example, from 2006 through 2008, immigrants in managerial and professional specialty occupations such as executives, financial managers, doctors and engineers accounted for 22 percent of immigrants in Los Angeles, 29 percent of

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[3] These studies show the economic contributions of legal residents and the undocumented. As such, they point to the value that full inclusion can bring, particularly inclusion of those who have developed their professional skills and education level to a point comparable to Mr. Garcia. These studies also point to the potential loss in investment in human capital if the development of professional skills and education encountered arbitrary roadblocks.

immigrants in San Francisco, 26 percent of immigrants in San Diego and 16 percent of immigrants in Riverside. *See Across the Spectrum* at 3.

What's more, immigrants are entrepreneurial and more likely to create their own jobs or be self-employed than native-born workers. *See Looking Forward* at 1; *see also* AnnaLee Saxenian, *Local and Global Networks of Immigrant Professionals in Silicon Valley* 12 (2002), *available at* http://www.ppic.org/content/pubs/report/r_502asr.pdf [hereinafter *Local and Global Network*]. In fact, from 2006 through 2010, immigrants owned 33 percent of all small businesses. *See* Fiscal Policy Inst. Immigration Research Initiative, *Immigrant Small Business Owners: A Significant and Growing Part of the Economy* (June 2012) at 11, *available at* http://www.fiscalpolicy.org/immigrant-small-business-owners-FPI-20120614.pdf. This entrepreneurial spirit also has led to creation of jobs for others. *See* Ctr. for Continuing Study of the Cal. Econ., *The Impact of Immigration on the California Economy: A Report of the Regional Economies Project* (Sept. 2005) at 35-36 (noting "the strength of the California economy has historically derived from its openness and diversity—and this will be increasingly true as the economy becomes more global" (internal citations omitted)).

The best example of this phenomenon is the explosive development of Silicon Valley after Congress enacted two sets of legislation: the 1965 Hart-Cellar Act and the Immigration Act of 1990. The 1965 Act attracted immigrants by abolishing national origin quotas and replacing them with a

preference system focusing on immigrants' skills and family relationships. *See* Loise Auerhahn and Bob Brownstein, *The Economic Effects of Immigration in Santa Clara County and California* 33 (Sept. 2004), *available at* http://www.wpusa.org/Publication/wpusa_immig.pdf [hereinafter *Economic Effects of Immigration*]. The 1990 Act then increased the number of permanent job-related visas, causing even more immigrants to flow into Silicon Valley. *See* Abel Valenzuela Jr. and Paul M. Ong, *Immigrant Labor in California*, in *The State of California Labor* (Paul M. Ong and James R. Lincoln eds., 2001), *available at* http://www.irle.ucla.edu/research/scl/pdf01/scl2001ch3.pdf.

As a result of the influx of immigrants, the high-tech market grew rapidly throughout the 1960s and 1970s. *Economic Effects of Immigration* at 33. By 1990, immigrants constituted 30 percent of the high-tech workforce of Silicon Valley and 32 percent of high-tech scientists and engineers. *Id.* Between 1990 and 2001, the number of people employed by the software industry more than doubled. *Id.* Immigrants, in particular, were instrumental in starting many of Silicon Valley's most successful companies, including eBay, Sun Microsystems, Yahoo! and Hotmail. *Id.* at 34-35. Approximately one third of all startups in Silicon Valley were started by immigrants and 29 percent have CEOs who are immigrant. *Id.* at 35. In 2000 alone, Silicon Valley firms started by immigrants achieved $19.5 billion in sales and provided nearly 73,000 jobs for California workers. *See* AnnaLee Saxenian, *Brain Circulation: How High-Skill Immigration Makes Everyone Better Off*, Brookings Rev., Vol. 20, No. 1 at 28 (Winter 2002).

According to some scholars, the success of immigrants in Silicon Valley is due in part to so-called "brain circulation" which links Silicon Valley and California to the economies of the immigrants' home countries, thereby increasing California's participation in the international economy. *See Local and Global Networks* at 23-36; *see also* Richard Florida and Gary Gates, *Technology and Tolerance: The Importance of Diversity to High-Technology Growth* at 4-6 (June 2001), *available at* http://www.urban.org/UploadedPDF/1000492_tech_and_tolerance.pdf (metropolitan areas with high concentration of foreign-born residents, including San Francisco, rank high as technology centers). Immigrants' ties to their native countries create transnational communities providing shared information and contacts with measurable economic benefits, including increased exports, generation of jobs and opening of markets abroad to California, thereby accelerating California's integration into the global economy. *See* AnnaLee Saxenian, *Silicon Valley's New Immigrant High-Growth Entrepreneurs*, Econ. Devel. Quarterly at 28-29 (2002) [hereinafter *Silicon Valley's New Immigrant*] (noting "[s]killed immigrants are an increasingly important—but largely unrecognized—asset for the California economy.").

Not only does California benefit from the sizeable contribution of immigrants to its economy, but California *needs* highly skilled immigrants. Studies show the number of jobs requiring advanced degrees will outpace current projections of native-born workers to fill those jobs. *See* Roberto G. Gonzales, *Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students*, in *In Focus*, Vol. 5, Issue 13 at 8 (Oct. 2007),

available *at* http://www.immigrationpolicy.org/sites/default/files/docs/Wasted%20Talent%20and%20Broken%20Dreams.pdf. The Public Policy Institute of California has projected that the California economy will continue to demand an increasing number of workers with advanced degrees as its economy shifts toward industries requiring highly skilled workers. Hans P. Johnson and Deborah Reed, *Can California Import Enough College Graduates to Meet Workforce Needs?*, *in California Counts: Population Trends and Profiles*, Vol. 8, No. 4 at 10 (Hans P. Johnson ed., May 2007) [hereinafter *California Counts*]. Specifically, the vast majority of the projected net increase in jobs will be due to job growth at the high end of the professional spectrum, with the professional services industries, including legal, engineering and computer services, among others, expected to account for 16.4 percent of all jobs in California by 2025. *Id.* at 12. Yet if California experiences diminished migration into the state, the projected proportion of adults with college and advanced degrees in 2025 would be essentially the same as it was in 2005. *Id.*

In other words, if California is to keep up with projected growth in highly skilled occupations and to remain a competitive force in the national and global economies, it must import human capital from other countries to fill jobs requiring advanced skills and degrees. *California Counts* at 14-15, 18 (California would still lack sufficient human capital to fill number of high-skilled jobs projected for 2025 even if it imported college-educated workers from other states and from abroad); *see generally* Cal. Competes, *The Road Ahead: Higher Education, California's Promise and Our Future Economy* 3-4

(June 2012) *available at* http://californiacompetes.org/wp-content/uploads/2012/06/CaCompetes_Report_Final-2.pdf (projecting that California needs an additional 2.3 million workers with postsecondary credentials *in addition to* the 3.2 million already projected under current policies).[4]

These numbers lend further support to the parties' contentions. While some scholars suggest that California will be forced to look abroad for highly-skilled workers who already have college degrees to fill these roles, this approach defies logic when highly-skilled immigrants like Mr. Garcia have met all of the qualifications necessary to participate in a professional occupation. Given California's economic reality, it would be in the best interest of this State to continue to welcome these immigrants and allow them to contribute to California's continued presence as a driving economic force. On the other hand, to deny immigrants like Mr. Garcia the opportunity to fill the void would be a huge economic step backwards and would serve only to further disenfranchise those who already are disenfranchised.

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[4] Despite common misconceptions regarding the impact of immigrants on job prospects for natives, immigrants often do not compete directly with native-born workers. Instead, immigrants tend to occupy the two ends of the spectrum: those without a high school degree and those with *more than* a college degree. *See, e.g.*, Jennifer Adkins and Ali Karaouni, *Rethinking the Gains from Immigration: Theory and Evidence from the U.S. – An Interview with Economics Professor Giovanni Peri*, 6 U.C. DAVIS BUS. L.J. 20 (2006). The varying skills and preferences of immigrants allows the immigrant work force to contribute a complement the native-born work force rather than compete with it – even when immigrants and native-born workers have the same level of education. *Id.*

III. CONCLUSION

For the reasons stated above, and for the reasons stated in the Opening Brief of Applicant Sergio C. Garcia and the Opening Brief of the Committee of Bar Examiners of the State Bar of California, the Amici respectfully request the Court to direct the admission of Mr. Garcia to the State Bar of California.

DATED: July 18, 2012

Respectfully submitted,

REED SMITH LLP

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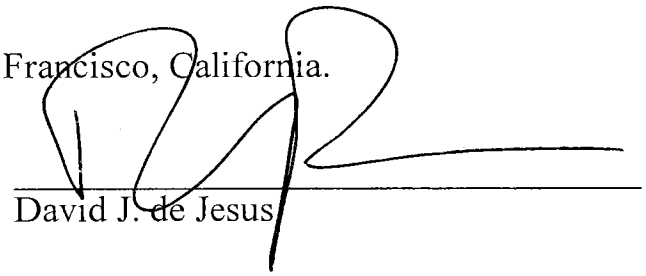
WORD COUNT CERTIFICATE

The foregoing Proposed Amicus Curiae Brief contains 4,768 words (including footnotes, but excluding tables and this certificate). In preparing this certificate, I have relied on the word count generated by Microsoft Office Word 2003.

Executed on July 18, 2012, at San Francisco, California.



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PROOF OF SERVICE

In Re Sergio C. Garcia on Admission
Bar Misc. 4186, Cal. Supreme Ct. S202512

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is REED SMITH LLP, 101 Second Street, 18th Floor, San Francisco, CA 94105. On **July 18, 2012**, I served the following document(s) by the method indicated below:

APPLICATION FOR PERMISSION TO FILE AND PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA AND THE COMMITTEE OF EXAMINERS OF THE STATE BAR OF CALIFORNIA

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **July 18, 2012**, at San Francisco, California.

Myra R. Taylor