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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

Order to Show Cause to the Committee of Bar Examiners in re Motion for Admission to the State Bar of California

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AMICUS CURIAE BRIEF IN OPPOSITION TO ADMISSION

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I. INTRODUCTION

A. Background of Amicus

Amicus Larry DeSha is a retired former prosecutor for the State Bar of California, and has represented the Committee of Bar Examiners (the "Committee") several times in moral character proceedings in State Bar Court. He is permitted to file this brief in opposition to the Committee because the issues and this brief involve no confidential information obtained from his prior employment by the Committee or the State Bar. (Rules of Professional Conduct, rule 3-310(E).)

Amicus has more than 12 years experience in protecting the public from attorney misconduct, and has observed the top priority given by the Court at all times to the protection of the public. He was the initial or final evaluator for more than 10,000 formal complaints of attorney misconduct to the State Bar. He was the trial attorney (but not the attorney on appeal) for the State Bar in *In re Silverton* (2005) 36 Cal.4th 81, which is the Court's most important decision concerning attorneys during the past two decades, and arguably for all time to date. (The Court disbarred Silverton on its own motion by a unanimous vote,

after the Chief Trial Counsel of the State Bar did not contest the short suspension recommended by State Bar Court.)

Amicus holds the speed record as State Bar trial attorney for the fastest disbarment recommendation from State Bar Court in history after a contested trial. It was on January 15, 2010, only 51 hours after the judge took the case under submission. *In the Matter of Kitlas*, State Bar Court Case No. 08-O-11557-DFM, Judge Donald F. Miles. Amicus also holds the record for second fastest disbarment recommendation after a contested trial, which was 70 hours after trial in 2011.

This brief is filed in the interests of protection of the public and the protection of the integrity of the courts and legal profession. In particular, amicus invites the Court's attention to certain errors and omissions, set forth fully below, which would be expected to lead to invited errors if not brought to the Court's attention.

B. Background of Sergio C. Garcia

Except as otherwise noted, the following pertinent information is taken from the facts stated in the Committee's Opening Brief, page 1:

Petitioner Sergio C. Garcia was born in Villa Jimenez, Mexico in 1977. He entered the United States without inspection in 1994 at the age of 17, apparently after his graduation from the Mexican equivalent of high school. At all times since entry, he has been and remains a deportable "illegal alien" as described in the Memoranda of President published in the Federal Register at 60 Fed. Reg. 7885 (Feb. 7, 1995) under the title of "Deterring Illegal Immigration."

Mr. Garcia's father was a lawful permanent resident and filed a petition for an immigrant visa ("Form I-130") for Petitioner on November 18, 1994. That petition was approved in January 1995, and Mr. Garcia took his place in a very long line awaiting a visa which will someday make his presence in the United States legal.

Mr. Garcia has waited a very long time for his visa, and he can expect to wait at least five more years, if not ten. The Court is requested to take judicial notice of the U.S. State Department's visa bulletins located at www.travel.state.gov/visa/bulletin/bulletin_1360.html. Mr. Garcia is a category F1 applicant from Mexico with a Priority Date of November 18, 1994. The latest bulletin shows the present "cut-off date" for available visas as June 8, 1993, more than 17 months earlier than Mr.

Garcia's place in line. Although the cut-off date advanced rapidly by 24 days in the last month, it advanced only two months in the last nine months and advanced only 19 weeks in the last 18 months. The pace of advance is erratic and unpredictable. In some months, the visa cut-off date does not advance by even one day.

Mr. Garcia is now 35 years old and has been in the United States illegally for more than 17 years, during which he attended college and law school in California. He passed the California Bar Examination on an unstated date (reportedly in November 2009).

C. Procedural History

On November 9, 2011, the Committee submitted Mr. Garcia's name, on motion, as an applicant certified for attorney licensure. The Committee was not aware of having previously certified an illegal alien for admission, and it informed the Court of his immigration status.

The Court did not immediately rule on the motion, but compiled a comprehensive list of law and policy issues which must be addressed in its consideration of the motion. On May 16, 2012, the Court

unanimously issued an Order to Show Cause to the Committee of Bar Examiners of the State Bar of California to show cause why its pending motion for admission of Sergio C. Garcia to the State Bar of California should be granted. The Committee and Mr. Garcia were ordered to file their opening briefs on or before June 18, 2012, which they did.

The Court also welcomed and invited amicus curiae briefs from the Attorney General of California, the Attorney General of the United States, and other interested persons. Amicus briefs are due on or before July 18, 2012. The Court further ordered that all briefs should address five specified issues, not repeated here but set forth below, and indicated that additional issues may be briefed if useful to the Court.

D. Overview of Amicus Brief

First, this is indeed a case of first impression for the Court, and apparently also for the Committee's "committee" of 14 attorneys listed on its Opening Brief. Amicus attributes most of the errors discussed herein to the short time (33 days) available to the Committee for submission of its Opening Brief (hereinafter "COB"), rather than to any improper motive. However, the completely erroneous argument

concerning employment as an independent contractor (COB, pp. 25-29.) can only be attributed to a lack of familiarity with immigration law and a lack of the appropriate diligence.

Second, there is no question as to the learning and ability of Mr. Garcia to practice law competently in California. Amicus could competently testify as to the thoroughness and fairness of the Committee's tests and investigations before it recommends an applicant for admission to the State Bar. The Committee has previously been meticulous in its adherence to the law and to the Court's guidance in what is necessary for protection of the public. Its few errors, at least those known to amicus heretofore, have been on the side of caution and were caused primarily by incomplete evidence provided by the applicants themselves.

Third, federal law does not prevent the admission of Mr. Garcia to the practice of law, but for different reasons than briefed by the Committee. However, contrary to the Committee's argument, federal law does prevent Mr. Garcia from being paid for legal services.

Fourth, Mr. Garcia is not qualified to practice law because he continually violates federal law by his presence in the United States. He cannot take the oath of office nor can any authority administer the oath to him in good faith, until such time as his presence is legal.

Fifth, protection of the public requires that he not be allowed to provide legal services to clients. As a deportable illegal alien for several years to come, he is subject to arrest and removal which can (1) make him unavailable to attend to his duties to clients and courts, and/or (2) affect his mental state due to concern of how openly he could or should expose himself to the possibility of arrest and removal.

Sixth, protection of the public and the courts requires that Mr. Garcia not be allowed to be hired for pay by anyone. Federal law requires that his paying clients terminate his services immediately upon learning of his illegal alien status. (8 U.S.C. § 1324a(a)(2).) The Committee's contention that a legal contract prevents his clients from violating federal law is erroneous, as briefed below.

Amicus recommends that the Committee's pending motion be denied. The order of denial could allow resubmission after Mr. Garcia

obtains his visa and an adjustment of status to legal permanent resident, if that adjustment of status is obtained within five years of passing the bar examination. Otherwise, the order should require Mr. Garcia to start all over with the bar examination after his adjustment of status.

Amicus makes no recommendation as to the provisions of the order of denial. This is indeed a case of first impression for all concerned.

II. RESPONSES TO THE COURT'S INQUIRIES

A. Does 8 U.S.C. Section 1621, Subdivision (c) Apply And Preclude This Court's Admission Of An Undocumented Immigrant To The State Bar Of California? Does Any Other Statute, Regulation, Or Authority Preclude The Admission?

The Committee answers both of these questions definitely in the negative. (COB, p. 5.) Its rationale for the inapplicability of 8 U.S.C. § 1621(c) is that the California Supreme Court is not an "agency" within the meaning of the statute. As set forth below, this limited definition of "agency" is not supported by the laws or cases cited by the Committee. However, the Court need not reach this "agency" issue, because the State of California has exercised its right under 8 U.S.C. § 1621(d) to

enact a law which makes 8 U.S.C. § 1621(c) inapplicable in California. (See Bus. & Prof. Code § 6060.6, and discussion below.)

The Committee is "not aware of the existence of any other statute, regulation, or authority that would preclude his admission." (COB, p. 5, fn. 4.) There is no effort to rationalize his illegal presence in the United States with his statutory duty to "support the … laws of the United States." (Business and Professions Code § 6068(a).) Business and Professions Code § 6067 requires Mr. Garcia to take an oath of office which he cannot do truthfully, nor can any person administer the oath to him in good faith under the present circumstances.

1. The California Supreme Court is an "Agency" within the Meaning of 8 U.S.C. Section 1621(a)

The Committee correctly asserts that 8 U.S.C. § 1621 does not provide a definition of "agency of a State government" (COB, p. 9.) and § 1611 does not provide a definition of "agency of the United States." Those statutes prohibit such "agencies" from issuing professional licenses. The Committee does not address the fact that the legislation itself and the Administrative Procedures Act (5 U.S.C. § 101 and § 105) provide some evidence that congress intended the term "agency" to be

broader than "agency of an executive branch."

The Committee alleges that it has found an appropriate definition of "agency," which does not include the California Supreme Court, by its interpretation "consistently with how it is used in other statutes." (COB, p. 11.) This argument fails because (1) the two statutes cited explicitly limit their definition to Titles 5 and 18, and (2) there is a counterexample in Title 5 which does indeed include "courts" within its definition of "agency."

Title 5 U.S.C. § 551(1) explicitly limits its definition of "agency" to "this subchapter," i.e., sections 551-559, concerning public information. Title 18 U.S.C. § 6 explicitly limits its definition of "agency" to "this title," i.e., federal crimes and criminal procedure. (COB, p. 10.)

Title 5 U.S.C. § 5721 defines "agency" to include "a court of the United States", "the Administrative Office of the United States Courts," and "the government of the District of Columbia." This definition is explicitly limited to federal travel expenses, but it shows the problem in applying other statutory definitions to Title 8.

The Committee also argues that, "The most closely analogous federal laws support the conclusion that the term "agency" does not include the courts." (COB, p. 11.) However, the Committee has not shown or even suggested that there is some analogy, close or otherwise, between Title 8, concerning immigration, and Title 5, concerning administrative procedures, or Title 18, concerning federal crimes. No such analogy is apparent, other than that their statutes were passed by Congress and signed by the President.

A broader definition of "agency" to include the Supreme Court of California is supported by the public policy stated in 8 U.S.C. § 1601. Subsection (3) states in part that, "Aliens have been applying for and receiving public benefits from Federal, State, and local *governments* at increasing rates." (italics added.) Subsection (6) states, "It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."

The broader definition of "agency" to include the California Supreme Court is further supported by the fact that Congress has formally defined the organization of the executive branch of the federal government to consist of "Executive departments" (5 U.S.C. § 101),

each of which is also an "Executive agency." (5 U.S.C. § 105). These definitions do not have the explicitly limited scope of those definitions of "agency" discussed above.

Title 8 U.S.C. § 1611(c)(1)(A) prohibits the issuance of a professional license by any "agency of the United States" in similar language to that of § 1621(c)(1)(A) prohibiting such issuance by any "agency of a State."

It thus appears that Congress did not intend to limit the word "agency" in § 1611 and § 1621 to the executive branch. If that were the intent, the more restrictive and legally defined term "Executive agency" would have been used.

The Committee correctly states that, "Every state in the union recognizes that the power to admit and to discipline attorneys rests with the state's highest court." (COB, p. 18.) It appears highly unlikely that Congress, with its abundance of lawyer members, did not know that when it passed 8 U.S.C. § 1621. If Congress had intended to exclude law licenses or State courts from section 1621, it clearly could have done so with fewer than 10 words.

2. Business and Professions Code Section 6067 Precludes Admission of Undocumented Immigrants

Business and Professions Code § 6067 states in pertinent part, "Every person on his admission shall take an oath ... faithfully to discharge his duties of an attorney at law to the best of his knowledge and ability."

The very first prescribed "duty of an attorney" is only two sentences further, in the very first sentence of § 6068(a), which reads, "It is the duty of an attorney to ... support the Constitution and *laws of the United States* and of this state." (italics added.)

An illegal alien thus cannot take the oath of office, since he will be in violation of federal law while he takes the oath and at all times later until he either becomes legal or leaves the United States. Based upon the facts stated in the Committee's Opening Brief, Mr. Garcia's undocumented status would be in violation of at least 8 U.S.C. § 1302 and § 1306, and he intends to remain in violation for years to come.

An official duly authorized to administer the oath could not do so in good faith, knowing that the undocumented immigrant is in his

presence illegally and will still be in violation of the federal immigration laws the very next second after the oath is completed.

3. Conclusion

A California law license is a "public benefit" provided by the Court, acting as a State "agency" within the meaning and intent of 8 U.S.C. § 1621(c). (However, the Court need not reach this issue of "agency" because, as set forth below, California has enacted legislation which makes 8 U.S.C. § 1621(c) inapplicable to law licenses.)

The barrier to the admission of illegal immigrants to the practice of law in California is not 8 U.S.C. § 1621, but rather Bus. & Prof. Code § 6067 and § 6068(a)(1), which require all attorneys to support the federal immigration laws to the best of their ability.

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B. Is There Any State Legislation That Provides – As Specifically Authorized By 8 U.S.C. Section 1621, Subdivision (d) – That Undocumented Immigrants Are Eligible for Professional Licenses In Fields Such As Law, Medicine, Or Other Professions?

The Committee concludes that no such legislation has been enacted. (COB, pp. 16-17.) The Committee then erroneously argues that the Court could "invoke ... section 1621(d), and, in its quasi-legislative authority, in effect enact a law (i.e., a rule of court) expressly providing that undocumented immigrants are eligible for law licensure." (COB, p. 18, fn. 11.)

This is an invitation to error which completely overlooks the fact that the Court does not "enact" laws, which "enactment of a State Law" is explicitly required by 8 U.S.C. § 1621(d) for the permitted opting out of § 1621(c). In the case of attorney admissions and practice, the Court "adopts" pertinent California Rules of Court, which start with rule 9.1. (See rule, 9.2, California Rules of Court.)

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1. California has Enacted a Law which Overrides 8 U.S.C. 1621(c) and Purports to Make Mr. Garcia Eligible for Admission to the State Bar

Title 8 U.S.C. § 1621(d) provides that a State may provide an illegal alien with any State or local public benefit, otherwise prohibited by § 1621(c), "only through enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility."

California enacted such a law in 2005, which provides in pertinent part that the Committee "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, ..., in lieu of a social security number, *if the individual is not eligible for a social security account number* at the time of application." (Bus. & Prof. Code § 6060.6, italics added.)

There are only two categories of individuals old enough to pass the bar examination who are not eligible to obtain a social security number. They are (1) illegal aliens, including Mr. Garcia, and (2) legal aliens, who have a right to be present, but who have not obtained the right to work in the United States. (See 42 U.S.C. § 405(c)(2)(B)(i).)

While the Committee's Opening Brief correctly states the legislative history of an intent to allow legal alien students to take and pass the bar examination (COB, pp. 21-22.), it incorrectly states that "Section 6060.6 is an express acknowledgement ... that non-immigrant aliens who: (i) are here as students; (ii) are not eligible for a social security number; and (iii) are generally not permitted to work in the United States, may nonetheless sit for the California Bar Examination and be admitted to practice law in California." (COB, p. 22.)

Section 6060.6 does not mention the immigration status of its beneficiaries, does not require their presence in the United States to be legal, does not require permission to work here, and does not require that a beneficiary be a student or former student.

Bus. & Prof. Code § 6060.6, by its terms, excludes the Court and Mr. Garcia from the restrictions on public benefits imposed by 8 U.S.C. § 1621(c).

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C. Does The Issuance Of A License To Practice Law Impliedly Represent That The Licensee May Be Legally Employed As An Attorney?

The Committee's Opening Brief is non-responsive to this question, except to answer in the negative. It appears that the Committee has interpreted the question to be whether Mr. Garcia has a reasonable expectation of finding employment as an attorney. Amicus interprets the Court's question to be whether the public would reasonably believe that the license to practice law means that Mr. Garcia could legally be employed as an attorney.

In its very first sentence on this issue, the Committee starts down the wrong track by arguing that the license to practice law and employment as an attorney "are *independent* and distinct concepts." (COB, p. 19, italics added.) While the two concepts are arguably distinct, they have no independence whatsoever from each other.

The possession of a license to practice law is an absolutely *necessary* condition for employment in the practice of law in California. (See Bus. & Prof. Code, § 6125 and § 6126.) The practice of law without a license is a crime under § 6126.

Similarly, every step required for the issuance of the license was created with consideration of its impact upon the practice of law while employed for that purpose. The goal of the issuance process is the competent practice of law, including protection of the public and the courts.

The Committee argues on page 22 that an implied representation of legal employability would impose on the Committee and the Court a "qualification standard that does not currently exist and would require a case-by-case assessment of federal law and what the licensee intends to do with it after it is granted." The argument continues that this is "a line of inquiry that would difficult, if not impossible, to effectuate."

The *effect* of the representation of legal employability is not material to the issue of whether such a representation is made by the issuance of the license.

The Committee's argument that a new qualification standard "would require a case-by-case assessment of federal immigration law and what the licensee intends to do with the license after it is granted – a line of inquiry that would be difficult, if not impossible, to effectuate,"

is frivolous and not supported by a shred of evidence. There is no mention of how the Committee came to know that Mr. Garcia is an illegal alien, nor how proof of employability would add more than one sheet of paper, if any, to the sheaf of papers presently required for admission to the State Bar.

There is no need to inquire as to what the licensee intends to do with his license. It is not material to its issuance. The suggestion that the decision rests solely with the licensee as to "Whether, and to what extent," he will comply with all laws related to the use of his license in the future (COB, pp. 22-23.) cannot be taken seriously, given that Mr. Garcia has already broken the immigration laws for more than 17 years as an adult and plans to do so for another five to ten years.

The Committee's final argument on this subject is that Mr. Garcia's future violation of federal laws "is a matter *strictly* between him and the federal government." (COB, p. 24, italics added.) That overlooks the fact that the very first duty of an attorney under Bus. & Prof. Code § 6068(a) is "To support the Constitution and laws of the United States and of this state." It further overlooks the fact that breach of that duty is cause for disciplinary action.

1. The Issuance Of A License To Practice Law Explicitly Represents That The Licensee May Be Legally Employed As An Attorney

The best example of what a law license does or does not represent to the public is the physical law license itself. It is a handsome document, measuring some 10.5 by 15 inches, with a printed scroll border nearly one-half inch in width. The largest print on the document, by far, are the words "Supreme Court of the State of California," surrounding a state seal with attached adornments of flags and flowers. This arrangement occupies the top 40 percent of the document. An embossed gold seal of the "Supreme Court of California," some 2.3 inches in diameter, is affixed in the lower left corner.

The message on the license is one long sentence of six printed lines:

Be it Remembered that upon certification by the Examining Committee
Of the State Bar of California and by order of this Court
[Full Name of Licensee]
Was admitted as an Attorney and Counselor at Law
And has taken and subscribed the oath as required by law, and is hereby licensed as
Such Attorney and Counselor to practice in all Courts of the State.

On the license, the Court states that the licensee has taken "the oath as required by law," i.e., as prescribed in Bus. & Prof. Code § 6067. Section 6067 states in pertinent part, "Every person on his admission shall take an oath ... faithfully to discharge his duties of an attorney at law to the best of his knowledge and ability."

The very first prescribed "duty of an attorney" is only two sentences further, in the very first sentence of § 6068(a), which reads, "It is the duty of an attorney to ... support the Constitution and *laws of the United States* and of this state." (italics added.)

An illegal alien thus cannot take the oath of office, since he will be in violation of federal law while he takes the oath and at all times later until he either becomes legal or leaves the United States. Based upon the facts stated in the Committee's Opening Brief, Mr. Garcia's undocumented status would be in violation of at least 8 U.S.C. § 1302 and § 1306, and he intends to remain in violation for years to come.

It is hard to imagine how even the most sophisticated of clients can read the license and believe that the license is subject to conditions which could mean the licensee cannot be hired as an attorney. This is a

trap which the Court should not allow.

When the California Supreme Court issues the law license with its printed statement that the licensee has taken the oath "required by law," which oath necessarily includes support of the laws of the United States to the best of one's ability, it is a direct representation by the Supreme Court that the licensee is indeed in compliance with the federal laws. It is unreasonable to expect most clients to interpret the license otherwise.

The danger of requiring the public to inquire beyond the license as to the employability of Mr. Garcia, is fortuitously illustrated in the Committee's Opening Brief, pp. 24-29. The Committee's "committee" of 14 rather sophisticated attorneys has erroneously concluded that Mr. Garcia can still be paid as "an independent contractor" attorney. However, the status of an "independent contractor" does *not* permit such employment, as set forth below.

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D. If Licensed, What Are The Legal And Public Policy Limitations, If Any, On An Undocumented Immigrant's Ability to Practice Law?

The Committee's Opening Brief is almost entirely non-responsive to this question. More than 13 pages are devoted to this topic without a single limitation on the ability to practice law being found. (COB, pp. 24-37.) Worst of all, the central theme, that clients can pay an illegal alien attorney, is erroneous, as discussed below.

The inability to accept funds from clients, even on a contingency basis, is the greatest limitation to the practice of law by an illegal alien. The second limitation is that an illegal alien's continuous presence and continuous violation of the immigration laws is likely to lead to prosecution by the State Bar for failure to comply with Bus. & Prof. Code § 6068(a) for failure to support the laws of the United States. There is also the danger of detention and removal, making the attorney unavailable for his duties to his clients and the courts. This danger could also inhibit the degree of exposure the attorney would be willing to risk in the court appearances required for representing some clients.

1. Title 8 U.S.C. § 1324a Proscribes the Hiring of a Known Unauthorized Alien, or the Continued Employment of an Unauthorized Alien after Learning of His Illegal Status

Title 8 U.S.C. § 1324a(a)(1)(A) states in pertinent part, "It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien."

Title 8 U.S.C. § 1324a(a)(2) states in pertinent part, "It is unlawful for a person or other entity, after hiring an alien for employment ... , to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment."

Title 8 U.S.C. § 1324a(a)(4) states in pertinent part, "For purposes of this section, a person or entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain labor of an alien in the United States knowing that the alien is an unauthorized alien ... with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A)."

It should be noted that the terms "employer", "employee", and "independent contractor" do not appear in the three statutes above. These terms arise from later implementing regulations, concerned mainly with the required process of verifying the immigration status of employees.

For example, 8 C.F.R. § 274a.3 states, "An employer who continues the employment of an employee ... knowing that the employee is or has become an unauthorized alien ... , is in violation of section 274A(a)(2) of the Act.", i.e., 8 U.S.C. 1324a(a)(2). The regulation substitutes "employer" for the statutory "person ... hiring an alien," and "employee" for the statutory "alien."

The term "independent contractor" was not created for the purpose for which the Committee relies, and it does not permit an illegal alien attorney to charge for his services. The "independent contractor" of the regulations is a third person who comes between the user of the labor, e.g., a farmer, and the laborer, i.e., the alien. Without the "independent contractor," the farmer is the "employer" and the alien is the "employee." When the independent contractor comes on the scene, he becomes the "employer" in the place of the farmer.

(See 8 C.F.R. § 274a.1(g).) The purpose of this is to shift responsibility for verification of immigration status from the farmer to the independent contractor.

Contrary to the Committee's argument, the illegal alien cannot become an independent contractor and accept payment. First, 8 U.S.C. § 1324a(a)(4) explicitly prohibits "a person or other entity" from using "a contract, subcontract, or exchange ... to obtain the labor of an ... unauthorized alien."

Second, it appears that the Committee's entire "committee" of 14 attorneys neglected to review the definition of "independent contractor"' in 8 C.F.R. § 274a.1(j). They did not mention it anywhere in the five pages of argument urging the legality of payment from clients. (COB, pp. 25-29.) The first three sentences of the definition are the generally accepted definition. However, the last sentence is not a definition at all, but rather a reminder that the regulations do not override 8 U.S.C § 1324a(a)(4). "The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and §274a.5 of this part."

The Committee's Opening Brief on this subject falls into disarray on page 26, where it begins confusing the definitions in the Code of Federal Regulations with broader terms in the actual legislation. For example, "Under the IRCA [Immigration Reform and Control Act of 1986] the term 'hire' means 'the actual commencement of employment of an employee for wages or other remuneration.' (8 C.F.R. § 274a.1(c).) 'Employment' is defined as 'any service or labor performed by an employee for an employer.' (8 C.F.R. § 274a.1(h)." (COB, p. 26.)

These regulations for implementing only part of the IRCA do not override the IRCA itself. The term "employment" in the IRCA is not limited to the involvement of "employer" or "employee," from which the Committee takes such comfort, but also means the "use of a contract" by any "person …to obtain the labor of an alien." (8 U.S.C. § 1324a(a)(4).)

The Committee argues, at page 27, that "No reasonable employer would assume that the issuance of a law license to an individual relieves them [the employer] of their obligation to verify employment eligibility consistent with the I-9 system." That paragraph ends with the erroneous and contradictory statement that "An undocumented immigrant can

engage in an independent contractor relationship." (COB, p. 27.) If there is an independent contractor involved, the user of the labor, i.e., client, is indeed relieved of his obligation to verify employment eligibility. In the very next paragraph, the Committee correctly cites 8 C.F.R § 274a.1(g) to the effect that "employer" does not mean the person using the contract labor. (COB, p. 28.)

In summary, Mr. Garcia cannot be hired by clients as an independent contractor and cannot accept payments from clients as long as he is an illegal alien. The Committee's argument to the contrary is an invited error caused by its disregard of the black letter law in, 8 U.S.C. § 1324a(a)(4) and 8 C.F.R. § 274a.5.

2. The *Raffaelli* Case Does Not Apply to Illegal Aliens.

The Committee advances the case of *Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288 in support of the admission of illegal aliens to the practice of law in California. (COB, pp. 29-37.) The case provides no support whatsoever, since Mr. Raffaelli was initially ineligible for admission to practice law for the sole reason that he was not a citizen of the United States, which citizenship was required

by a California statute.

Paolo Raffaelli entered the United States on a student visa in 1961, at the age of 25 or 26, attended college, and graduated on an unknown date. In 1969, he graduated from law school and took and passed the bar examination. He overstayed his visa as of an unknown date in 1969, but he subsequently married a United States citizen and became a permanent resident alien as of September 5, 1971. He then promptly petitioned the Court for admission to practice law, which the Court granted on May 24, 1972, subject to a prompt moral character determination. The grounds for overturning the statute requiring citizenship were that *lawfully admitted* resident aliens were entitled to equal protection of the laws. He was admitted to practice on July 21, 1972, and retired from practice more than 39 years later at the age of 76.

Mr. Garcia has little in common with Mr. Raffaelli, who came to the Court with a legal immigration status and asked the Court to overturn a law for which the Court had authority to do. Mr. Garcia comes in an illegal status of 18 years, and counting, and asks the Court to ignore both State and federal laws designed to protect the public.

E. What, If Any, Other Public Policy Concerns Arise With A Grant Of This Application?

The Committee's Opening Brief is almost entirely non-responsive to this question, and it presents no public policy concerns other than those previously briefed. More than seven pages are devoted to this topic, but the argument can be briefly summarized as (1) since we are already providing free education to illegal aliens, we should expand their opportunities to utilize that education, i.e, allow Mr. Garcia to practice law until he becomes legal in a few years (COB, pp. 40-42), (2) the Court should join the Department of Homeland Security in refusing to enforce all immigration laws (COB, p. 43), and (3) admitting Mr. Garcia to the practice of law "builds logically on those evolving efforts to allow access to educational opportunities for undocumented students." (COB, p. 43). Amicus believes that all public policy concerns have been suitably addressed by the prior questions, and he offers nothing further for the Court's consideration of this last question.

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III. CONCLUSION

1. Title 8 U.S.C § 1621(c) does not preclude the admission of undocumented immigrants to the practice of law in California, since California has exercised the option provided by 8 U.S.C. § 1621(d) to permit such admission.

2. Business and Professions Code § 6067 precludes the admission of Mr. Garcia because it requires an oath to support the federal immigration laws to the best of his ability Mr. Garcia cannot take the oath of office because he has no intention of complying with the federal immigration laws until several years from now.

3. No State authority can administer the oath of office to Mr. Garcia in good faith due to knowledge that he will have violated that oath by his presence the very moment he completes the oath.

4. Illegal immigrants cannot accept pay for legal services because such pay is proscribed by 8 U.S.C. § 1324a.

5. Granting a law license to Mr. Garcia will mislead prospective clients to erroneously believe that he is legally present in the United States and can be paid for legal services.

6. The decision of whether or not Mr. Garcia can be hired should not be left to the client, since Mr. Garcia cannot be legally paid. The Committee's 14 lawyers botched this issue, and clients should be expected to do the same

7. The best way to protect the public from committing the federal crime of hiring Mr. Garcia before he becomes a legal resident is to deny his admission to practice until such time as he becomes legal, can take the oath of office truthfully, and can be hired for pay.

For the foregoing reasons, the Court should deny the motion for admission of Sergio C. Garcia to State Bar of California.

Dated: July 14, 2012

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this AMICUS CURIAE BRIEF IN OPPOSITION TO ADMISSION contains 5,600 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: July 14, 2012

Larry Dosha

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PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident in the county where the mailing occurred.

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4. Date mailed: 7/16/12
Place mailed: Camarillo, CA

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

Dated: July 16, 2012

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No Further Entries