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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

APPLICATION BY DREAM TEAM LOS ANGELES, ET AL. TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA

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APPLICATION BY DREAM TEAM LOS ANGELES, ET AL. TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA

Interest of *amici curiae*

Amici are all youth-led organizations whose missions focus on advancing the interests of undocumented immigrant youth in California and across the country. These immigrant youth organizations have been instrumental in recent national developments affecting the rights of undocumented students.

In order to accomplish their missions, these organizations engage in outreach and education of undocumented students issues in communities and colleges across the nation. Furthermore, the organizations engage in advocacy and organizing with undocumented immigrant youth and allies to pass policies that improve their well-being and contribution to society. Finally, these organizations work to foster the skills and connections needed for undocumented immigrant youth to become effective leaders in their communities.

These organizations are part of the United We Dream Network whose membership stretches across the country. Through this network, the organizations have been part of the federal DREAM Act campaign, have helped to pass in-state tuition legislation, and have advanced the rights of undocumented immigrant youth and their families. Most recently, these organizations have been engaged in the

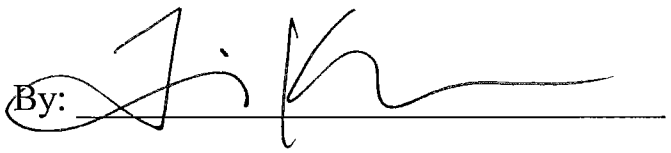
successful Right to Dream campaign, whose goal was to obtain administrative relief from the president, stopping the deportations of undocumented youth and providing them with work permits.

The Court has specifically invited *amici curiae* briefs in support of Sergio Garcia's motion. Because Mr. Garcia is an undocumented law school graduate in a situation similar to that which many of their own members might face, *amici* have a vested interest in the outcome of his motion for admission to the State Bar of California. In its invitation, the Court directed parties and *amici curiae* to address five separate questions. The attached brief will answer the fourth question: "If licensed, what are the legal and public policy limitations, if any, on an undocumented immigrant's ability to practice law?" In answering this question, *amici* address the potential issues that a denial of Mr. Garcia's application would have on the hundreds of thousands of students that they seeks to help.

In accord with this Court's invitation and *amici*'s interest in the outcome of Mr. Garcia's motion, *amici* respectfully request permission to submit the attached brief.

Dated: July 24, 2012

Respectfully submitted,

By: 

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EXECUTIVE MEMOS AND OTHER AUTHORITIES

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Johnson, *El Salvador Reclaiming Its Past*, L.A. Times (October 23, 2009) 7

Preston and Cushman, *Obama to Permit Young Migrants to Remain in U.S.*, N.Y. Times (June 15, 2012) 2

Remarks by the President on Immigration (June 15, 2012) <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration> [as of July 17, 2012] 3

Schmitt, *Salvadorans Illegally in U.S. Are Given Protected Status*, N.Y. Times (March 3, 2001) 6

INTRODUCTION

Sergio Garcia is an undocumented law school graduate who wishes to be admitted to the State Bar of California. The Court has requested *amici curiae* briefs answering five questions pertaining to Mr. Garcia's application. The fourth of these questions is, "If licensed, what are the legal and public policy limitations, if any, on an undocumented immigrant's ability to practice law?" That is the question which *amici* address in this brief.

While Mr. Garcia is one of many undocumented immigrant law school students and graduates, his case is the first of its kind in the state of California. Because of this, it sets important precedent for the many undocumented immigrant law students who will come after him. As such, it is vital to think of these future law students, and how this decision will impact them. It is on these youth which *amici* focus in this brief, and which *amici* implore the Court to consider.[1]

SUMMARY OF ARGUMENT

The Department of Homeland Security has issued a new policy, halting the deportation of many undocumented students and

[1] *Amici* recognize that while their main focus is on helping what are commonly known as DREAM Act eligible youth, Sergio is not himself DREAM Act eligible. *Amici* believe that Sergio's case is similar enough to that of DREAM Act eligible youth, specifically those youth affected by the new policy outlined below, that it prompts discussion of the broader public policy concerns addressed in this brief.

graduates. This policy allows these students to work legally, despite their undocumented status. If the Court were to deny Mr. Garcia's application to the bar, it would set an absurd precedent for these undocumented students and would prevent California from taking full advantage of their success. For these reasons, the Court should grant Mr. Garcia's application.

ARGUMENT

I. Qualified undocumented immigrant students and graduates are permitted to work under a new DHS policy

On June 15, 2012, President Obama issued a statement outlining a new policy in the Department of Homeland Security. This new policy provides deferred action for qualified, undocumented immigrants in good moral standing who came to the United States as children. The policy is estimated to affect over 800,000 people. (Preston and Cushman, *Obama to Permit Young Migrants to Remain in U.S.*, N.Y. Times (June 15, 2012) p. A1.)

This policy is outlined in greater detail in a June 15, 2012 memo from Janet Napolitano, Secretary of Homeland Security, directed to U.S. Customs and Border Protection, U.S. Citizenship and Immigration Service, and U.S. Immigration and Customs Enforcement. (*See* Janet Napolitano, Exercising Prosecutorial

Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) (hereinafter Napolitano Memo) p. 1.) In this memo, Secretary Napolitano expresses the concern that the students in question have contributed so much to our country and often have no ties to the countries where deportation would send them. (*Ibid.*) As President Obama so succinctly put it in his June 15 speech, "they are Americans in their heart, in their minds, in every single way but one: on paper." (Remarks by the President on Immigration (June 15, 2012) <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration> [as of July 17, 2012].)

These students are, by definition, upstanding and productive members of society. In order to qualify for deferred action under this new policy, a student must have entered the United States before the age of sixteen; have lived continuously in the United States for the five years prior to the date of the memo; be enrolled in school, hold a high school diploma or GED, or have received an honorable discharge from the United States Armed Forces; have not been convicted of any felony or significant misdemeanor, or multiple misdemeanors; pose no threat to the peace and safety of the United States, and be thirty years old or younger. (Napolitano Memo, p. 1.) USCIS is directed to implement this policy within 60 days from the date of the memo. (*Id.*

at p. 3.) The youth who qualify for this program are educated and productive. They are law-abiding members of their communities. They have the desire to give back to their communities, and one way that they can do that is by working.

This program of deferred action allows all those who are granted administrative relief to apply for work permits. (Napolitano Memo, p. 3.) This means that over the course of the next several months, many of the estimated 800,000 undocumented immigrants will be granted permission to work legally in the United States.

a. Sergio Garcia should be admitted to the bar because denying his application would set an absurd precedent for the myriad qualified, undocumented law students in California who will be eligible to work under the new DHS policy

Some of the 800,000 undocumented immigrants affected by the new policy will be recent law school graduates. In order to work in their chosen profession, which will be otherwise legal for them to do, these undocumented law school graduates will need to be admitted to the bar in the state where they wish to practice. The Court has asked what legal and public policy limitations would prevent an undocumented immigrant from practicing law. If the Court were to deny Mr. Garcia's application on the grounds that he was an undocumented immigrant, that would set a devastating precedent for those law school graduates who qualify for this new policy. While

these graduates will have work permits, deferred action will grant them no legal status. (Napolitano Memo, p. 3.) This will mean that they are still undocumented immigrants in the same way that Mr. Garcia is an undocumented immigrant. By not admitting Mr. Garcia to the State Bar, the Court would be impliedly prohibiting those undocumented immigrants with work permits under the new DHS policy from being admitted, despite the fact that they would be legally able to practice law in the United States. This would be an absurd result, due to the fact that the agency in charge of immigration and deportation will have said that not only are they allowed to remain in the U.S., but they are also allowed to work freely while they are here.

Recent law school graduates who receive a work permit under the new policy would be in no danger of being deported, having received a grant of deferred action. There would be no legal reasons to prevent them from practicing law, because they would have been granted permission to do so freely by the federal government. Because there would be no impediment to these undocumented graduates obtaining work as lawyers, it makes no sense to prevent them from practicing law in California.

The Court should grant Mr. Garcia's application to the bar in order to avoid setting a devastating and absurd precedent for the thousands of potential applicants who are also undocumented

immigrants but who will have permission from the federal government to work.

b. Granting Sergio Garcia's application allows California to benefit from the success of the youth eligible under the new policy

The United States has always been a country made up of people from other places. Sometimes our laws do not immediately recognize the legitimacy of certain groups of these people. In times like these, the executive branch has taken up the slack by helping these groups to function as a part of our country until the other branches of government can provide more permanent recognition for them. These groups invariably go on to become fully-contributing members of American society.

A prime example of this is the Salvadorans who were granted temporary protected status by President Bush in 2001, allowing them to legally work in the country. (Schmitt, *Salvadorans Illegally in U.S. Are Given Protected Status*, N.Y. Times (March 3, 2001) p. 1.) The temporary protected status had been created 11 years prior, in order to help Salvadoran refugees who came to the U.S. to escape their war-torn country. (Id. at p. 2.) While the wars and natural disasters drove many Salvadorans out of El Salvador, in the United States they were able to become productive members of society and build new lives for themselves. It was here in California specifically that they were able

to salvage their threatened culture, even while assimilating into American society. (Johnson, *El Salvador Reclaiming Its Past*, L.A. Times (October 23, 2009) p. 1.) Because of the help they received from the administration, Salvadorans were able to become valuable, contributing members of the United States and California.

Like Salvadorans and other similar groups, the undocumented youth eligible for the new policy are being helped by the president. The Salvadorans were a tragedy-stricken people, fleeing war and disaster when they came to America, but they managed to become true Americans after receiving help from the administration. It is evident that the youth eligible for the new policy, who are in a position of strength having been raised and educated right here in the U.S., are even more likely to become indispensable members of the society to which they belong.

Mr. Garcia himself is a prime example, having done his best to contribute to his adopted country in every way possible. While granting his application is clearly the right thing to do, it is even more vital that the Court grant it because of the message that doing so will send. By granting his application, the Court will be telling these undocumented youth that when they are granted more permanent recognition in this country they are welcome in California, and that California wants them to become the valuable members of society

which they are sure to be. This message will go out most strongly to future lawyers in this group, but will also serve to make California a more inviting place for all of these future citizens, encouraging them to come and contribute to our great state. It is for this reason that the Court should grant Mr. Garcia's application.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask that the Court grant Sergio C. Garcia's application for admission to the State Bar of California.

Dated: July 24, 2012

Respectfully submitted,

By: _____

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CERTIFICATION OF COMPLIANCE

Pursuant to Rules 8.204(c) and 8.520(c) of the California Rules of Court, I certify that this **APPLICATION BY DREAM TEAM LOS ANGELES, ET AL. TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA** contains 1,597 words, not including the tables of contents and authorities, the caption page, signature blocks, or this certification page.

Date: July 24, 2012

By: _____

Tia Koonse

PROOF 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 675 South Park View Street, Los Angeles, CA 90057.

On July 17, 2012, I served the following document:

APPLICATION BY DREAM TEAM LOS ANGELES, ET AL. TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPLICANT SERGIO C. GARCIA

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 24, 2012

By: _____

Tia Koonse

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