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S202512

IN THE SUPREME COURT OF CALIFORNIA

In Re: Sergio Garcia,
Petitioner

AMICUS CURIAE BRIEF IN OPPOSITION TO ADMISSION OF PETITIONER TO THE BAR

Submitted by:
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PRELIMINARY STATEMENT

The undersigned came from a family whose members *legally* immigrated to the United States of America. He was the first person in his family to attend college and, later, law school. He has served in the United States Armed Forces and has a clear understanding of matters of personal responsibility and the responsibility to uphold the Rule of Law. Although the undersigned lives in New Jersey, those responsibilities can and should transcend state borders.

LEGAL ARGUMENT

PERSONS WHO ARE BREAKING THE LAW SHOULD NOT BE ENTRUSTED WITH UPHOLDING THE LAW.

Thirty-two years ago, the New Jersey Supreme Court wrote:

> If the rule of law is this nation's secular faith, then the members of the Bar are its ministers. (State v. Sugar, 84 N.J. 1, 12 (1980))

In State of New Jersey v. V.D., 401 N.J. Super. 527 (App. Div. 2008) the intermediate appeals court noted that "when a court becomes aware that the parties appearing before it are, or may be, involved in illegal conduct, it has an ethical obligation to act." Id. at 537 (citing Sheridan v. Sheridan, 247 N.J. Super. 552 (Ch. Div. 1990)[1]). What illegal conduct? That is discussed below.

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[1] The Sheridan court held:

8 U.S.C. § 1325(a) provides that "[a]ny alien who...enters...the United States at any time or place other than as designated by immigration officers...shall, for the first commission of any such offense, be fined under title 18...or imprisoned not more than 6 months, or both, and, for a subsequent commission...be fined under title 18...or imprisoned not more than 2 years, or both."

Justice is the right of all men & the private property of none. The judge holds this common right in trust, to administer it with an even hand in accordance with law . . . Chief Justice Weintraub, In re Mattera, 34 N.J. 259, 275-276 (1961). *It is every citizen's duty to uphold the law* and as part of that duty to report any knowledge she or he may have of a crime committed or to be committed. n4 In order to preserve public confidence in the integrity of the judiciary, a judge must be the ultimate exemplar of that good citizenship. ***

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - -

n4 Under certain, defined circumstances, failure to report may constitute a criminal offense. See N.J.S.A. 2C:29-1 & -3 [predecessor crime of obstructing justice -- i.e., to do any act which prevented, impeded or hindered due course of public justice -- was a common-law crime punishable as a misdemeanor N.J.S.A. 2A:85-1 since repealed. State v. Cassatly, 93 N.J. Super. 111 (App.Div.1966).]

- -

Notwithstanding the absence of a Supreme Court Rule or written administrative directive, it has been my experience that judges do report illegal or improper activities, or credible allegations thereof. Judges do so because it is the right thing to do and because it is repugnant to their oath that judges sit mute in the face of acknowledged, demonstrated or potential wrongdoing.

***

Accordingly, it is the holding of the court that where evidence establishes an intentional, underreporting of income -- in this case large sums from illegal enterprise -- it is a judge's duty to report such wrongdoing to the appropriate authorities.

(Id. at 562-566) (*italics* added)

8 U.S.C. § 1324(a)(1)(A)(iii) provides that "[a]ny person who -- ...knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law,

conceals,
harbors, or
shields from detection, such alien in any place...[or]

[8 U.S.C. § 1324(a)(1)(A)(iv)] encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law... [or] [8 U.S.C. § 1324(a)(1)(A)(v)(II)] ***aids or abets*** the commission of any of the preceding acts...shall be punished as provided in subparagraph (B) [fined under title 18...imprisoned not more than 5 years, or both]." (***emphasis*** added)

Federal law makes it illegal to "shield" an illegal alien from detection or to aid or abet such a shielding.

RPC 1.6(b)(2) provides that "[a] lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client *or another person* ... from committing a criminal [or] illegal...act that the lawyer reasonably believes is likely to result in substantial injury to the property of another...." (*italics* added)

Ethics Opinion 247 (December 7, 1972) (95 N.J.L.J. 1271) (http://lawlibrary.rutgers.edu/collections/ethics/acpe/acp247_1.html) considered whether an attorney must report to the proper authorities the reasonable suspicion that his client is an illegal alien. The decision held that an alien who is in this country illegally is "at least" committing a fraud upon the United States. The decision held that if an inquiry were to be made of the attorney, "he is not prevented from disclosing such facts by the attorney-client privilege."

RPC 8.4 provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." It is clear that if a lawyer engages in conduct that involves fraud or deceit, that lawyer is engaged in professional misconduct. "Involves" has been held to mean "embrace, include or concern directly." In re Winton Shirt Corp., 104 F.2d 777, 779 (3rd Cir. 1939).

In United States v. Elizabeth Ramirez, 2007 U.S.App. LEXIS 23398 (5th Cir. 2007), the defendant was prosecuted under 8 U.S.C. §1324(a)(1)(A)(iii). The defendant did not employ the illegal aliens in a business. The defendant apparently allowed some illegal aliens to sleep overnight at her home. The defendant had closed her bedroom

door, to deny officers access, claiming there were feminine items inside. The officers became suspicious and then found a man trying to leave through a rear window. The defendant asserted that she merely "shared living quarters" with the men and denied knowledge of their illegal status. Nonetheless, her conviction was upheld. She made it "significantly 'easier or less difficult'" for the illegal aliens to be present in the United States. Ms. Ramirez failed to disclose the presence of illegal aliens.

In United States v. Hinojos-Mendez, 2008 U.S. App. LEXIS 6178 (5th Cir. 2008) the defendant had been convicted of conspiring to conceal, harbor and shield illegal aliens. The appeals court affirmed the conviction because:

> Taken in the light most favorable to the verdict, the evidence showed that Hinojos acted in concert with others involved in the offense by acting as a lookout at the apartment complex and by ***providing food*** to the illegal aliens, conduct which, by its nature, "tended to substantially facilitate the alien[s] remaining in the United States illegally." United States v. De Jesus-Batres, 410 F.3d 154, 160 (5th Cir. 2005). See also United States v. Shum, 496 F.3d 390, 392 (5th Cir. 2007). Because the evidence was sufficient to support the jury's verdict, we affirm the judgment of the district court. (***emphasis*** added)

In United States v. Batjargal, 302 Fed. Appx. 188, 2008 U.S. App. LEXIS 24764 (4th Cir. 2008) a defendant had been convicted of concealing, harboring or shielding an illegal alien. The appeals court affirmed the conviction:

> ...we find sufficient evidence shows that he knew [the alien] was no longer in the United States legally because she was no longer attending school as was required under her student visa. The evidence further shows [the defendant] encouraged her to stay in the United States despite her illegal status and that he harbored her by ***providing her with a place to live, an automobile, a cell phone, auto insurance and gym membership.*** (Id. at 191) (***emphasis*** added)

If providing food, a cell phone or a "gym membership" to an illegal alien can constitute a violation of the foregoing federal statute, then – respectfully – allowing membership in a State Bar would also encourage the alien to remain in the United States.

The Court is also respectfully invited to Segretti v. State Bar of California, 15 Cal.3d 878 (1976). In that case the petitioner, an attorney, had been involved in a series of political pranks and mischief, intended to cause confusion amongst rival candidates. Even though some of the acts may have been intended to be humorous or harmless, they nonetheless violated ***federal*** law and this Court found

> ...he repeatedly committed ***acts of deceit*** designed to subvert the free electoral process. *** ***A member of***

> ***the bar should not under any circumstances attempt to deceive another.*** (See Cutler v. State Bar (1969) 71 Cal.2d 241, 252-253 [78 Cal.Rptr. 172, 455 P.2d 108]; McKinney v. State Bar (1964) 62 Cal.2d 194, 196 [41 Cal.Rptr. 665, 397 P. 2d 425].) "***An attorney's practice of deceit involves moral turpitude.***" (Cutler v. State Bar, supra; in accord, Lewis v. State Bar (1973) 9 Cal.3d 704, 713 [108 Cal.Rptr. 821, 511 P.2d 1173].) (Id. at 887-888) (***emphasis*** added)

"Good moral character" has also been defined to mean "qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, ***[observance] of the laws of*** the state and ***the nation*** and respect for the rights of others and for the judicial process." Pacheco v. State Bar, 43 Cal.3d 1041, 1046 (1987) (***emphasis*** added).

It is the duty of every alien, who is 14 years of age or older, to register with the U.S. government. 8 U.S.C. § 1302(a). Alien registration statutes are essentially non-criminal regulatory provisions, and do not violate an alien's right against self-incrimination. United States v. Sacco, 428 F.2d 264 (9th Cir. 1970) cert den 400 U.S. 903, 27 L.Ed. 2d 140, 91 S.Ct. 141 (1970) reh den 401 U.S. 926, 27 L.Ed.2d 831, 91 S.Ct. 864 (1971).

"Deceit" has been defined to mean "[t]he suppression of a fact, by one who is bound to disclose it...." Cal. Civ. Code § 1710(3).

Foreign citizens who are in this country and have not registered themselves are engaged in deceit. An alien who is in this country illegally is "at least" committing a fraud upon the United States.

CONCLUSION

For the foregoing reasons, a person in the United States illegally should not be permitted to practice law as a member of an organized bar. The practice of law requires the practitioner to uphold the law. A person who is in this country illegally is deceitfully breaking federal law, not unlike how Mr. Segretti violated federal law, and should not be entrusted with upholding the law. Mr. Segretti ended his violation of federal law and sought to make amends. By contrast, Mr. Garcia's violation of federal law continues as long as he is in this country without proper authorization.

> If the rule of law is this nation's secular faith, then the members of the Bar are its ministers. (State v. Sugar, 84 N.J. 1, 12 (1980))

Respectfully submitted,

NICHOLAS KIERNIESKY, Pro Se

Date: 7-31-12

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CERTIFICATION OF WORD COUNT OF AMICUS CURIAE BRIEF IN OPPOSITION TO ADMISSION OF PETITIONER TO THE BAR

NICHOLAS KIERNIESKY, of full age, certifies as follows:

The word count of the amicus curiae brief, to include tables of contents and authorities is: 1, 772 words. This word count was accomplished by the word perfect computer system.

NICHOLAS KIERNIESKY

Date: 8-8-12