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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Case No. S202512
Bar Misc. 4186

California Board of Bar Examiners)
Re: Motion for Admission of Sergio C. Garcia)
to The State Bar of California)

BRIEF OF *AMICUS CURIAE* JOSEPH A. VAIL CENTER FOR IMMIGRANT RIGHTS IN SUPPORT OF ADMISSION OF APPLICANT

BRIGIT G. ALVAREZ
California Bar No. 237301
Vice President
Joseph A. Vail Center for Immigrant Rights
448 S. Hill St., Suite 615
Los Angeles, CA 90013
Telephone: (213) 250-2210
Facsimile: (213) 250-2211

On the Brief:
VANESSA P. MANZI
Legal Intern
Joseph A. Vail Center for Immigrant Rights
448 S. Hill St., Suite 615
Los Angeles, CA 90013
Telephone: (213) 250-2210
Facsimile: (213) 250-2211

Counsel for *Amicus Curiae*

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Facsimile: (213) 250-2211

Counsel for *Amicus Curiae*

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STATEMENT OF INTEREST OF AMICUS CURIAE JOSEPH A. VAIL CENTER FOR IMMIGRANT RIGHTS

Amicus Curiae, the Joseph A. Vail Center for Immigrant Rights ("Vail Center") is a non-profit organization that provides counsel for disadvantaged non-citizens through direct legal representation, community education and advocacy for the just implementation of immigration laws.[1]

The Vail Center provides direct legal representation for non-citizens through volunteer attorneys and law student interns. The law student interns are directly supervised by the attorney board members of the Vail Center who advise both the clients and the students through each case.

Since the Vail Center accepts law students as interns based on their work ethic and legal knowledge, and refuses to inquire about the immigration status of those interns, it welcomes undocumented individuals. The Vail Center is therefore directly affected by this Court's decision.

In this brief, the Vail Center, in fulfilling a traditional role as *amicus*, seeks to "bring to the attention of the Court relevant matters not already brought to its attention by the parties [that] may be of considerable help to the court." (Sup. Ct. R. 37(1).) The issue presented by this case directly affects the law student volunteers of the Vail Center. *Amicus Curiae* respectfully submits the following arguments as to why the applicant, Sergio C. Garcia, and others similarly situated should be admitted into the California Bar.

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[1] The Vail Center was founded in June 2011 by immigration attorney Julie R. Sparks. Since that time, over fifteen clients have been successfully represented by the volunteers of the Vail Center. The Vail Center currently provides direct representation for an estimated thirty clients largely in removal proceedings. (*See* Vail Center for Immigrants Rights, 2011; <http://www.vailcenter.org/>.)

INTRODUCTION

Sergio C. Garcia ("Sergio") submitted an application for admission to the California Bar after successfully completing the requirements for admission. On November 9, 2011, the Committee of Bar Examiners ("The Committee") determined Sergio had met all of the requirements for admission and it therefore submitted his name on a motion for admission to the California Supreme Court. However, due to Sergio's immigration status, the California Supreme Court issued an Order to Show Cause as to the question of whether to admit an undocumented immigrant to the California State Bar.

Sergio was brought to the United States by his parents in search of a better life in 1979 when he was only seventeen months old. When he was nine years old, he returned to Mexico and again entered the United States without inspection when he was seventeen years old. Sergio is currently the beneficiary of a petition for an immigrant visa which has been pending since November 18, 1994. Once a visa becomes available, Sergio will be able to adjust his status to become a lawful permanent resident of the United States.

The Court's Order to Show Cause identified five issues which should be briefed by *amicus curiae*.

SUMMARY OF THE ARGUMENT

Sergio C. Garcia has satisfied all of the requirements for admission to practice law in the State of California. Current legislation, namely the Business and Professional Code Section 6060.6, allows applicants like Sergio and others similarly situated to apply for a license to practice law. Furthermore, public policy considerations as well as current immigration trends favor the admission of undocumented graduates to the State Bar of California.

ARGUMENT

I. Impact of This Decision: Story of an Undocumented Law Student

The Supreme Court of California must decide whether to grant an undocumented student, Sergio C. Garcia, admission to the State Bar of California. However, this decision will affect other students similarly situated. As such, it is relevant the Court hear additional stories of undocumented law students as they will also be directly impacted.

A clear example of a student whose future will be impacted by this decision is Patricia.[2] She was brought to the United States at the age of twelve years because her father was transferred temporarily to the United States for work. Patricia traveled to the United States legally as a J-2 visa holder.[3] Due to an extension on the project, Patricia and her family changed status to H-1B visa holders.[4] Patricia therefore became the derivative of an H-1B visa holder (H-4). Finally, when the visa was near its expiration, a company in the United States decided to sponsor Patricia's father and the entire family to remain in the United States as lawful permanent residents.

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[2] Name has been changed to protect the true identity of this particular law student.

[3] According to the Department of State, the Exchange Visitor (J) non-immigrant visa category is for individuals approved to participate in work- and study-based exchange visitor programs. (Department of State, "J-1 Visa Basics" <http://j1visa.state.gov/basics/>.)

[4]The United States Citizenship and Immigration Services explains that H-IB visas are reserved for those individuals who wish to perform services of exceptional merit and ability in a specialty occupation. (*See* United States Citizenship and Immigration Services, "H-1B Specialty Occupation" September 6, 2011; <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=73566811264a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD.>)

Patricia's father promptly contacted an immigration attorney who assured him that he could perform the work. The attorney's fee for the entire case was over $30,000 to be paid in a period of two years, which was the time predicted to complete the entire case. However, the attorney failed to perform his duties and instead allowed the family's visas to expire. Due to the attorney's failure to adhere to strict immigration deadlines, Patricia's family fell out of status and was no longer eligible to adjust their status to lawful permanent residents of the United States.[5]

Suddenly, Patricia and her family found themselves out of status due to ineffective assistance of counsel. Patricia was completing her third year of college at the time she became aware of the situation. Although she did not understand the significance of her new status- due to a lack of understanding of the complexities of immigration law- she immediately enrolled in law school. Patricia thought that by learning immigration law she could potentially undo the damage caused by her previous counsel.

Patricia is currently a third-year student at a private law school in California. She has devoted herself to understanding the intricacies of immigration law and to advocating for the rights of immigrants. Even though the damage caused by her previous attorney cannot be undone, the

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[5] One of the provisions of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) creates a system where once a person reaches the age of majority, which is 18 years of age under immigration law, they will begin to accrue unlawful presence. For immigration purposes, accruing unlawful presence has two different consequences depending on the amount of time accrued. If a person remains unauthorized in the United States past their 18th birthday for 180 days, they will be barred from returning to the country for a period of three years. (INA § 212(a)(9)(B)(i)(I).) However, an unauthorized stay of over a year causes the person to be barred from returning to the United States for 10 years. (INA § 212(a)(9)(B)(i)(II).) In addition, those immigrants who fail to maintain their non-immigrant visa status are deportable. (INA § 237(a)(1)(C).)

experience allowed Patricia to learn about the damage attorneys can cause when they fail to adhere to their ethical duties. Therefore, she decided to become an attorney to prevent other families from having to endure the same travesty of ineffective assistance of counsel.

II. Affirmative Legislation in California Expressly Permits Bar Admission to Undocumented Immigrants

Congress enacted 8 U.S.C. section 1621 in order to prevent "not qualified aliens or non immigrants" from gaining eligibility for state and local benefits. (*See* 8 U.S.C § 1621(a) .) These benefits were further defined as "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government..." *Id.* However, the statute allowed States to affirmatively provide eligibility to undocumented immigrants through the enactment of a State law after August 22, 1996. (8 U.S.C § 1621(d).)

The California Business and Professional Code Section 6060.6 does so, specifically providing that:

> "the Committee of Bar Examiners may accept for registration, and the State Bar may process for an original or renewed license to practice law, an application from an individual containing a federal tax identification number, or other appropriate identification number as determined by the State Bar, in lieu of a social security number, if the individual is not eligible for a social security account number at the time of application and is not in noncompliance with a judgment or order for support pursuant to Section 17520 of the Family Code." (Cal. Bus. & Prof. Code § 6060.6 (Stats. 2005, ch. 610, § 1 [Assem. Bill No. 664 (2005-2006 Reg. Sess.)].)

This affirmative step by the California legislators to allow the Committee of Bar Examiners to accept for registration a federal taxpayer identification number in lieu of a social security number was aimed at allowing undocumented students like Sergio and Patricia to apply and be

admitted to the California Bar. This intent is clear when one considers the purpose of the federal taxpayer identification number.

According to the Internal Revenue Service ("IRS"), an Individual Taxpayer Identification Number ("ITIN") is a tax processing number the agency issues to individuals "who are required to have a U.S. taxpayer identification number but do not have, and are not eligible to obtain a Social Security Number ("SSN")." (*See* Internal Revenue Service, "General ITIN Information" March 21, 2012; available at <http://www.irs.gov/individuals/article/0,,id=222209,00.html>.) The IRS further explains ITINs are issued "to foreign nationals and others who have federal tax reporting or filing requirements." *Id.* The IRS illustrates that a non-resident alien required to file U.S. tax return is an example of an applicant for an ITIN. *Id.* Foreign nationals as of yet ineligible for a SSN, including undocumented law students like Patricia, are eligible for an ITIN under federal tax law. Having an ITIN number is an essential part of being a foreign national in the United States. As such, any legislation making reference to individuals with ITIN numbers is aimed at foreign nationals within the United States regardless of their immigration status.

Furthermore, this Court has held that "section 1621's text contains no requirements that a state law giving unlawful aliens a benefit must expressly reference the section." *Martinez v. The Regents of The University of California*, 241 P.3d 855, 867. The only requirement under section 1621 is that the law is passed after August 22, 1996, when section 1621 was enacted. 8 U.S.C § 1621 (d). The California Business &and Professional Code Section § 6060.6 was signed into law on October 6, 2005, well after August 22, 1996. (*See* Cal. Bus. & Prof. § 6060.6 *supra*). It therefore fulfills the requirements under federal law.

Since there is no requirement that the California Business and Professional Code section 6060.6 reference section 1621 nothing impedes the inference that the State's aim is to use its police power to provide a benefit to undocumented immigrants within state borders. (*See Martinez, 241 P.3d at 867.)* Furthermore, it is within the powers reserved to the states under the United States Constitution to regulate admission to the State Bar. (U.S.C. Const. amend. X.)

Legislative history behind the California Business and Professional Code section 6060.6 demonstrates the goal of providing foreign nationals an opportunity to study the law and receive a license in the United States regardless of eligibility for employment or where the individual choose to practice. The Legislature considered that foreign law students should be allowed to take the bar and apply for a license despite the lack of a social security number. (Cal. Bus. & Prof. Code § 6060.6.) The Legislature did not classify foreign law students on the basis of lawful/unlawful immigration status, which means that the law's conception of "foreign law students" includes undocumented law students. Therefore, pursuant to the California Business and Professional Code section 6060.6, foreign undocumented law students like Patricia are able to take the Bar Exam and apply for a law license in California with only an ITIN number.

III. Public Policy Requires Admission to the California State Bar of All Applicants Whom Fulfill Rigorous Eligibility Requirements Regardless of Immigration Status

In recent years, California has enacted several pieces of legislation favoring undocumented youth. California understands the important contribution immigrant youth have made and will continue to make in improving the Golden State and American society as a whole.

a. Background: The *Plyler* Graduates

Sergio, Patricia and others similarly situated have taken advantage of their right to obtain an education in the United States regardless of their status.

In striking down the Texas statute restricting educational access to undocumented children, Justice Brennan recognized that denying undocumented children an education would lead to "the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime." *(Plyler v. Doe, 457 U.S. 202, 230 (1982).)* Justice Brennan further added that "by denying these children a basic education we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." *Id* at 223.

Undocumented students like Sergio and Patricia have excelled in their academic careers while overcoming every obstacle associated with their immigration status. They have taken a strenuous but rewarding path in order to obtain a legal education and graduate from law school. As such, they have followed Justice Brennan's prophecy to become contributing citizens to society. Their goal is to continue on this path to contribute to the progress of the United States. These are the *Plyler* graduates.

b. The California Legislature Drafted Statutes with the Specific Intent to Assist Undocumented Students Pursue their Education

California recognized in recent years that the holding in *Plyler*, *supra,* which was limited to a K-12 grade education, had to be extended in order to help talented and hard-working individuals continue with their educational goals. The California legislature has since passed a series of laws with the sole aim of assisting those in need in their pursuit of higher education regardless of their immigration status.

The first of such laws allowed undocumented students in California who satisfied certain requirements to pay in-state tuition rates at public institutions of higher education. (*See* A.B. 540 codified as *Cal. Educ. Code* § 68130.5 (West 2002).) When challenged as preempted by federal law, this Court upheld A.B. 540 since it did not violate a federal statute. *See Martinez*, 241 P.3d at 1287

Although in-state tuition alleviates some of the challenges faced by undocumented youth pursuing higher education, the California Legislature understood that there was a lot more it could do to assist undocumented students. To further this goal, last year it passed the California DREAM Act. (*See* Ed. Code § 66021.7.) The California DREAM Act consists of two bills, A.B. 130 and A.B. 131. *Id.* A.B. 130 allows those students who qualify for A.B. 540 to apply for institutional scholarships at public institutions of higher learning. (*See* A.B. 130, Cal.Legis.2011.) A.B. 131 further allows qualifying undocumented youth to apply for in-state financial aid. (*See* A.B. 131, Cal. Legis. 2011.)

Recent legislation in California continues to assist undocumented students in their pursuit of higher education. These undocumented students, like Sergio, continue to excel in school and are reaching new levels of success in attending and graduating from graduate school. Therefore, for a state to deny a professional license to a student who has obtained a graduate degree in large part due to state assistance would be illogical. Furthermore, denying professional licenses to these students would also deter them from contributing to society at their highest potential, which contradicts the *Plyler* precedent and undermines the specific intent of the California Legislature.

IV. Current Trends in Immigration Policy Favor Bar Admission to Sergio and Others Similarly Situated

President Barack Obama has been committed to immigration issues as they affect undocumented youth since his first campaign for President of the United States. The piece of legislation regarding immigration President Obama has continuously supported is the Developmental Relief and Education for Alien Minors Act, also known as the DREAM Act.[6] This legislation would provide a pathway to citizenship for undocumented youth currently in the United States.[7]

In the 2011 State of the Union Address, President Obama again mentioned the need for legislation addressing the uncertainty that undocumented youth face in this country. He pleaded with Congress to stop "expelling talented, responsible young people who could be staffing our research labs or starting a new business, who could be further enriching

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[6] The DREAM Act requires the youth to have been physically present in the United States for a continuous period of no less than 5 years before the date of the enactment of this Act; to have been 15 years of age or younger on the date the alien initially entered the United States; to have been a person of good moral character since the date of their initial entry into the United States; to have been admitted to an institution of higher education in the United States or have earned a high school diploma or obtained a general education development certificate in the United States; and to be 32 years old or younger on the date of the enactment of the Act. (Dream Act, H.R. 1842, 112th Cong. (2011).)

[7] The DREAM Act has been introduced in every Congress session since 2001. In 2010, the bill was reintroduced in both the House and Senate. The bill passed the House of Representatives on December 8th 2010. However, the bill failed to reach the 60 votes necessary to pass on the Senate by 5 votes. (See United States Student Association, "The Federal DREAM Act" (2007), U.S. Student Association <http://www.usstudents.org/our-work/legislative/federal-dream-act-details>.)

this nation." (President Obama, "Transcript: Obama's State Of The Union Address" NPR Jan. 25, 2011; <http://www.npr.org/2011/01/26/133224933/transcript-obamas-state-of-union-address>.) As recently as July 25, 2011, President Obama reiterated his support for undocumented youth when he spoke at the National Council of La Raza. (Lynn Sweet, "Obama's La Raza Speech. Plugs Dream Act. Transcript" Chicago Sun-Times, July 25, 2011 1:45PM; (<http://blogs.suntimes.com/sweet/2011/07/obamas_la_raza_speech_plugs_dr.html>.) He stated, "we have a system right now that allows the best and the brightest to come study in America and tells them to leave, set up their next great company someplace else." *Id.* He further added, "We have a system that [...] punishes innocent young people for their parents' actions by denying them the chance to earn an education or contribute to our economy or serve our military." *Id.*

a. The Department of Homeland Security Discretionary Policy and Memorandum Protect People like Sergio and others Similarly Situated

In August 2011, the Department of Homeland Security ("DHS") announced a change regarding its removal priorities. (Ruth Ellen Wasem & Karma Ester, "Temporary Protected Status: Current Immigration Policy Issues," Congressional Research Service June 30, 2011; <www.crs.gov>.) The Director of the Immigration & Customs Enforcement Agency ("ICE"), John Morton issued an agency memorandum on June 17, 2011. *Id.* Director Morton's memorandum called for ICE officers to use their discretion when deciding which unauthorized immigrants to prosecute once detected. (Brittanicus, "DHS Announcement on New Process of Implementation of Prosecutorial Discretion Memo," ILW Aug. 19, 2011 5:13PM; <http://blogs.ilw.com/immigrationlawblogs/2011/08/dhs-announcement-on-new-process-for-implementation-of-prosecutorial-discretion-memo.html>.) It further included factors to consider when

deciding whether or not to exercise favorable discretion when prosecuting an immigrant. *Id.* A favorable exercise of discretion essentially allows the undocumented immigrant to remain in the country due to "low priority" for removal. *Id.* Director Morton included nineteen factors to consider when exercising this discretion. *Id.* These nineteen factors are largely based on humanitarian reasons.[8]

Director Morton's memorandum, however, only covered those officials who worked for ICE. In August, DHS expanded the jurisdiction of this memorandum to include all of the employees under the agency of immigration under its authority. (*See* Brittanicus *supra.*) The DHS announcement was made by DHS's Secretary Janet Napolitano. *Id.* The announcement included a required review of 300,000 cases of people currently in immigration proceedings. *Id.* If determined to be of low priority, their cases would be administratively closed, and the person would receive work authorization. *Id.*

Under Mr. Morton's memorandum and DHS's announcement undocumented immigrants like Sergio or Patricia would qualify as "low

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[8] Under the factors that tend to favor undocumented youth, are the following: "the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child; the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States; the person's ties and contributions to the community, including family relationships; the person's ties to the home country and conditions in the country; the person's age, with particular consideration given to minors." (*See* United States Immigration and Customs Enforcement, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" June 17, 2011; < http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.)

priority" immigrants and thus would not be prosecuted. Furthermore, in some instances, they would also be given work permits. As such, it is illogical to deny someone like Sergio admission to the bar because of his status when current immigration policy favors grating employment authorization to precisely these individuals. Under current policy, individuals like Sergio and those similarly situated should be allowed to remain in the country and contribute to its economic growth as lawyers or otherwise.

b. Deferred Action Policy will Protect Future Undocumented Bar Applicants from Removal and Grant Work Authorization

On June 15th, 2012, President Barack Obama made a landmark announcement that pursuant to a new policy of the Department of Homeland Security ("DHS"), undocumented youth who essentially qualify for the DREAM Act[9] will not be removed from the United States. (See Furthermore, these young people will be able to apply for a process of Deferred Action as well as for work authorization. (*See* Department of Homeland Security, "Exercising Prosecutorial Discretion with Respect To Individuals Who Came to The United States as Children" June 15, 2012; <http://dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.) During President Obama's

[9] Requirements for Deferred Action: Arrived to the United States under the age of sixteen; have continuously resided in the United States for at least five years preceding June 15, 2012 and been present in the United States on June 15, 2012; currently be in school, graduated from high school, obtained a general education development certificate, or be honorably discharged veterans of the Coast Guard or Armed Forces of the United States; have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety; and not be above the age of thirty. (*See* Exercising Prosecutorial Discretion *supra.*)

announcement he explained the importance of cultivating the talent of undocumented youth within our borders as well as the need to reform the broken immigration system. (*See* American Immigration Lawyers Association, "Remarks By The President on Immigration" June 15, 2012; < http://www.aila.org/content/default.aspx?docid=40179>.)

> He explained: "It makes no sense to expel talented young people who, for all intents and purposes, are Americans. They've been raised as Americans; understand themselves to be part of this country. To expel these young people who want to staff our labs or start new businesses or defend our country simply because of the actions of their parents or because of the inactions of politicians — in the absence of any immigration action from Congress to fix our broken immigration system, what we've tried to do is focus our immigration enforcement resources in the right places." *Id.*

Through his speech, President Obama captured the essence of current immigration policy as it embraces rather than rejects undocumented youth like Sergio and Patricia.

After President Obama's speech, the Department of Homeland Security was afforded sixty days to develop a process for qualifying undocumented youth to apply for Deferred Action. (*See* "Exercising Prosecutorial Discretion with Respect To Individuals Who Came to The United States as Children" *supra.*) Although the process will not be available until August 2012, the announcement prohibited the removal of those who will qualify for deferred action. *Id.* As such, those students like Sergio and Patricia who have worked hard in order to excel in high school, college and in law school, will be able to reap the rewards of their hard work as they will be allowed to remain in this country and improve its civic institutions. Therefore, sound policy considerations which produced the recent changes in national immigration policy should also be considered in allowing undocumented students admission to the State Bar of California.

CONCLUSION

For the aforementioned reasons, the Joseph A. Vail Center for Immigrant Rights respectfully requests this Court grant Sergio C. Garcia's application for admission to the State Bar of California.

Respectfully submitted this 23rd day of July 2012,

BRIGIT G. ALVAREZ
California Bar No. 237301
Vice President
Joseph A. Vail Center for Immigrant Rights
448 S. Hill St., Suite 615
Los Angeles, CA 90013
Telephone: (213) 250-2210
Facsimile: (213) 250-2211

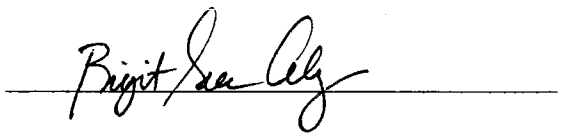
VANESSA P. MANZI
Law Student Intern
Joseph A. Vail Center for Immigrant Rights
448 S. Hill St., Suite 615
Los Angeles, CA 90013
Telephone: (213) 250-2210
Facsimile: (213) 250-2211

Counsel for *Amicus Curia*

CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.20(c)(1), California Rules of Court, the undersigned hereby certifies that this AMICUS BRIEF OF THE JOSEPH A. VAIL CENTER FOR IMMIGRANT RIGHTS IN SUPPORT OF SERGIO C. GARCIA'S MOTION FOR ADMISSION TO THE STATE BAR OF CALIFORNIA contains 4,218 words, excluding the table of content, table of authorities and this certificate, according to the word count generated by the program used to produce this document.

Dated: July 23, 2012



BRIGIT G. ALVAREZ, Esq.

CERTIFICATE OF SERVICE

I declare that I am employed in the Los Angeles County, California. I am over the age of eighteen years and am not a party to the within case. My business address is 448 S. Hill St., Suite 615, Los Angeles, CA 90013.

On July 23, 2012, I served the following document:

BRIEF OF *AMICUS CURIAE* JOSEPH A. VAIL CENTER FOR IMMIGRANT RIGHTS IN SUPPORT OF ADMISSION OF APPLICANT

on the following interested parties in this action:

See attached Service List

by placing it in an envelope designated Priority Mail by the United States Postal Service, paying all applicable delivery fees, and giving it to an agent of the United States Postal Service for delivery.

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

Date: July 23, 2012

By: _____

BRIGIT G. ALVAREZ

SERVICE LIST

Jerome Fishkin (SBN 47798) Lindsay K. Slatter (SBN 72692) Samuel C. Bellicini (SBN 152191) Fishkin & Slatter LLP 1575 Treat Blvd., Suite 215 Walnut Creek, CA 94598	Attorneys for Sergio C. Garcia Applicant for Admission
Starr Babcock (SBN 63473) Lawrence C. Yee (SBN 84208) Richard J. Zanassi (SBN 105044) Rachel S. Grunberg (SBN 197080) State Bar of California 180 Howard Street San Francisco, CA 94105	Attorneys for The Committee of Bar Examiners of the State Bar of California
Robert E. Palmer (SBN 116892) Joshua A. Jessen (SBN 222831) Drew A. Harbur (SBN 279511) Gibson, Dunn & Crutcher LLP 3161 Michelson Drive Irvine, CA 92612-4412	
Mark A. Perry (SBN 212532) 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306	
Donald K. Tamaki (SBN 72884) Minette A. Kwok (SBN 152337) Phillip M. Zackler (SBN 266408) Minami Tamaki LLP 360 Post Street, 8th Floor San Francisco, CA 94108-4903	
Kevin R. Johnson* (SBN 117535) U.C. Davis School of Law 400 Mrak Hall Drive Davis, CA 95616 *acting in an individual capacity, and not on behalf of the listed university	
Bill Ong Hing* (SBN 61513) University of San Francisco School	Attorneys for The Committee of Bar Examiners of the State Bar of

of Law 2199 Fulton Street San Francisco, CA 94117 *acting in an individual capacity, and not on behalf of the listed university	California (cont.)
Bryan Springmeyer (SBN 272597) 275 Battery Street, Suite 1170 San Francisco, CA 94111	