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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

BRIEF OF PROPOSED *AMICUS CURIAE*
CESAR VARGAS
IN SUPPORT OF APPLICANT SERGIO C. GARCIA

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I. INTRODUCTION

Perhaps the most important perspective on the admission of any potential member to the California Bar is that of the potential member's future clients: will the applicant be able to serve his clients competently, ethically, and effectively? This question is fundamental to the determination of Sergio Garcia's application for admission. The answer – with respect to both Mr. Garcia and to other undocumented students who succeed in law school, on the bar examination, and in the moral character determination – is "yes."

Co-counsel LatinoJustice PRLDEF is an organization that uses the law, advocacy, and education to protect opportunities for Latinos to succeed in school and work, fulfill their dreams, and sustain their families and communities. *Amicus curiae* Cesar Vargas is an undocumented immigrant who, like Mr. Garcia, has graduated from law school and passed the bar examination in his home state (New York). As a law student, Mr. Vargas donated his time to clients – in his case, federal, state and local governments – in several unpaid internships. His experience demonstrates that an undocumented immigrant can effectively represent clients. Moreover, a wide array of both organizations and individuals would benefit immensely if law graduates such as Mr. Garcia and Mr. Vargas were admitted to the Bar.

LatinoJustice PRLDEF and Mr. Vargas respectfully submit

the following response to the Court's invitation to brief the issues:

- If licensed, what are the legal and public policy limitations, if any, on an undocumented immigrant's ability to practice law?
- What, if any, other public policy concerns arise with a grant of this application?

II. ARGUMENT

A. The State Bar should continue to grant individualized review to all applicants.

As the Committee of Bar Examiners recognizes, admission to the Bar is an *individualized* determination.[1] This is especially the case with regard to the determination of moral character, where over 13 factors may be taken into consideration in evaluating the fitness of applicants who have committed a previous act of misconduct[2] and at least 15 supplemental forms exist to allow applicants to further demonstrate their moral fitness and to assist the Committee in making its fact-specific inquiry.[3] To categorically ban any group of prospective attorneys is inconsistent with the Bar's current policy and practice. To categorically ban a group of prospective attorneys on the basis of immigration status alone is unjustifiable.

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[1] "The Committee of Bar Examiners through its Subcommittee on Moral Character conducts the inquiry into an applicant's background. Each case is considered individually." *See* http://admissions.calbar.ca.gov/MoralCharacter/Statement.aspx.

[2] *See* http://admissions.calbar.ca.gov/MoralCharacter/Factors.aspx.

[3] *See* http://admissions.calbar.ca.gov/Requirements/Forms.aspx.

Moreover, an individualized review of Mr. Garcia's circumstances – and probably of others in his shoes – offers no support for the idea that he would not act ethically if admitted to the Bar. Mr. Garcia, like many other undocumented immigrants, was brought to this country by his parents when he was a minor. *See* Opening Brief of the Committee of Bar Examiners of the State Bar of California ("State Bar Br.")at 1; *see also* Declaration of Krsna Avila, attached hereto as Exhibit A ("Avila Decl.") at ¶ 2 and Declaration of Mabel Alavez, attached hereto as Exhibit B ("Alavez Decl.") at ¶ 3. The subsequent presence in the United States of such immigrants was not the result of their personal decisions. *See* Avila Decl. at ¶¶ 2-3; Alavez Decl. at ¶ 4-5. As minors, these individuals had neither the intent nor choice to violate any law, and did not possess the capacity to choose otherwise. This Court should not, therefore, presume that undocumented attorneys cannot satisfy their ethical or fiduciary obligations to their clients.

In any event, subsequently remaining in this country without legal status is an infraction, not an actual crime. Undocumented immigrants are not criminals for residing in the country without legal status. Unlawful *presence* has always been a *civil*, not criminal, violation of the Immigration and Nationality Act ("INA").[4] In a similar vein, foreign visitors with

[4] *See, e.g.,* Congressional Research Service Report for Congress, *Immigration Enforcement in the United States* (April 6, 2006) at 8 ("Being illegally present in the U.S. has always been a civil, not

expired student, tourist or working visas remaining in the country without lawful status are not considered criminals, and no presumptions are made against them regarding their ability to represent clients to whom they may owe fiduciary duties.

Significantly, even applicants who have been *convicted* of violent felonies or felonies involving moral turpitude or the breach of fiduciary duty (which is an ethical obligation of all attorneys) have the opportunity to seek admission, and more importantly, are assured a fair and individualized review: "It is the policy of The State Bar of California that persons who have been convicted of violent felonies, felonies involving moral turpitude and crimes involving a breach of fiduciary duty are *presumed* not to be of good moral character in the absence of a pardon or a showing of overwhelming reform and rehabilitation. The Committee shall exercise its discretion to determine whether applicants . . . have produced overwhelming proof of reform and rehabilitation, including at a minimum, a lengthy period of not only unblemished, but exemplary conduct."[5] Thus, even an attorney practicing in another state who has previously breached a fiduciary duty to a client is afforded the opportunity to be admitted to practice law in California. It is nonsensical to extend individualized review to a group of applicants with relevant history of harm to clients yet to

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criminal violation of the INA, and subsequent deportation and associated administrative processes are civil proceedings.").

[5] *See* http://admissions.calbar.ca.gov/MoralCharacter/Factors.aspx (emphasis added).

withhold it from a group of applicants from whom no inferences regarding moral character or the ability to uphold ethical and fiduciary duties may be drawn.[6]

Furthermore, as this Court has recognized, and as discussed in the State Bar's brief, even prior intentional violations of the law are not indicative of a person's character and future ability to faithfully discharge one's duties as an attorney. *See* State Bar Br. at 32-33 (citing *Hallinan v. Committee of Bar Examiners of State Bar* (1966) 65 Cal. 2d 447, 457-58, 469, 471 [55 Cal. Rptr. 228, 421 P.2d 76]). There is no blanket rule against individuals with a less-than-perfect record; they are still given a fair opportunity to demonstrate their ability to practice law in accordance with the standards set by the State Bar.

There are safeguards in place to assure that clients of undocumented attorneys receive representation of the same quality and caliber as they would from any other practicing attorney. The ability of an undocumented immigrant to uphold and discharge the high ethical and fiduciary obligations established by the State Bar is not undermined by his immigration status. There are currently *no bans* against *any* group of individuals, even those who have previously harmed clients or other

[6] Moreover, the INA allows the Attorney General to cancel removal of, and adjust a deportable alien's status if, among other factors, the alien has had good moral character during his or her stay in the United States. *See* 8 U.S.C. § 1229b(b)(1). Accordingly, even the INA recognizes that an individual unlawfully present in the country can still possess good moral character, and allows the Attorney General to conduct a fact-specific inquiry before making a determination. *See, e.g.,* 8 U.S.C. § 1229b(b)(2)(C) (special rule applying to battered spouses and children).

citizens. Undocumented attorneys are able to provide the same quality of representation to their clients. As this Court recognized long ago, an immigrant can both "appreciate the spirit of American institutions" and uphold the Constitutions of the United States and California:

> . . . [W]e need only look to the case of the present petitioner. . . . [H]e settled in California over a decade ago with the intent of becoming a permanent resident . . . ; he received both his undergraduate and legal education here, and took and passed the California Bar Examination. To suggest that such a person lacks appreciation of American institutions merely because he is not himself a citizen demonstrates the irrationality of excluding aliens on this ground.

Raffaelli v. Committee of Bar Examiners (1972) 7 Cal. 3d 288, 297 (internal quotation marks omitted). Accordingly, the State Bar should maintain its current policy and continue to grant individualized review to all applicants.

B. Undocumented Law Graduates Can Meet the Professional Obligations that California Lawyers Owe to Their Clients

1. Undocumented immigrants possess the same relevant qualifications as other aspiring lawyers.

Prospective California attorneys must satisfy stringent admission requirements. These requirements include a minimum of two years of college coursework, a J.D. degree from an accredited law school or four years of certain other types of legal study, a background check and a positive moral character determination from the State Bar. Bar applicants

must also pass the Multistate Professional Responsibility Examination and the California Bar Examination. Some applicants must also pass the First-Year Law Students' Examination.[7] The bar examination alone is a significant hurdle. Only about half of those who take the exam pass.[8]

Mr. Garcia has fulfilled all of these requirements. He has graduated from college and law school, has passed the bar examination, and meets all other requirements for admission. *See* State Bar Br. at 1-2. Mr. Vargas has fulfilled the parallel requirements in New York. He has graduated from college and from law school at the City University of New York School of Law, where he graduated *magna cum laude*. Mr. Vargas has completed some of the most prestigious internships *any* law student could hope to secure, having interned at the District Attorney's Office in Brooklyn, as a judicial intern at the New York state trial court, and as a legislative intern in a congressional office. Mr. Vargas has also passed the New York Bar Examination.[9] Mr. Garcia and Mr. Vargas – and others in a similar position – are as qualified as other new law graduates seeking admission to the Bar.

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[7] For a summary of admissions requirements to the California State Bar, *see* http://admissions.calbar.ca.gov/Requirements.aspx. In addition to the requirements discussed above, applicants must also comply with any California court-ordered child or family support obligation, and either provide their Social Security number or request an exemption from that requirement.

[8] *See* General Statistics Report July 2011 California Bar Examination, *available at* www.admissions.calbar.ca.gov (54.8% of all takers passed the July 2011 exam).

[9] Only 69.2% of individuals taking the New York bar examination in July 2011 passed. *See* http://www.nybarexam.org/Press/ExamStatsJUL11PassRates2005-2011.pdf.

2. An undocumented attorney would be as "available" to clients as any other attorney

An undocumented attorney's lack of legal status in the United States could give rise to a concern that he could become involuntarily and suddenly unavailable to his clients. This risk, however, is relatively small. And it is no different in degree or kind from the risk that *any* lawyer will become voluntarily or involuntarily unavailable to clients. As this Court has previously stated, "the possibility that an alien lawyer might voluntarily return to his native land is not significantly different, in today's highly mobile society, from the possibility that a citizen lawyer might voluntarily move to a different jurisdiction." *Raffaelli*, 7 Cal. 3d at 299. The risk that an alien lawyer could be removed from the country and have to abandon his practice is "easily outweighed by the possibility that a lawyer, even though a citizen, may be involuntarily removed from his practice by death, by serious illness or accident, by disciplinary suspension or disbarment, or by conscription." *Id.* "In any of [these] circumstances the client will undergo the same inconvenience of having to obtain substitute counsel." *Id.*

The State Bar has already submitted briefing discussing the unlikelihood of the government initiating removal proceedings against aspiring attorneys like Mr. Garcia and Mr. Vargas, as well as the mechanisms that exist to transition an attorney's practice to another member of the Bar. *See* State Bar Br. at 34-36. Mr. Vargas will not repeat

those arguments here.[10] But the recent announcement by the Obama administration of a new policy to defer removal and grant work authorization to certain young people suggests that the chance of removal from the country is diminishing for many undocumented law students.

The federal deferred action policy provides that certain undocumented immigrants who were brought to the United States as young children are eligible for relief from removal from the country or from entry into removal proceedings.[11] Individuals who meet the criteria will be eligible to receive two years of deferred action and to apply for work authorization; this status will be renewable. The criteria for eligibility for deferred action are (1) that the individual came to the United States under the age of 16, (2) the individual has continuously resided in the United States for at least five years, (3) is in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces, (4) has not been convicted of certain criminal offenses, and (5) is not above the age of 30. Although the number of undocumented students currently attending law school is unreported, a number of them will meet the requirements for

[10] Mr. Vargas notes, however, that an attorney subject to removal under INA § 240 should receive a minimum of 10 days' notice before the removal proceeding. INA § 239(b). This notice would allow time for the attorney to notify his clients and the court and to transition his practice.

[11] *See* www.dhs.gov/ynews/releases/20120612-napolitano-announces-deferred-action-process-for-young-people.shtm.

deferred action.[12] Although it is too early to know the exact parameters of the new program, it is clear that many undocumented students who attend law school may no longer be at risk of removal from the country and involuntary distance from their clients.

3. An undocumented immigrant, if admitted to the California State Bar, can also be admitted to practice before federal courts

Attorneys do not need to provide proof of immigration status in order to gain admission to practice before federal courts in California. The requirements for attorney admission to practice before the Northern District of California, for example, are set forth in Civil Local Rule 11. The rule requires that an attorney seeking admission be "an active member in good standing of the State Bar of California," that the attorney certify his knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the Local Rules of the Northern District, the Northern District's Alternative Dispute Resolution Programs, and his "[u]nderstanding and commitment to abide by the Standards of Professional Conduct of Civil L.R. 11-4," and that the attorney pay the attorney admission fee. Civ. L.R.

[12] Undocumented prospective lawyers will have to meet many of the criteria – such as education and a clean criminal record – simply in order to meet the State Bar's requirements for admission. Many law students will also meet the age requirements of the policy. The average age of incoming students at both the University of California at Los Angeles School of Law and the University of California at Berkeley School of Law, for example, is 25. *See* www.law.ucla.edu/prospective-students/learn-about/our-students/Pages/2010-incoming-class-profile.aspx; www.law.berkeley.edu/37.htm.

11-1.[13] There is no reason to believe that an individual such as Mr. Garcia or Mr. Vargas, who has graduated from college and law school and passed the Bar examination, will not be able to learn and comply with the rules of procedure, evidence, and professional responsibility. An undocumented member of the State Bar, therefore, can practice in federal courts in California.

4. Undocumented immigrants can enter many courthouses in California, but can represent clients effectively even without doing so

Individuals seeking to enter California state courthouses must submit to a security screening, but this screening does not include a requirement to show government issued identification.[14] Individuals entering federal buildings, on the other hand, typically must present

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[13] The Northern District's standards of professional conduct require that attorneys:

> **(1)** Be familiar and comply with the standards of professional conduct required of members of the State Bar of California; **(2)** Comply with the Local Rules of this Court; **(3)** Maintain respect due to courts of justice and judicial officers; **(4)** Practice with the honesty, care, and decorum required for the fair and efficient administration of justice; **(5)** Discharge his or her obligations to his or her client and the Court; and **(6)** Assist those in need of counsel when requested by the Court.

Civil L.R. 11-4.

[14] San Francisco Superior Court, for example, requires persons entering the courthouse to go through a metal detector. Handbags, briefcases, backpacks, and containers may be x-rayed or hand-searched, and weapons and certain other items are prohibited. *See* www.sfsuperiorcourt.org/divisions/jury-services; *see also* www.scscourt.org/documents/security.pdf (visitors to court will go through a security screening that involves walking through a metal detector and having bags x-rayed; weapons and hazardous items prohibited); www.marincourt.org/court-security.htm (individuals entering courthouse will be screened for prohibited items); www.saccourt.ca.gov/jury/reporting.aspx#security (visitors to courthouse may be required to enter through a metal detector, personal belongings x-rayed, and weapons and hazardous items are not allowed).

government-issued identification.[15] This requirement is not absolute, however, as some federal courthouses allow patrons without identification to enter and be escorted to the courtroom.[16]

In any event, even if the lack of government-issued identification were to prevent an undocumented attorney from attending a court hearing in person, it would not necessarily prevent him from representing his client at hearings and arguments. California courts have an affirmative policy favoring telephone appearances in civil cases. Cal. Rules of Court 3.670(a) ("To improve access to the courts and reduce litigation costs, courts should permit parties, to the extent feasible, to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases."). Hearings at which parties can appear by phone include case management conferences, trial setting conferences, hearings on law and motion, hearings on discovery motions, status conferences, and hearings to review the dismissal of an action. *See id.*, Rule 3.670(c). Telephone hearings are also permitted in federal court. *See, e.g.*, N.D. Cal. Civ. L.R. 7-1(b) ("In the Judge's discretion, or upon request by counsel and with the Judge's approval, a motion may be determined without oral argument or by

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[15] The United States Bankruptcy Court for the Northern District of California, for example, requires visitors to provide a valid driver's license or government issued picture identification. *See* www.canb.uscourts.gov/court-information/locations/headquarters.

[16] *See* www.cacd.uscourts.gov/newsworthy/media/general-information-guide-media#BuildingSecurity ("Any person entering the courthouse on Court business without proper identification will be escorted to the courtroom or office to ensure that he or she has legitimate Court business.").

telephone conference call."); S.D. Cal. Civ. L.R. 7.1(d)(2) ("At the discretion of the court, argument concerning a noticed motion may be conducted through the use of a telephone conference call, said call to be arranged, initiated and paid for by the party proposing this method of oral argument. If such telephonic argument is approved by the court, the matter may be taken off the regular motion hearing calendar, and reset for a date and/or time more convenient to the court and the parties."). Motions may also be decided on the papers, without the requirement of in-person appearance by counsel. *See* N.D. Cal. Civ. L.R. 7-1(b); S.D. Cal. Civ. L.R. 7.1(d)(1) ("A judge may, in the judge's discretion, decide a motion without oral argument.").

In addition, an undocumented attorney could enter into an of-counsel relationship with another attorney to make court appearances on behalf of the undocumented attorney's clients. *See* Rutter California Practice Guide: Professional Responsibility, § 1:296 ("An 'of counsel' attorney may not be a partner, associate, officer or shareholder of the firm."); *id.* at 2:147 ("Of counsel" generally denotes "a professional relationship between attorneys or law firms *other than* as partners, employees, associates, officers or shareholders."); Cal. State Bar Form. Opn. 1993-129 (an "of counsel" attorney generally has: "(1) a close and personal relationship with the law firm; (2) is available to the listing firm or attorney for consultation and advice; (3) is not a partner, associate, or mere

forwarder-receiver of legal business; (4) is compensated on the basis of individual cases; and (5) does not in other respects or in other cases share the continuing obligations of the listing lawyer or law firm").

Finally, President Obama's recent deferred action announcement suggests that young lawyers similarly situated to Mr. Garcia and Mr. Vargas may soon be able to obtain government-issued photo identification. Under President Obama's announcement, such attorneys can obtain temporary employment authorization.[17] In many states, that authorization would be sufficient proof of identification for such attorneys to apply for state-issued drivers licenses.[18]

The likelihood that an undocumented attorney could attend court hearings in person, and the existence of sufficient alternatives if not, indicates that such an attorney can adequately represent his clients in court.

5. Undocumented attorneys face no greater disclosure obligation to their clients than any other attorneys

As demonstrated above, an attorney's immigration status has a negligible impact, if any, on an attorney's ability to diligently and competently represent his client. Because of this, it is unlikely that an attorney's fiduciary responsibility to his client would require him to

[17] *See* http://www.dhs.gov/files/enforcement/deferred-action-process-for-young-people-who-are-low-enforcement-priorities.shtm, detailing the impact of the President's announcement on the Department of Homeland Security and United States Citizenship and Immigration Services.
[18] *See* http://www.dmv.ca.gov/dl/dl_info.htm#BDLP and http://www.dmv.ny.gov/forms/id82.pdf, which notes that an Employment Authorization Card is an acceptable form of documentation to verify legal presence.

disclose his immigration status. Furthermore, even if an undocumented attorney is obligated to disclose his immigration status to a client, there is no reason to think that disclosure would have a negative impact on an attorney's ability to represent that client.

An attorney has a fiduciary duty to his client that requires him to disclose information that is likely to have a material impact on the client's matter or on the ability of the attorney to serve the client. *See, e.g., Lewin v. Anselmo*, 56 Cal. App. 4th 694, 701 (Cal. App. 1st Dist. 1997), stating that the attorney-client relationship is "a fiduciary relation of the highest character. An attorney's undocumented status is not material because there is no reason to believe that "a reasonable man would attach importance to its existence or nonexistence in determining his choice of action," or "the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it." (Restatement (Second) of Torts, § 538 defining "material" for the purposes of material misrepresentation.) Because an attorney is required to disclose only the information that is material to a client, an attorney's immigration status would have no impact on an attorney's required disclosures.

While it is clear that an attorney's immigration status would be considered immaterial on the face on the prevailing definitions, it is also

clear that such status would be considered immaterial when compared to those facts that are also considered immaterial in this context. Generally speaking, courts do not embrace the idea that professionals must disclose information of a purely personal nature. Some courts have even declined to require the disclosure of information involving addiction – something that is arguably much more likely to impact an attorney's practice than immigration status. *See, e.g., Beck v. Law Offices of Edwin Terry, Jr., P.C.*, 284 S.W.3d 416 (Tex. App. Austin 2009) (finding that an attorney's failure to disclose alcoholism and substance abuse did not constitute a breach of fiduciary duty). Under such reasoning an undocumented attorney should be no more obligated to disclose his immigration status than an unmarried attorney should be obligated to disclose his marital status or an attorney with children should be obligated to disclose his parental status.

Finally, as described in section II.B.1, *supra*, there is no reason to believe that undocumented attorneys are any less moral than other attorneys. If an undocumented attorney did take a case that was for some reason exceptionally likely to be affected by his immigration status, such an attorney would be expected to disclose that status and the court has no reason to believe that would not occur. Further, any fears that an attorney would fail to make proper disclosures are purely speculative and are insufficient grounds to deny an attorney admission to the Bar.

6. There is no reason an undocumented attorney would be prohibited or ethically barred from representing clients various interests, including immigration interests

As with any attorney who has an emotional or personal connection to an issue in his client's case, an undocumented attorney would not be barred from representing clients in various matters, including immigration interests. An undocumented attorney would be no more prohibited from representing a client's immigration issue than a female attorney is prohibited from representing a client's sexual harassment issue. Even when a judge may share a personal interest in seeing a case resolved a certain way, courts have not found that to be a reason to bar the judge from hearing the case or overturn that judge's opinion. *See, e.g.. Perry v. Brown*, 671 F.3d 1052, 1096 (9th Cir. Cal. 2012) (finding that a judge who ultimately disclosed that he was gay was not obligated to recuse himself from hearing a case regarding the legal status of gay marriage in California). Finally, undocumented immigrants often possess critical skills that other attorneys do not and they bring a specialized cultural understanding of underserved individuals and communities. (*See infra* section C.)

C. Licensing Undocumented Immigrants Will Increase the Number of Attorneys Available to Undertake *Pro Bono* Work and Represent Underserved Individuals and Communities

Although an undocumented immigrant cannot be hired for

employment by a law firm or business, such an individual, if admitted to the State Bar, could still practice law and provide critical legal service to clients. Pro bono work, for example, does not violate the law – Section 1324a applies only to the employment of an employee for wages or other remuneration. 8 C.F.R. § 274a.1(c); State Bar Br. at 29; ACLU brief. Federal law also does not penalize individuals or entities for hiring independent contractors – such as lawyers – without verifying their legal status. *See* State Bar Br. at 28.

Many undocumented law students and law graduates, in fact, already donate their time to underserved individuals and communities. Mabel Alavez is an undocumented immigrant who has lived in California since her parents brought her to the United States when she was eight years old. Alavez Decl., ¶ 3. After graduating from California public schools, community college, and the University of California at Los Angeles, Ms. Alavez attended law school at Whittier Law School in Costa Mesa. *Id.*, ¶ 36. As a law student, she volunteered at Whittier's on-campus disability clinic. *Id.*, ¶¶ 40-41. That clinic provided legal services to children and young adults with severe developmental disabilities. *Id.* In addition to assisting clients with their disability-related legal issues, she also became an advocate for Spanish-speaking parents seeking to obtain access to education for their children. *Id.*, ¶ 42. These clients came to the clinic at Whittier because they did not have the means to hire an attorney to

represent them, and the representation provided by Ms. Alavez and other volunteers was an invaluable service. *See id.*, ¶¶ 41-50, 56.

In addition to her abilities as a legal advocate, Ms. Alavez possesses specialized skills that make her suited to address the legal needs of these underserved communities. As a volunteer with Whittier's clinic, Ms. Alavez observed a high need for Spanish-speaking representatives and further noted that even in Los Angeles, a community with a large *documented* immigrant population, she was still often the only Spanish speaker available. *See id.*, ¶ 42. Among this Spanish-speaking population, Ms. Alavez noticed that the clients of the clinic often lacked a higher education and struggled to understand their rights and obligations. *Id.*, ¶ 46. As a Spanish-speaking immigrant, Ms. Alavez was uniquely suited to support and advance the interests of this disadvantaged population. *Id.*, ¶¶ 44-48. Ms. Alavez aspires to practice disability law and to represent the rights of children and parents. *Id.*, ¶ 55. Assuming she was admitted to the California Bar, she would be able to do so without violating federal law.

Similarly, undocumented law students working with Educators for Fair Consideration (E4FC) provide pro bono immigration-related legal information. Avila Decl., ¶¶ 6, 8. E4FC provides online legal information and analysis to undocumented immigrant students seeking to achieve legal status in the United States. *Id.*, ¶ 6. These analyses are drafted by a team of volunteers – pre-law students, law students, and law graduates

– who are also undocumented. *Id.*, ¶ 8. E4FC's team of immigration experts and attorneys, as well as its legal services supervisor, advise, supervise and approve all of the volunteer's work. *Id.*, ¶ 8. E4FC and its volunteers have been able to help many immigrant students who would not otherwise have access to legal information. *See id.*, ¶ 9. It is not a stretch to imagine that these same law students and graduates, if eventually admitted to the Bar, would continue to donate their time to communities and individuals in desperate need of legal help.

D. Clients Do Not Violate the Law by Hiring an Undocumented Attorney

As argued by the American Civil Liberties Union and joint *amici curiae* to that brief, a client does not violate the law if his attorney is undocumented. The provisions of the Immigration Reform and Control Act of 1986 (IRCA) and the Federal Criminal Harboring Statute do not implicate clients of undocumented attorneys for a variety of reasoning. This brief incorporates by reference the arguments made by those *amici curiae*.

III. CONCLUSION

For the foregoing reasons, LatinoJustice PRLDEF and Cesar Vargas respectfully request that this Court grant the motion for the admission of Sergio C. Garcia to the practice of law in California.

Dated: July 18, 2012

Respectfully submitted,

By: _____
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CERTIFICATE OF COMPLIANCE

Counsel for *Amicus Curiae* hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Brief of Proposed *Amicus Curiae* Cesar Vargas in Support of Applicant Sergio C. Garcia is produced using 13-point or greater Roman type, including foonotes, and contains 4,851 words. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 18, 2012

Respectfully submitted,

By: _____
ALEXIS YEE-GARCIA
Attorneys for *Amicus Curiae* Cesar Vargas

Exhibit A

I, Krsna Avila, declare and state,

1. I am the legal services manager at Educators for Fair Consideration (E4FC), an organization dedicated to supporting undocumented students in their pursuit of college, career and citizenship. I make this declaration in support of LatinoJustice/PRLDEF and Cesar Vargas' *amicus curiae* brief in support of applicant Sergio Garcia. The facts set forth in this declaration I know to be true of my own personal knowledge, except where such facts are stated to be based on information and belief, and those facts I believe to be true. If called as a witness, I could and would testify competently to the matters set forth in this declaration.

2. I was brought by my parents from Mexico to the United States when I was four months old. I have lived in the San Francisco Bay Area since I came to this country.

3. I grew up as an undocumented immigrant. As a child, however, I was unaware of my undocumented status and considered myself to be an American.

4. My parents subsequently became permanent residents and, later, citizens. My younger brother, who was born in the United States, is also a citizen.

5. I did not receive my permanent residency until September of 2011, after I had already graduated from college.

6. I now work with E4FC as its legal services manager. Our legal services program provides initial online legal information and analysis to undocumented immigrant students seeking to achieve legal status in the United States.

7. We provide legal information and analysis to students all over the country. For students located in the Bay Area, in additional, we also refer them to local non-profit organizations and immigration attorneys who may be able to take their case and help them legalize their status. Since the development of our legal services in 2009, E4FC has analyzed over 600 cases. 70% of these cases have involved students from California.

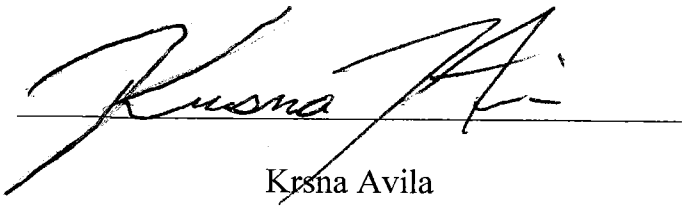
8. Our legal analysis are drafted by a team of undocumented students

who volunteer their time to our organization. Our team of immigration experts and attorneys, as well as our Legal Services Supervisor, a Board of Immigration Appeals accredited representative, advise, supervise and approve all of our volunteer's work. Our volunteers include pre-law undergraduate students, law students, and law graduates, all of whom are undocumented.

9. I believe that, through our confidential legal services, E4FC has been able to help many immigrant students who otherwise would not be able to obtain legal information.

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

Executed in San Francisco, California on July 12th, 2012.



Krsna Avila

Exhibit B

Declaration of Mabel Alavez

I, Mabel Alavez, hereby declare as follows:

1. My name is Mabel Alavez. I am a resident of California. I make this declaration based on my personal knowledge.
2. I make this declaration in support of Sergio Garcia's application to become a member of the California State Bar Association.
3. I was born in a small poor town of Oaxaca, Mexico on March 17, 1983. I immigrated to the United States in July 1991. I was eight years old.
4. Although my father obtained his teaching credentials and was working, he had a hard time supporting our small family of three.
5. After some serious thought, my parents made the difficult decision to leave our small community and immigrate to the United States.
6. We did not have the financial resources to all make the transition at the same time, so we had to split up.
7. After several months of being separated from my mother, I was reunited with her in Los Angeles.
8. My mother and father worked in an affluent area of Los Angeles and I was lucky to have attended a school in the Santa Monica Unified School District.
9. At 8 years old – without ever having heard the English language, or known a person of another ethnicity – I was thrown into a school where I was one of three Latinos, and where I was the only Non-English speaker.
10. Despite these difficulties, I adapted and knew that I quickly had to learn.
11. In fourth grade I won 3rd place in a DARE writing contest.
12. But because I did not have a social security number, I was not given the value of my reward.
13. I felt defeated and different. But instead of retreating I continued to learn and succeed.
14. I wanted to prove to myself, and others, that I was equally as smart as my peers and that I deserved the recognition that I earned.
15. By the time I reached high school I was determined to thrive in every way possible.
16. I began to be recognized by the faculty through awards and scholarships.
17. Not only was I a good student, but I was also captain of my varsity basketball team, president of a Latino club at school, and did many hours of community service at my local community clinic.
18. I also invested a lot of time in an outside basketball league created by people from Oaxaca in the Los Angeles area.
19. During my senior year, most of my classmates where being accepted to prestigious universities.
20. I was left behind, because the counselor at school did not have the resources needed to help undocumented students like myself. As far as they knew, I was their first case.
21. I had to find out everything about higher education on my own.

22. Luckily for me, a few months after I graduated in 2001, Governor Davis passed Assembly Bill 540 (AB 540).
23. This allowed me to attend community college and pay in-state tuition. Without AB 540 I would have been unable to afford community college.
24. In community college I was enrolled in the honors program and involved in different organizations.
25. I was introduced to a student group of undocumented students. This was the first time I met other undocumented students.
26. It was there that I learned about the Dream Act and the hope such legislation brought to many other undocumented students.
27. In 2003, I transferred to University of California at Los Angeles (UCLA) where I graduated with honors and received Bachelor's degree in Psychology with a minor degree in Education.
28. At UCLA, with the help of faculty and other students, an undocumented student group named IDEAS was created - the first of many that would be created across UC campuses.
29. Although my immigration status was always on my mind, it is only one aspect of my life.
30. I am also a survivor of sexual molestation, and as such I became focused on learning more about violence against women and children.
31. UCLA allowed me and trained me to become an advocate for women and children as an undergraduate.
32. I participated as a mentor for young women at a local middle school, and involved myself in events like Walk the Night Project and the Clothes Line Project.
33. After graduation, my life was once again uncertain.
34. I spent two years working at a minimum wage job. I felt like I was going nowhere. I felt stuck and a great inability to succeed in the United States.
35. After two years of preparing and saving money, I decided to apply to law school.
36. I was accepted to most of the schools I applied to, but I chose Whittier Law School because they offered a full tuition scholarship.
37. At Whittier Law School I was accepted as a fellow in their Children's Rights Program, and joined the Whittier Journal of Child and Family Advocacy, a law journal, my second year.
38. Whittier allowed me the opportunity to participate in many areas of law that include: family law, disability law, and immigration law.
39. Unfortunately, I was unable to participate in some internships as they required a social security number or a thorough background check of which I was fearful of, given my status.
40. I found myself volunteering in the on-campus disability law clinic, where I became an advocate for Spanish speaking parents in obtaining access to education for their children.
41. The Disability Law Clinic at Whittier's Children's Rights Clinic, whose clients are children and young adults with severe developmental disabilities, allowed me to advocate for their access to education in Los Angeles and Orange County school districts.
42. Because there was a high need for Spanish speaking advocates in the Los Angeles Unified School District, and I was often the only Spanish speaker available, most of my cases were with Spanish speaking clients.

43. It was during this experience that I learned of the great need for advocacy for these parents.
44. Often times at the Individualized Education Programs (IEP) meetings I noticed that Spanish speaking parents would simply sign and agree to the terms of the IEP without really understanding the implication of such a contractual agreement, or further rights there were entitled to were they to simply ask for them.
45. Although it was required by law for there to be a translator; the translators job was not to explain legal terms of art in disability law, thus parents would have to infer what such terms meant.
46. Furthermore, some of the parents themselves did not have more than a middle school education, and had a difficult time understanding the IEP itself. I also found that these parents attended such IEP meetings alone, and for the most part did not have support of the faculty or other related service providers, which often led to pressure by the school district to sign and agree to the IEP by the end of the meeting despite this being against the child's best interests.
47. Fortunately, through the clinic and the Frank D. Lanterman Regional Center, I was able to assist and conduct a few "know your rights" presentations to parents, where they would be given general information on their rights, and other resources they had available to make their cases stronger.
48. This assisted parents by providing them with the resources that often proved immediately useful to them as well as providing them with an opportunity to ask questions about their particular situations.
49. Of course, the parents who attend these presentations were parents who were very involved with their children already.
50. There are still many parents who cannot attend the presentations because of work schedules or who simply are unaware of them. These parents need more help.
51. During my second year, because of personal matters, I lost my scholarship and could not continue as a full time student.
52. Despite my financial setback I continued to attend law school by paying it out of pocket, worked, and I was able to graduate on time.
53. It has now been two years since I graduate from law school.
54. I have seen my classmates pass the bar and enter the working field, yet I am once again left behind because of my legal status.
55. I would like to enter a field like disability law, in which I can represent the rights of children and parents.
56. I have personally witnessed how much need there is to inform Spanish-speaking parents of their rights.
57. It is very frustrating to not be allowed to give back to a country that has given me so much and that I have lived in for the majority of my life.
58. All I have ever wanted was to be a productive member of society, and feel that I have done all I can possibly do to show this country, and its members, that I am well deserving of a simple opportunity.
59. I consider myself an American. It is all that I know.

60. Although I speak conversational Spanish, I am in no way prepared for the working environment in Mexico as I lack the technical writing and reading skills in Spanish that are required of that work environment.
61. I am also not prepared for a life in Mexico as I no longer have any family there or any other type of support system.
62. I believe that undocumented students are deserving of an opportunity to be employed and to have a path to citizenship in the only country they know.
63. Many of us have already shown and proven that we are serious, dedicated, and most of all willing to work hard for the benefit of this country.

I certify under the penalty of perjury that I read and understood the contents of this declaration before signing it, and that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Los Angeles, California on July 13, 2012.

Name: Mabel Alavez Signature

PROOF OF SERVICE BY MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 405 Howard Street, San Francisco, CA 94104. On July 18, 2011, I served the following documents:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

PROPOSED AMICUS CURIAE BRIEF (AND EXHIBITS)

REQUEST FOR JUDICIAL NOTICE

APPLICATION TO APPEAR PRO HAC VICE FOR JOSE PEREZ

on the interested parties in this action by placing true and correct copies thereof in sealed envelope(s) addressed as follows:

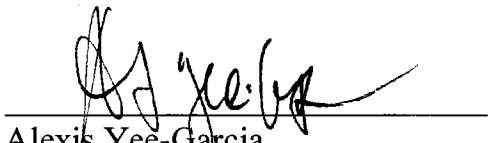
Sergio C. Garcia P.O. Box 662 Durham, CA 95938	Joseph Starr Babcock State Bar of California 180 Howard Street San Francisco, CA 94105
Jerome Fishkin Fishkin and Slatter LLP 1575 Treat Boulevard, Suite 215 Walnut Creek, CA 94598	Rachel Simone Grunberg Office of the General Counsel, State Bar of California 180 Howard Street San Francisco, CA 94105
Committee of Bar Examiners of the State Bar of California : Non-Title Respondent 1149 S. Hill Street Los Angeles, CA 90015	Robert E. Palmer Gibson Dunn and Crutcher LLP 3161 Michelson Drive Irvine, CA 92612-4412
Mark A. Perry Gibson Dunn and Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306	Donald K. Tamaki Minami Tamaki LLP 360 Post Street, 8 Floor San Francisco, CA 94108

On the date indicated above, I placed the sealed envelope(s) for collection and mailing at this firm's office business address indicated above. I am readily familiar

with this firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the firm's correspondence would be deposited with the United States Postal Service on this same date with postage thereon fully prepaid in the ordinary course of business.

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

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



Alexis Yee-Garcia