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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO AND IMPERIAL COUNTIES, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, ASIAN LAW CAUCUS, LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER, NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION, AND NATIONAL IMMIGRATION LAW CENTER IN SUPPORT OF APPLICANT SERGIO C. GARCIA

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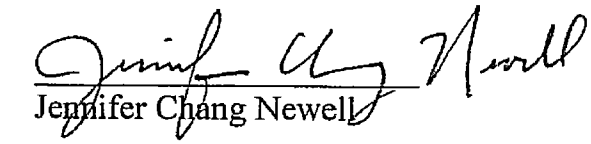
CERTIFICATE OF INTERESTED ENTITIES

The undersigned counsel certifies, pursuant to Rule 8.208 of the California Rules of Court, that she represents the following entities, each of which is an organization joining in the attached application and amici brief:

- AMERICAN CIVIL LIBERTIES UNION
- AMERICAN IMMIGRATION LAWYERS ASSOCIATION
- AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA
- AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO AND IMPERIAL COUNTIES
- AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA
- ASIAN LAW CAUCUS
- LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER
- NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION
- NATIONAL IMMIGRATION LAW CENTER

Dated: July 18, 2012



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Amici curiae American Civil Liberties Union (ACLU), American Immigration Lawyers Association, ACLU of Northern California, ACLU of San Diego and Imperial Counties, ACLU of Southern California, Asian Law Caucus, Legal Aid Society – Employment Law Center, and National Immigration Law Center (collectively "*Amici*") respectfully request leave pursuant to Rule 8.520(f) of the California Rules of Court to file the attached brief *amici curiae* in support of Applicant Sergio C. Garcia.[1]

Each of *amici* has a strong interest in the issues before this Court. *Amicus* American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization of more than 500,000 members, including approximately 100,000 members in California. The Immigrants' Rights Project of the ACLU engages in a nationwide program of litigation and advocacy to enforce the constitutional and civil rights of immigrants. *Amici* ACLU of Northern California, ACLU of San Diego and Imperial Counties, and ACLU of Southern California are the three California-based affiliates of the national ACLU. Defending and expanding the rights of immigrants was one of the founding principles of the ACLU and continues as one of its core missions. ACLU attorneys have developed significant expertise in immigrants' rights under state and federal law, litigating cases to promote

[1] Pursuant to Rule 8.200(c)(3), *amici* state that no party in this case, and no person or entity other than *amici*, their members, or their counsel, authored the proposed *amici* brief in whole or in part or made any monetary contribution intended to fund the preparation or submission of the brief.

the equal treatment and civic integration of immigrants, protect the historic guarantee to judicial review, challenge draconian enforcement and detention practices, and enjoin unconstitutional state and local laws targeting immigrants.

Amicus American Immigration Lawyers Association (AILA) is a national organization comprised of more than 11,000 lawyers practicing in the field of immigration law throughout the United States. AILA's objectives are to advance the administration of law pertaining to immigration, nationality, and naturalization; to promote reforms in the laws; to facilitate the administration of justice; and to elevate the standard of integrity, honor, and courtesy of those appearing in representative capacity in immigration, nationality and naturalization matters. AILA's members practice regularly before the Department of Homeland Security and before the Executive Office for Immigration Review, as well as before the United States District Courts, Courts of Appeals, and Supreme Court, often on a *pro bono* basis. AILA has appeared as *amicus* in many federal courts and some state court cases in matters involving the proper interpretation of federal immigration laws. As the nation's premier bar association of immigration attorneys, AILA has a unique perspective and abiding interest in the extent to which alienage or immigration status may affect the ability to practice law.

The mission of *amicus* the Asian Law Caucus is to promote, advance, and represent the legal and civil rights of Asian and Pacific Islander communities. The Asian Law Caucus is a member of the Asian American Center for Advancing Justice. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society, with a specific focus directed toward addressing the civil and human rights of, among other vulnerable communities, undocumented immigrants. As the oldest Asian American legal rights organization devoted to protecting the civil rights of all racial and ethnic minorities, we have a strong interest in protecting the integrity of the core constitutional principle of equal protection under the law for all Americans regardless of their immigration status. As *amicus*, the Asian Law Caucus agrees that immigration status should not be a factor in admitting qualified lawyers for service to the bar.

Amicus the Legal Aid Society – Employment Law Center (LAS-ELC) is a San Francisco-based non-profit public interest law firm that specializes in litigation on behalf of historically subordinated and underrepresented worker communities, notably including persons of color, immigrant workers and language minorities. Among other areas, LAS-ELC has long been concerned with the rights of immigrant workers in the context of the Immigration Reform and Control Act of 1986 ("IRCA"), and

in recent years has undertaken substantial litigation in this regard. As *amicus*, LAS-ELC has an interest in preserving a qualified applicant's ability to join the Bar, irrespective of her alienage or immigration status.

Amicus the National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys and more than 60 local Asian Pacific American bar associations, who work variously in solo practices, large firms, corporations, legal services organizations, non-profit organizations, law schools, and government agencies. NAPABA's members include immigration attorneys with significant expertise in immigration law issues. Since its inception in 1988, NAPABA has served as the national voice for Asian Pacific Americans in the legal profession and has promoted justice, equity, and opportunity for Asian Pacific Americans. NAPABA engages in civil rights advocacy on various fronts and has a particular interest in ensuring that all well-qualified individuals are able to join the profession and practice law. As *amicus*, we believe that immigration status should not be an impediment to joining the bar for an otherwise qualified applicant.

Amicus National Immigration Law Center (NILC) is a national legal advocacy organization based in Los Angeles whose mission is to defend and promote the rights and opportunities of low-income immigrants and their family members. NILC has earned a national leadership reputation for

its expertise in the legal rights of immigrants in a wide variety of areas, including immigration law, employment, and access to public benefits and educational opportunities. Since 1979, NILC has litigated key cases regarding immigrants' rights, written basic legal reference materials relied on by the field, trained countless advocates and attorneys, and provided technical assistance on a wide range of legal issues affecting low-wage immigrants. NILC interest in the outcome of this case arises out of a concern that citizenship or immigration status not be a prerequisite for the practice of law.

Amici have a strong interest in promoting the equal treatment of noncitizens, regardless of immigration status. Protecting the ability of noncitizens to obtain law licenses is in line with principles of fundamental fairness and equal opportunity and advances the goals of each of the *amici*. In light of the influential nature of this Court's jurisprudence, *amici* also have an interest in urging the correct application of federal immigration law in this important case, as this Court's approach may influence other states' decisions whether to license undocumented immigrants for the practice of law.

Amici (or their members) collectively have special expertise in statutory immigration law issues, having litigated numerous cases involving interpretation of the federal immigration laws, including the federal employment and harboring laws, as well as the federal laws concerning

immigration status and removal. For example, the ACLU and NILC recently filed an *amici curiae* brief in this Court in *Martinez v. The Regents of the University of California* (2011) 50 Cal.4th 1277. *Amici* also have litigated or participated as *amici curiae* in other federal and California cases concerning statutory immigration law issues. (*See, e.g.*, *Villas at Parkside Partners v. City of Farmers Branch* (5th Cir. 2012) 675 F.3d 802 [concerning immigration status and rental to undocumented immigrants]; *Lozano v. City of Hazleton* (3d Cir. 2010) 620 F.3d 170 [concerning immigration status, harboring, and employment of unauthorized aliens] judg. vacated and cause remanded for further consideration in light of *Chamber of Commerce v. Whiting* (2011) 131 S.Ct. 1968; *Keller v. City of Fremont* (D. Neb. 2012 Nos. 8:10CV270, 4:10CV3140) __ F. Supp. 2d __, __ [2012 WL 537527, at *10]; *Garrett v. City of Escondido*, (S.D. Cal. 2006) 465 F. Supp. 2d 1043 [concerning immigration status and rental to undocumented immigrants]; *Langfeld v. City & County of San Francisco*, (Super. Ct. S.F. City and County, 2008, No. CPF-08-508341) [as *amici*] [concerning whether the San Francisco municipal ID ordinance conflicted with federal harboring laws].)

Amici seek to assist this Court's consideration of this matter by addressing three specific immigration law issues relating to Questions 3, 4, and 5 of this Court's Order to Show Cause in order to demonstrate that the nation's immigration laws pose no obstacle to the admissions of noncitizens

like Mr. Garcia who may currently lack a valid immigration status. *First*, amici clarify two common misconceptions regarding undocumented immigrants, explaining that the fact that a noncitizen is present in the United States without a valid immigration status indicates neither that any federal criminal law has been violated, nor that the federal government desires to remove (or will remove) him. Under the federal system, immigration status is a complex legal and policy determination that may change over time, and numerous persons currently lacking federal permission to remain in the country may well eventually receive such permission. *Second*, *amici* explain that the provisions of the INA (and related regulations) restricting employment of unauthorized aliens would not preclude an undocumented attorney from practicing law, because an attorney can practice law in a number of ways that would not involve an employment relationship. *Third*, *amici* write to make absolutely clear that the conduct and intent involved in a client's retaining an undocumented attorney for the purpose of obtaining legal assistance would be wholly insufficient as a matter of law to trigger liability under the federal "harboring" statute, 8 U.S.C. § 1324(a)(1)(A)(iii).

For the foregoing reasons, *amici* respectfully request that the Court accept the accompanying brief for filing in this case.

Respectfully submitted,

Dated: July 18th, 2012

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INTRODUCTION

This case concerns the application of Sergio C. Garcia, a noncitizen who currently lacks explicit federal permission to remain in the United States, to be licensed as a lawyer in California. Although the Committee of Bar Examiners of the State Bar of California recommends Mr. Garcia's admission, this Court has issued an Order to Show Cause asking the parties to address whether federal immigration law precludes his admission or would counsel against his admission as a matter of policy. *Amici*, several nonprofit organizations with expertise in immigration law matters, write to explain that the nation's immigration laws pose no obstacle to the admission of noncitizens like Mr. Garcia who may currently lack a valid immigration status, addressing three specific immigration law issues relating to Questions 3, 4, and 5 of the Court's Order to Show Cause.

As an initial matter, *amici* agree with the parties that immigration status is irrelevant to one's capacity to serve as a member of the bar, and that undocumented attorneys can make important, unique, and diverse contributions to the practice of law. As the United States Supreme Court recently observed in a different context, "[t]he history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come here." (*Arizona v. United States* (June 25, 2012 No. 11-182) __U.S. __, __ [__ S.Ct __, __, 2012 WL 2368661, at *18].) *Amici* also agree with the parties that 8 U.S.C. § 1621 does not

preclude this Court from granting a bar license to an undocumented immigrant.

In this brief, we address three points concerning the requirements of the Immigration and Nationality Act ("INA"). *First*, *amici* clarify two common misconceptions regarding undocumented immigrants, explaining that the fact that a noncitizen is present in the United States without a valid immigration status indicates neither that any federal criminal law has been violated, nor that the federal government desires to remove (or will remove) him. Indeed, under the federal system, immigration status is a complex legal and policy determination that may change over time, and numerous persons currently lacking federal permission to remain in the country may well eventually receive such permission. *Second*, *amici* explain that the provisions of the INA (and related regulations) restricting employment of unauthorized aliens would not preclude an undocumented attorney from practicing law, because an attorney can practice law in a number of ways that would not involve an employment relationship. *Third*, *amici* write to make absolutely clear that the conduct and intent involved in a client's retaining an undocumented attorney for the purpose of obtaining legal assistance would be wholly insufficient as a matter of law to trigger liability under the federal "harboring" statute, 8 U.S.C. § 1324(a)(1)(A)(iii).

INTERESTS OF AMICI CURIAE

Amicus American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization of more than 500,000 members. The Immigrants' Rights Project of the ACLU engages in a nationwide program of litigation and advocacy to enforce the constitutional and civil rights of immigrants. *Amici* ACLU of Northern California, ACLU of Southern California, and ACLU of San Diego and Imperial Counties are the three California-based affiliates of the national ACLU. The ACLU has special expertise in statutory immigration law issues, having litigated numerous cases involving interpretation of the federal laws concerning employment, harboring, and immigration status. (*See, e.g.*, *Lozano v. City of Hazleton* (3d Cir. 2010) 620 F.3d 170 [immigration status, harboring, and employment] judg. vacated and cause remanded for further consideration in light of *Chamber of Commerce v. Whiting* (2011) 131 S.Ct. 1968; *Garrett v. City of Escondido*, (S.D. Cal. 2006) 465 F. Supp. 2d 1043 [immigration status and rental]; *Langfeld v. City & County of San Francisco*, (Super. Ct. S.F. City and County, 2008, No. CPF-08-508341) [as intervenors] [whether municipal ID ordinance conflicted with federal harboring laws].)

Amicus American Immigration Lawyers Association (AILA) is a national organization comprised of more than 11,000 lawyers practicing in the field of immigration law throughout the United States. AILA's objectives are to advance the administration of law pertaining to

immigration, nationality, and naturalization; to promote reforms in the laws; to facilitate the administration of justice; and to elevate the standard of integrity, honor, and courtesy of those appearing in representative capacity in immigration, nationality and naturalization matters. AILA's members practice regularly before the Department of Homeland Security and before the Executive Office for Immigration Review, as well as before the United States District Courts, Courts of Appeals, and Supreme Court, often on a *pro bono* basis. AILA has appeared as *amicus* in many federal courts and some state court cases in matters involving the proper interpretation of federal immigration laws. As the nation's premier bar association of immigration attorneys, AILA has a unique perspective and abiding interest in the extent to which alienage or immigration status may affect the ability to practice law.

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organization devoted to protecting the civil rights of all racial and ethnic minorities, we have a strong interest in protecting the integrity of the core constitutional principle of equal protection under the law for all Americans regardless of their immigration status. As *amicus*, the Asian Law Caucus agrees that immigration status should not be a factor in admitting qualified lawyers for service to the bar.

Amicus the Legal Aid Society – Employment Law Center (LAS-ELC) is a San Francisco-based non-profit public interest law firm that specializes in litigation on behalf of historically subordinated and underrepresented worker communities, notably including persons of color, immigrant workers and language minorities. Among other areas, LAS-ELC has long been concerned with the rights of immigrant workers in the context of the Immigration Reform and Control Act of 1986 ("IRCA"), and in recent years has undertaken substantial litigation in this regard. As *amicus*, LAS-ELC has an interest in preserving a qualified applicant's ability to join the Bar, irrespective of her alienage or immigration status.

Amicus National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys and more than 60 local Asian Pacific American bar associations, who work variously in solo practices, large firms, corporations, legal services organizations, non-profit organizations,

law schools, and government agencies. NAPABA's members include immigration attorneys with significant expertise in immigration law issues. Since its inception in 1988, NAPABA has served as the national voice for Asian Pacific Americans in the legal profession and has promoted justice, equity, and opportunity for Asian Pacific Americans. NAPABA engages in civil rights advocacy on various fronts and has a particular interest in ensuring that all well-qualified individuals are able to join the profession and practice law. As *amicus*, we believe that immigration status should not be an impediment to joining the bar for an otherwise qualified applicant.

Amicus National Immigration Law Center (NILC) is a national legal advocacy organization based in Los Angeles whose mission is to defend and promote the rights and opportunities of low-income immigrants and their family members. NILC has earned a national leadership reputation for its expertise in the legal rights of immigrants in a wide variety of areas, including immigration law, employment, and access to public benefits and educational opportunities. Since 1979, NILC has litigated key cases regarding immigrants' rights, written basic legal reference materials relied on by the field, trained countless advocates and attorneys, and provided technical assistance on a wide range of legal issues affecting low-wage immigrants. NILC's interest in the outcome of this case arises out of a concern that citizenship or immigration status not be a prerequisite for the practice of law.

ARGUMENT

I. A Person's Lack of a Valid Immigration Status Indicates Neither That He Has Committed Any Crime, Nor That He Will Be Removed from the United States.

Amici begin by addressing two common misconceptions concerning undocumented immigrants: that their mere presence is a crime, and that the federal government affirmatively desires to remove, and will remove, all persons lacking a valid immigration status. To the contrary, a noncitizen who is present in the United States without authorization need not have violated any federal criminal law to arrive in that circumstance. Moreover, immigration status is fluid and complex. Many persons lacking a valid status may have either implicit or explicit permission to remain in the United States. And many persons who presently lack status may acquire the right to remain permanently in the United States. As a result, it would be incorrect to assume that an undocumented immigrant applying for a bar license resides here against the wishes of the federal government, or that he would necessarily face removal from the United States in the near future.

A. Being Present in the United States Without Authorization Is Not a Crime.

The U.S. Supreme Court recently reaffirmed that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States." (*Arizona*, *supra*, 2012 WL 2368661, at p *13 [citing *INS v. Lopez–Mendoza* (1984) 468 U.S. 1032, 1038].) The federal statutes are plain on

this point, as no federal law makes it a crime to be present in the United States without a valid immigration status. Rather, such presence is prohibited only by civil federal immigration laws. (*See Martinez-Medina v. Holder* (9th Cir. 2011) 673 F.3d 1029, 1035-36.)

Significantly, presence without a valid immigration status is *not* synonymous with illegal entry into the United States.[2] Thus, although federal law criminalizes illegal entry, 8 U.S.C. § 1325, and illegal re-entry, 8 U.S.C. § 1326, no provision makes it a crime to be present without authorization or removable without other conduct. (*Cf. Martinez-Medina, supra*, 673 F.3d at p. 1035 [noting an admission of illegal presence does not constitute probable cause of a criminal violation of illegal entry or reentry].) The distinction between entering the United States and being present in the United States without a valid immigration status is important. For example, a person may enter the United States lawfully on a visa, but may remain beyond the period authorized by the visa. Such a person would be present without authorization and removable, but would not have illegally entered and would not be subject to any criminal charge as a result of the visa overstay.

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[2] Moreover, the offense of illegal entry occurs at the time of entry and is not a continuing offense for which a person present without authorization could be arrested absent a warrant, unless that offense was committed in the presence of the arresting officer. (*United States v. Cores* (1958) 356 U.S. 405, 408 fn. 6; Cal. Pen. Code § 836(a).)

B. An Individual's Present Lack of a Valid Immigration Status Does Not Mean He Will Be Removed.

It is simply incorrect to assume that lack of a valid immigration status indicates that a noncitizen will be removed from the United States. Rather, whether a noncitizen will be permitted to remain in the United States is a complex legal and policy judgment based on numerous factors, including not only enforcement priorities, but humanitarian considerations, foreign relations concerns, and other factors reflected in the federal immigration laws. Under the complex federal system, immigration status is far from static, and present lack of explicit permission to remain in the United States is by no means determinative of whether a noncitizen will be subject to removal. Numerous persons who presently lack status may receive permission from the federal government to stay, whether permanently or temporarily.

"Federal governance of immigration and alien status is extensive and complex." (*Arizona*, *supra*, 2012 WL 2368661, at p. *5.) The INA and its implementing regulations set forth detailed removal procedures which determine whether a person may remain in the country. (*See* 8 U.S.C. §§ 1101 *et seq.*; 8 C.F.R. §§ 100.1 *et seq.*; *see also Arizona*, *supra*, 2012 WL 2368661, at p. *5 [explaining that "Congress has specified which aliens may be removed from the United States and the procedures for doing so."].) It is *those* procedures, which include multiple discretionary decisions by

federal officials, that determine whether an individual may remain in the United States—*not* an individual's immigration status at the outset of the process.

Extensive procedural protections are generally applicable to immigrants in removal proceedings, such as a pre-removal adversarial proceeding before a federal immigration judge, including notice and an opportunity to be heard. (*See* 8 U.S.C. § 1229a.) During removal proceedings, the INA provides that certain immigrants who are otherwise removable may obtain relief from removal, including relatives of U.S. citizens, certain individuals who would suffer hardship upon deportation, and individuals fleeing persecution and torture. (*See* 8 U.S.C. §§ 1158 [asylum]; 1229b [cancellation of removal]; 1255 [adjustment of status]; 1231(b)(3) [withholding of removal]; 8 C.F.R. §§ 208.16-18; *see also Arizona*, 2012 WL 2368661, at *5-*6 [noting availability of discretionary relief from removal].) Thus, under the system established by Congress, it is simply

> impossible . . . to determine [ex ante] which aliens the Federal Government will eventually deport, which the Federal Government will permit to stay, and which the Federal Government will ultimately naturalize. Until an undocumented alien is ordered deported by the Federal Government, no [one] can be assured that the alien will not be found to have a federal permission to reside in the country, perhaps even as a citizen. Indeed, even the Immigration and Naturalization Service cannot predict with certainty whether

> any individual alien has a right to reside in the country until deportation proceedings have run their course.

(*Plyler v Doe* (1982) 457 U.S. 202, 241 fn. 6 (conc. opn. of Powell, J.); *see also id.* at 236 (conc. opn. of Blackmun, J.) ["[T]he structure of the immigration statutes makes it impossible for the State to determine which aliens are entitled to residence, and which eventually will be deported"]; *id.* at 226 (maj. opn. of Brennan, J.) ["In light of the discretionary federal power to grant relief from deportation, a State cannot realistically determine that any particular undocumented child will in fact be deported until after deportation proceedings have been completed."].) Notably, even an immigration judge's issuance of a removal order is not a conclusive determination regarding whether a noncitizen may remain, because Congress enabled individuals to seek reconsideration, reopening, and administrative and judicial review of their removal orders. (*See* 8 U.S.C. §§ 1229a(c)(6), (7) [motions to reconsider and reopen removal proceedings], 1252 [judicial review]; 8 C.F.R. §§ 1003.1(b) [administrative appeal] and 1003.2 [motions to reopen administrative appeal]; *see generally Dada v. Mukasey*, (2008) 554 U.S. 1, 18 [describing motions to reopen as an "important safeguard" of the noncitizen's rights].) Further, some individuals with final removal orders who have exhausted their appeals may still be permitted to remain and work in the United States, such as persons released from detention because their removal is not reasonably

foreseeable. (*See Clark v. Martinez* (2005) 543 U.S. 371; *Zadvydas v. Davis* (2001) 533 U.S. 678.)

Moreover, even apart from the removal process, numerous categories of persons who lack a valid immigration status are permitted to reside here with the full knowledge of the U.S. government. (*See Lozano v. Hazleton* (3d Cir. 2010) 620 F.3d 170, 222 judg. vacated and cause remanded for further consideration in light of *Chamber of Commerce v. Whiting* (2011) 131 S.Ct. 1968; Pl.'s Mot. for Prelim. Inj. and Mem. of Law in Supp. Thereof, at 4-6, *United States v. Arizona* (D. Ariz. docketed July 6, 2010 No. 2:10-CV-1413-PHX-SRB) 703 F. Supp. 2d 980, ECF No. 6 [hereinafter "U.S. SB 1070 Mot."] [noting DHS's authority "to permit aliens, including those who would otherwise be inadmissible, to temporarily enter and remain" in the U.S.].) For example, DHS has long exercised discretion to place an otherwise removable noncitizen in a "deferred action" category, allowing the person to remain in the country on humanitarian grounds. (*See, e.g., David v. INS*, (8th Cir. 1977) 548 F.2d 219, 223 & fn. 5; *see also, e.g., Reno v. Am.-Arab Anti-Discrimination Comm.* (1999) 525 U.S. 471, 483-87 [recognizing extent of discretion in removal proceedings].) Federal law also authorizes certain categories of noncitizens to receive federal permission to work, and implicitly to stay, in the country even though they may lack a valid immigration status. (*See* 8 C.F.R. §§ 274a.12(a)(10-13), (c)(8-11, 14, 18-20, 22, 24)*; accord* U.S. SB

1070 Mot., at p. 5 [certain individuals "may be provided employment authorization while the federal government evaluates [their] immigration status"].) Persons with pending applications to adjust to lawful permanent resident status, such as survivors of domestic violence, asylum applicants and others, are also permitted to remain in the country without formal status. (*See* 8 U.S.C. §§ 1254a; 1255(i), (m); 8 C.F.R. § 274a.12(c)(8, 9, 19).) Notably, persons with a "deferred action" classification, a work permit, or a pending immigration application are nonetheless present in the United States without any formal immigration status.

As these aspects of the federal immigration scheme demonstrate, "[a] principal feature of the removal system is the broad discretion exercised by immigration officials." (*Arizona*, 2012 WL 2368661, at p. *5.) The federal government's discretion includes the power to decline to initiate removal proceedings against a removable noncitizen, to deem removal of certain categories of removable noncitizens (such as noncriminals) a low enforcement priority, or to grant affirmative permission to remain in the United States. As the Supreme Court recently explained:

> Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has children born in the United States, long ties to the community, or a record of

> distinguished military service. Some discretionary decisions involve policy choices that bear on this Nation's international relations. Returning an alien to his own country may be deemed inappropriate even where he has committed a removable offense or fails to meet the criteria for admission.

(*Id.* at p. *6; *see also* 8 C.F.R. §§ 212.5 [parole], 274a.12(c)(14) [deferred action]; Memorandum from John Morton, Director, ICE, to All Field Office Directors et al., Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011) available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf [hereinafter "Morton Memorandum"].)

Indeed, just last month, the Secretary of Homeland Security announced that certain undocumented young people who came to the United States as children will be able to seek deferred action and be permitted to remain in the country on a temporary basis.[3] Qualified individuals will receive deferred action for two years, subject to renewal, and the opportunity to seek a work permit. Even noncitizens subject to final orders of removal will be eligible to apply. (*See* Memorandum from Janet Napolitano, Secretary of Homeland Security, to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Patrol et al., Exercising

[3] Applicants must have come to the United States before the age of 16; be under the age of 30; lived in the country continuously for five years; graduated from high school, obtained a GED, or served in the military; and have no or a very minor criminal record.

Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) available at http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.) Individuals eligible for this new federal policy are, by definition, present in the United States without a valid immigration status.

Although Mr. Garcia may not be eligible for deferred action under this particular policy, he is a prime example of someone who, while currently lacking a valid immigration status, resides here with the knowledge and tacit approval of the federal government, and is a low priority for removal under the agency's prosecutorial discretion guidelines. Mr. Garcia was brought by his parents from Mexico to the United States when he was 17 months old. He lived in the country until around the age of eight or nine, at which point his parents took him back to Mexico. The family returned when Mr. Garcia was 17 years of age. He has lived in the United States since that time, graduating college and law school, and passing the California Bar Examination. (Opening Br. of the Comm. of Bar Examiners of the State Bar of California at 1 [hereinafter "State Bar Br."].)

Moreover, Mr. Garcia is waiting to adjust his status to lawful permanent residence. His father, who was a lawful permanent resident at the time, and who has since become a U.S. citizen, filed a Form I-130 petition for an immigrant visa for his son on November 18, 1994. That

petition was approved in January 1995. Since that time—for more than 17 years—Mr. Garcia has been waiting, without a valid immigration status, for his priority date to become current. (*Id.*. at 1 & fn. 3.)[4] Once his priority date finally becomes current, he will be eligible to adjust his status to lawful permanent residence without having to leave the country. (*See* 8 U.S.C. § 1255(i).) In light of these equities, Mr. Garcia clearly would merit a favorable exercise of prosecutorial discretion; he is a low priority for removal. (*See* Morton Memorandum at 4 [listing factors].)

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In sum, the fact of a bar applicant's presence in the United States without authorization does not mean that he has violated any criminal laws, that he is likely to be removed from the United States in the near future, or even that he remains in the United States without the knowledge or permission of the federal government. To the contrary, under the federal system, immigration status is fluid and a person who lacks permission to remain in the United States at one point in time may well be granted such permission, either permanently or temporarily.

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[4] As this case illustrates, there is an extremely long waiting line for persons born in Mexico based on per country limitations. Because Mr. Garcia is Mexican-born, his petition would have had to have been filed before June 8, 1993 to be "current" this month. In contrast, persons born in other countries whose petitions were filed by their U.S. citizen parents prior to July 8, 2005, are eligible to apply for immigrant visas in July 2012. (*See* U.S. Department of State, Visa Bulletin for July 2012, *available at* http://www.travel.state.gov/visa/bulletin/bulletin_5733.html [explaining visa allocation rules].)

II. The INA Does Not Prohibit an Attorney Who Lacks Work Authorization From Practicing Law.

The Court's Order to Show Cause asks whether the grant of a law license impliedly represents that the licensee legally may be employed as an attorney in the United States. As the Committee of Bar Examiners of the State Bar has shown, the answer to this question is, unequivocally, no. While a license to practice law is a necessary prerequisite to employment as an attorney in California, a license alone does not establish or imply that an attorney possesses work authorization in the United States. The exclusive terms under which an individual may establish authorization to be employed in the United States are provided within § 274A of the INA, 8 U.S.C. § 1324a, and its implementing regulations, and a state-issued license is wholly separate from and has no bearing on the question of federal permission to work. (*See* State Bar Br. at 20.)

Amici write separately to elaborate that the relevant INA provisions do not prohibit or prevent an attorney who lacks work authorization from practicing law. Although such an attorney may not be employed as an employee, he may nonetheless utilize his law license in a number of respects that are not prohibited by federal immigration law, including by performing pro bono work or establishing a solo law practice.

A. A Brief Summary of the INA's Employment Provisions.

In 1986, for the first time in the nation's history, Congress made it unlawful to hire an alien for employment, or to continue to employ an alien, "knowing the alien is an unauthorized alien." (8 U.S.C. §1324a(a)(1)-(2).) At the same time, Congress established an "employment verification system" (commonly known as the "I-9 process") that requires potential employees to provide documents establishing identity and employment authorization, and requires employers to execute an I-9 form. (8 U.S.C. §1324a(b)(1); 8 C.F.R. §274a.2(a)(2).) Pursuant to these amendments made to the INA as part of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359, employers must review employee documents at the beginning of employment to ascertain whether an individual is a United States citizen or a work-authorized alien. (8 U.S.C. § 1324a(b).) These requirements apply whenever an individual is "hire[d] for employment" in the United States. (8 U.S.C. § 1324a(a)(1)(B); *see also* § 1324a(a)(1)(A).) Civil and criminal penalties may be levied against employers who violate the employment authorization requirements. (8 U.S.C. § 1324a(e), (f).) In addition, IRCA added anti-discrimination provisions to protect employees from unfair immigration-related employment practices by unscrupulous employers. (8 U.S.C. § 1324b.)

B. Employment Authorization is Necessary Only When an Individual Seeks to be Employed by an Employer in the United States.

The federal prohibition on hiring unauthorized aliens and related verification requirements applies to the employment by employers of employees in the United States. These requirements do not generally apply to the work of persons who own their own businesses, such as bona fide independent contractors, or to non-remunerative work. Federal law would therefore not preclude a noncitizen attorney who lacks work authorization from practicing law in any capacity that does not involve serving as an employee, such as engaging in pro bono legal work, writing and publishing on legal subjects in law reviews or online, or, critically, establishing a solo legal practice. Nor does the law require verification of an employee's right to be employed if the person rendering services does so outside of the United States. Thus, an attorney admitted in California who works in Mexico or the United Kingdom does not need to show proof of the ability to be employed in the United States.

Specifically, the definitions of "employee" and "employer" in the pertinent Department of Homeland Security regulations are only triggered when remuneration is involved, and, moreover, expressly exclude independent contractors:

> (f) The term employee means an individual who provides services or labor for an employer for wages or other remuneration *but does not mean independent contractors* as

> defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;
>
> (g) The term employer means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and *not the person or entity using the contract labor*;

(8 C.F.R. § 274a.1(f)-(g), emphasis added.) Significantly, the regulations make clear that when an independent contractor is retained, "the person or entity using the contract labor" is "not" an "employer." (*Id.* at § 274a.1(g).) Thus, under the federal regulations, when a client retains a lawyer, the client is *not* an employer and therefore has no obligation to refrain from retaining an unauthorized alien or to verify the work authorization status of the attorney.

Further, the regulations define "employment" as "any service or labor performed by an employee for an employer within the United States." (8 C.F.R § 274a.1(h).) The definition of employment reinforces that independent contractor-type work is not covered, providing that "employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent." (8 C.F.R. § 274a.1(h)*; see also* H.R. Rep. 99-682, pt. I, at 56-57 (1986) reprinted in 1986

U.S.C.C.A.N 5649, at 5660-61 [stating that "[i]t is not the intent of this Committee that sanctions would apply in the case of casual hires (i.e., those that do not involve the existence of an employer/employee relationship)" and noting an exception for unions and similar entities].)

In addition, although the regulations provide that the determination of whether an individual is an independent contractor is made on a case-by-case basis, they nevertheless make clear that an "independent contractor" is an individual or entity "who carr[ies] on independent business, contract[s] to do a piece of work according to their own means and methods, and [is] subject to control only as to results." (8 C.F.R. § 274a.1(j).) The factors to be considered in determining whether a person is an independent contractor also make clear that a solo legal practitioner easily qualifies. (*See ibid.* ["Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done."]; *see also Worthington v. Unemployment Insurance Appeals*

Board, (1976) 64 Cal.App.3d 384, 387 [holding that an attorney was independent contractor because "he made agreements with clients for compensation . . . for outright or for contingent remuneration" and was "not subject to his client's direction as to the manner of performing his tasks, but . . . was expected to use his skills to produce results whether these were recoveries of money, the supplying of advice, the drafting of instruments or whatever product of the lawyer's expertise each client may have contracted for."]; *Otten v. San Francisco Hotel Owners Ass'n* (1946) 74 Cal.App.2d 341, 343 [holding that an attorney who "maintained his separate office in San Francisco where he engaged in the general practice of the law . . . . was not a servant of the defendants but an independent contractor retained to perform professional services"]; *McCarthy v. Recordex Services, Inc.*, 80 F.3d 842, 853 (3d Cir. 1996) [noting that "attorneys are . . . independent contractors"].)

These definitions make explicit that only employers and employees in the United States are subject to the hiring prohibition and verification requirements in 8 U.S.C. § 1324a. Because a client who retains an attorney is not an employer, and an attorney who is retained by a client is not an employee of the client, the immigration laws do not preclude attorneys who are solo practitioners from engaging in remunerative work on behalf of a client. Similarly, the immigration laws would not preclude an attorney who

lacks federal employment authorization from engaging in nonremunerative work, such as publishing legal articles or representing clients pro bono, or from providing legal services abroad.

Finally, 8 U.S.C. § 1324a(a)(4) provides that a person may not circumvent the prohibition on hiring unauthorized aliens for employment by "us[ing] a contract[] [or] subcontract . . . to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien . . . with respect to performing such labor." Section 1324a(a)(4) prohibits a person or business from "us[ing] a contract . . . to obtain the labor of an alien" when he knows he could not directly employ that person to perform the same labor. Thus, the Executive Office for Immigration Review (the federal agency charged with interpreting the INA) has explained that § 1324a(a)(4) means"that a person or business that uses contract labor to circumvent the law against knowingly hiring unauthorized aliens[] will be considered to have 'hire[d]' the alien 'for employment,' in violation of § 1324a(a)(1)(A)." (*United States v. General Dynamics Corp.* (O.C.A.H.O. 1993) 3 OCAHO 517 [1993 WL 403774, at *15]). "Congress enacted § 1324a(a)(4) to avoid the creation of a loophole which would have enabled a person or business to use subcontractors or create 'independent contractor' relationships with workers to avoid liability for employer sanctions." (*Id.* at *15 fn. 22; *see also* H.R. Rep No. 99-682, pt. 1, at 62 (1986), reprinted in 1986 U.S.C.C.A.N 5649, 5666. ["Some sanctions laws of foreign countries

have proved to be ineffective because of loopholes which enable the use of subcontractors to avoid liability. The Committee intends to prevent any such loophole in the instant legislation."].) In sum, § 1324a(a)(4) prohibits using a contractual relationship to avoid IRCA liability for employing someone it would be unlawful to employ directly. Because a client is never in a position to directly employ a sole practitioner, this provision plainly does not prohibit a potential client from retaining an attorney such as Mr. Garcia for his legal services as a solo practitioner.

III. Retention of an Undocumented Attorney Is Insufficient As a Matter of Law to Constitute Harboring

Finally, *amici* write to dispel any potential concerns that a client who retains an undocumented attorney could possibly be held liable pursuant to the federal criminal harboring statute, 8 U.S.C. § 1324(a)(1)(A)(iii). The conduct and intent involved in retaining an undocumented attorney for the purpose of securing legal assistance are clearly legally insufficient to incur liability for harboring an undocumented immigrant.

Section 1324(a)(1)(A)(iii) punishes any person who while "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including in any building or any means of transportation." An attorney-client relationship, entered into by the

client for the purpose of securing legal assistance to the benefit of the client, and not to avoid an immigrant's detection by the immigration authorities, plainly could not come within the statutory language even where the attorney is known to be present in the United States without a valid immigration status.

To violate 8 U.S.C. § 1324(a)(1)(A)(iii), an individual must take active steps to conceal, harbor or shield undocumented immigrants from detection. The Ninth Circuit has repeatedly held that a defendant cannot be convicted of any of the offenses under § 1324(a)(1)(A), including § 1324(a)(1)(A)(iii), unless "the government . . . show[s] that the defendant acted with *criminal intent, i.e., the intent to violate United States immigration laws*." (*United States v. Yoshida* (9th Cir. 2002) 303 F.3d 1145, 1149, alterations omitted and italics added [quoting *United States v. Barajas-Montiel* (9th Cir. 1999) 185 F.3d 947, 951]; *see also United States v. You* (9th Cir. 2004) 382 F.3d 958, 966, original italics and alternation [holding that a conviction under § 1324(a)(1)(A)(iii) requires a showing that the defendant acted with "*the purpose of* avoiding [the aliens'] detection by immigration authorities"]; *United States v. Nguyen* (9th Cir. 1995) 73 F.3d 887, 893 [holding that "to convict a person for violating Section 1324(a)(1)(A), the government must show that the defendant acted with criminal intent"]; Ninth Circuit Model Criminal Jury Instructions (2003), 9.3 Alien—Concealment (8 U.S.C. § 1324(a)(1)(A)(iii)), original

brackets [providing that in order to establish guilt, the government must prove beyond a reasonable doubt that, inter alia, "Fourth, the defendant concealed [*alien*] for the purpose of avoiding [*alien*]'s detection by immigration authorities."], available at http://archive.ca9.uscourts.gov/web/sdocuments.nsf/dcf4f914455891d4882564b40001f6dc/a14ddcb81170fbc6882564bb0004fa44?OpenDocument; *cf. United States v. Barajas-Montiel*, *supra*, 185 F.3d at p. 953 fn. 7 [conviction for "br[inging] in" alien without prior official authorization under § 1324(a)(2) requires finding that defendant "intended to violate immigration laws"].) The retaining of an undocumented attorney for the purpose of obtaining legal assistance is a type of innocent conduct that does not involve any specific intent on the part of the client to avoid the attorney's detection by immigration authorities, and would therefore fall far short of the applicable standard.

Even apart from the lack of specific criminal intent, the act of retaining an undocumented attorney could not possibly amount to the required conduct of concealing, affording shelter to, or shielding from detection. (*See* 8 U.S.C. § 1324(a)(1)(A)(iii); *United States v. Acosta de Evans* (9th Cir. 1976) 531 F.2d 428, 430 [defining "harboring" as "afford[ing] shelter to" an alien who is present in the United States without permission].) Indeed, rather than affording secrecy or concealment to the attorney, retaining an attorney's services frequently requires the attorney to appear publicly and notoriously, arguing in court, negotiating with

opposing counsel, appearing before administrative bodies, and potentially advocating or negotiating with governmental parties. Retaining an attorney to provide legal services is wholly inconsistent with avoiding the attorney's detection by governmental authorities. In sum, under controlling Ninth Circuit precedent, a client who retains an undocumented attorney in California would not be held liable pursuant to § 1324(a)(1)(A)(iii).[5]

Amici are unaware of any federal case finding harboring liability premised on an arms-length business transaction with a known undocumented immigrant such as retaining an undocumented lawyer for a legal matter. To the contrary, the federal courts have held that ordinary

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[5] Although the law in other circuits would not be applicable because a client in California would be subject to Ninth Circuit law, *amici* note that other courts of appeals have held that liability under § 1324(a)(1)(A)(iii) requires conduct that tends to conceal the alien or prevent his detection by government authorities and which substantially facilitates an unlawfully present alien's remaining in the United States. (*See United States v. Kim* (2d Cir. 1999) 193 F.3d 567, 574) [holding that harboring is conduct "tending substantially to facilitate" an undocumented person remaining in United States illegally and "to prevent government authorities from detecting his unlawful presence"]; *United States v. Ozcelik* (3d Cir. 2008) 527 F.3d 88, 100 [same]; *United States v. Varkonyi* (5th Cir. Unit A 1981) 645 F.2d 453, 456, 459 [holding that predecessor provision "proscribes any conduct which tends to substantially facilitate an alien's remaining in the United States illegally," and emphasizing that "implicit in the wording 'harbor, shield, or conceal', is the connotation that something is being hidden from detection"]; *see also Susnjar v. United States* (6th Cir. 1928) 27 F.2d 223, 224 [holding that "the natural meaning of the word 'harbor' [is] to clandestinely shelter, succor, and protect improperly admitted aliens"]; *United States v. Tipton* (8th Cir. 2008) 518 F.3d 591, 595, internal quotations and alternations omitted [harboring conviction requires "conduct that substantially facilitates an alien's remaining in the United States illegally"].)

transactions or interactions such as renting to or residing with known undocumented noncitizens are legally insufficient to incur liability under § 1324(a)(1)(A)(iii). For example, in *United States v. Costello*, Judge Posner of the Seventh Circuit recently held that providing an undocumented immigrant with a place to stay was inadequate to support liability under § 1324(a)(1)(A)(iii), and reversed the conviction of a defendant who allowed her undocumented immigrant boyfriend to reside with her. (*See United States v. Costello* (7th Cir. 2012) 666 F.3d 1040, 1050; *see also, e.g.*, *DelRio-Mocci v. Connolly Properties, Inc.* (3d Cir. 2012) 672 F.3d 241, 248) [holding that, although defendant landlords were "likely aware that some of their residents lacked lawful immigration status and did nothing to alert federal authorities to this fact," this was insufficient to constitute harboring]; *United States v. Silveus* (3d Cir. 2008) 542 F.3d 993, 1003-04 [cohabitation with an undocumented immigrant legally insufficient to support harboring conviction]; *United States v. Alabama* (N.D. Ala. 2011) 813 F. Supp. 2d 1282, 1335, italics omitted [stating "no Fifth Circuit or Eleventh Circuit case has held that the mere provision of rental housing to someone he knew or had reason to know was an unlawfully-present alien" violates 8 U.S.C. § 1324 and collecting cases].)

The federal case law reflects an understanding by the courts that, particularly in light of the fact that "[t]he number of illegal aliens in the United States was estimated at 10.8 million in 2010," *Costello*, *supra*, 666

F.3d at p. 1047, Congress could not have intended to criminalize wholly innocent interactions with noncitizens present without valid immigration status. Thus, in *Nguyen*, the Ninth Circuit explained that proof of criminal intent for harboring convictions ensures that "persons who perform innocent acts" are not "expose[d] . . . to lengthy prison sentences." (*Nguyen*, *supra*, 73 F.3d at p. 893; *see also ibid.* ("We cannot believe that it was Congress's intent . . . to criminalize wholly innocent conduct."].) Similarly, in *Costello*, the Seventh Circuit reasoned that harboring liability was inappropriate in that case because "[t]he defendant . . . was not trying to encourage or protect or secrete illegal aliens." (*Costello*, *supra*, 666 F.3d at p. 1045.) *Costello* held that the term "'harboring' . . . has a connotation . . . of deliberately safeguarding members of a specified group from the authorities, whether through concealment, movement to a safe location, or physical protection." (*Id.* at 1044.)

Federal law recognizes the reality that the millions of undocumented immigrants in the United States attend school,[6] open bank accounts,[7] pay

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[6] *See Plyler v. Doe* (1982) 457 U.S. 202; *cf. Martinez v. The Regents of the University of California* (2010) 50 Cal.4th 1277.

[7] Federal law establishes standards that permit banks to accept undocumented immigrants as customers. Thus, the U.S. Treasury Department regulations implementing the USA PATRIOT Act permit banks to accept, for identification purposes, documents issued by foreign governments such a foreign drivers' license or consular identification card. (*See* 31 C.F.R. § 1020.220(a)(2)(i)(A)(4)(ii).) Federal law contains no requirement that bank customers provide evidence of immigration status.

taxes,[8] get married,[9] and secure basic necessities such as medical care[10] and housing.[11] (*See Villas at Parkside Partners v. City of Farmers Branch* (5th Cir. 2012) 675 F.3d 802, 816 [observing that "the great majority" of

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(*See, e.g.*, 31 C.F.R. § 1020.100(a)(3) [defining "customer" for banking purposes].)

[8] Under federal law, a noncitizen who lacks a valid immigration status is nonetheless required to file a tax return with the Internal Revenue Service if he or she earns an income. *See Zamora-Quezada v. Commissioner of Internal Revenue* (U.S. Tax Ct. Oct. 27, 1997 No. 5194–95), 1997 WL 663164, at *1.

[9] *See, e.g.*, *Buck v. Stankovic* (M.D. Pa. 2007) 485 F. Supp. 2d 576, 582 [holding that noncitizen groom, like his U.S. citizen bride, had a fundamental right to marry even though he was subject to a final deportation order].

[10] *See, e.g.*, 8 U.S.C. § 1611(b) [providing that aliens who are not "qualified aliens," including noncitizens present without authorization, are nonetheless eligible to receive federal public benefits relating to, inter alia, emergency medical care, immunizations, and emergency disaster relief]; *Costello*, *supra*, 666 F.3d at p. 1044-45 [explaining that "the emergency staff at the hospital may not be 'harboring' an alien when it renders emergency treatment even if he stays in the emergency room overnight."].

[11] For example, federal regulations permit persons lacking valid immigration status to reside together with family members eligible for federal housing subsidies. (*See* 24 C.F.R. § 5.508(e) [providing that "[i]f one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance . . . despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family."]; *see also* 24 C.F.R. § 5.520 [providing for prorated subsidies based on the number of persons in the household eligible for benefits].) Further, the INA contemplates that individuals DHS seeks to place in removal proceedings will have addresses where they can be located or contacted. (*See* 8 U.S.C. § 1229(a)(1) [providing for personal service of notice to appear or notice by mail where personal service is not practicable]; *see also id.* §§ 1301-1306 [providing for noncitizens to register with the federal government, provide their addresses, and notify the government of changes in address]; *see also, e.g.*, *Villas at Parkside Partners*, *supra*, 675 F.3d at p. 811 [holding that a municipality was precluded under the Supremacy Clause from denying rental housing to undocumented aliens].)

noncitizens present in the United States without a valid immigration status "live quietly, raise families, obey the law daily, and do work for our country."].) And, as discussed in Part I, *supra*, the federal government exercises discretion to allow, whether explicitly or implicitly, many undocumented immigrants to remain in the United States, notwithstanding their lack of a valid immigration status. Every day, all of these undocumented immigrants enter into a myriad of commercial and personal transactions, and federal law simply does not criminalize U.S. citizens, lawful immigrants, or other undocumented immigrants for merely interacting with them in their daily lives.

CONCLUSION

In sum, federal immigration law does not preclude a person who currently lacks a valid immigration status from practicing law. Because both immigration status and employment authorization are not permanently fixed but may change over time, these factors ought not to limit the Court's determination of an individual's fitness to be an attorney.

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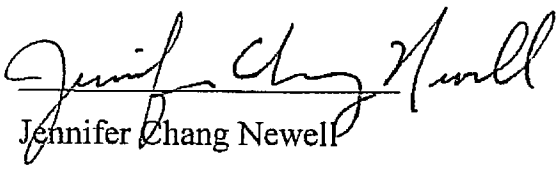
Accordingly, the Court should hold that noncitizens currently lacking federal permission to remain in the United States are not precluded by reason of their immigration status from eligibility for bar admission in the state of California.

Respectfully submitted, Dated: July 18, 2012



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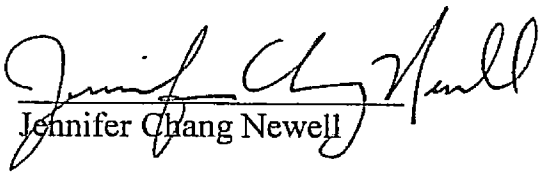
***Counsel gratefully acknowledge the invaluable assistance of legal intern Travis S. Silva in the research and preparation of this brief.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of California Rule of Court 8.204(c)(1). This brief is printed in 13 point Times New Roman font and, exclusive of the portions exempted by Rule 8.204(c)(3), contains 7,596 words.



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PROOF OF SERVICE

I, Tess Ranahan, declare that I am employed in the City and County of San Francisco, California; I am over the age of 18 and not a party to the within action or cause; my business address is 39 Drumm Street, San Francisco, California 94111.

On July 18, 2012, I served a copy of the attached **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO AND IMPERIAL COUNTIES, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, ASIAN LAW CAUCUS, LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER, NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION, AND NATIONAL IMMIGRATION LAW CENTER IN SUPPORT OF APPLICANT SERGIO C. GARCIA** on each of the following by placing a true copy in a sealed envelope and mailing, via UPS, to the addressed as follows:

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