Bar Misc. 4186
S202512

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

APPLICATION OF AMICI CURIAE LOS ANGELES COUNTY BAR ASSOCIATION, ALAMEDA COUNTY BAR ASSOCIATION, ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA, ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF SILICON VALLEY, BAR ASSOCIATION OF SAN FRANCISCO, BEVERLY HILLS BAR ASSOCIATION, KERN COUNTY BAR ASSOCIATION, MARIN COUNTY BAR ASSOCIATION, MEXICAN AMERICAN BAR ASSOCIATION, MULTICULTURAL BAR ALLIANCE OF SOUTHERN CALIFORNIA, RIVERSIDE COUNTY BAR ASSOCIATION, SACRAMENTO COUNTY BAR ASSOCIATION, SAN BERNARDINO COUNTY BAR ASSOCIATION, SAN DIEGO COUNTY BAR ASSOCIATION, SANTA CLARA COUNTY BAR ASSOCIATION, AND SOUTH ASIAN BAR ASSOCIATION OF NORTHERN CALIFORNIA FOR LEAVE TO FILE AN AMICI CURIAE BRIEF; PROPOSED BRIEF OF AMICI CURIAE SUPPORTING THE APPLICANT

IRELL & MANELLA LLP
Carlos R. Moreno (Bar No. 66912)
Eric A. Webber (Bar No. 136866)
BJ Ard (Bar No. 277006)
1800 Avenue Of The Stars, Suite 900
Los Angeles, CA 90067
Phone: (310) 277-1010
Fax: (310) 203-7199

ATTORNEYS FOR AMICI CURIAE

Bar Misc. 4186
S202512

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

APPLICATION OF AMICI CURIAE LOS ANGELES COUNTY BAR ASSOCIATION, ALAMEDA COUNTY BAR ASSOCIATION, ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA, ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF SILICON VALLEY, BAR ASSOCIATION OF SAN FRANCISCO, BEVERLY HILLS BAR ASSOCIATION, KERN COUNTY BAR ASSOCIATION, MARIN COUNTY BAR ASSOCIATION, MEXICAN AMERICAN BAR ASSOCIATION, MULTICULTURAL BAR ALLIANCE OF SOUTHERN CALIFORNIA, RIVERSIDE COUNTY BAR ASSOCIATION, SACRAMENTO COUNTY BAR ASSOCIATION, SAN BERNARDINO COUNTY BAR ASSOCIATION, SAN DIEGO COUNTY BAR ASSOCIATION, SANTA CLARA COUNTY BAR ASSOCIATION, AND SOUTH ASIAN BAR ASSOCIATION OF NORTHERN CALIFORNIA FOR LEAVE TO FILE AN AMICI CURIAE BRIEF; PROPOSED BRIEF OF AMICI CURIAE SUPPORTING THE APPLICANT

IRELL & MANELLA LLP
Carlos R. Moreno (Bar No. 66912)
Eric A. Webber (Bar No. 136866)
BJ Ard (Bar No. 277006)
1800 Avenue Of The Stars, Suite 900
Los Angeles, CA 90067
Phone: (310) 277-1010
Fax: (310) 203-7199

ATTORNEYS FOR AMICI CURIAE

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page

Cases

Page(s)

Constitutional Provisions

Page(s)

Statutes

Page(s)

Rules

Other Authorities

APPLICATION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court and the Court's May 16, 2012 Order To Show Cause in *In re Sergio C. Garcia on Admission* (Bar Misc. 4186, S202512), the Los Angeles County Bar Association, Alameda County Bar Association, Asian American Bar Association of the Greater Bay Area, Asian Pacific American Bar Association of Silicon Valley, Bar Association of San Francisco, Beverly Hills Bar Association, Kern County Bar Association, Marin County Bar Association, Mexican American Bar Association, Multicultural Bar Alliance of Southern California, Riverside County Bar Association, Sacramento County Bar Association, San Bernardino County Bar Association, San Diego County Bar Association, Santa Clara County Bar Association, and South Asian Bar Association of Northern California (collectively, "Amici") respectfully request leave to file the attached brief, in support of the Applicant, to be considered in the above-captioned matter. This application is timely made pursuant to the briefing schedule set forth in the Court's May 16, 2012 Order To Show Cause.

Interests of Amici Curiae

Amici are voluntary California bar associations whose members include a large number of the attorneys regulated by this Court and the State Bar of California (the "State Bar"). Through volunteer service to the State Bar as well as the payment of State Bar dues, Amici's attorney

members enable the State Bar to carry out its functions, including attorney admissions and discipline. Among other interests, our attorney members have a vested interest in seeing that the State Bar fulfills its duty of public protection in a manner that is effective, efficient, and in the best interests of the State of California.

Because Amici represent a significant number of the members of the State Bar, the organization the Applicant seeks to join, we offer a unique perspective on the harms resulting from the unwarranted intrusion of federal law into State Bar admission policies as well as the State interests served by an attorney admissions policy that does not screen or exclude applicants on the basis of immigration status.

The Los Angeles County Bar Association ("LACBA"), established in 1878, is a nonprofit voluntary membership organization with over 21,000 members, most of whom are California attorneys who live and practice in the metropolitan Los Angeles, California area. LACBA is one of the largest voluntary local bar associations in the United States.

The Alameda County Bar Association ("ACBA"), established in 1877, is a nonprofit voluntary membership organization with about 2,000 members, most of whom are California attorneys who live and practice in and around the East Bay area of California.

The Asian American Bar Association of the Greater Bay Area ("AABA"), established in 1976, is a nonprofit voluntary membership

organization with about 550 members, most of whom are California attorneys who live and practice in and around the San Francisco Bay area of California.

The Asian Pacific American Bar Association of Silicon Valley ("APABA-SV"), established in 1981, is a nonprofit voluntary membership organization with over 300 members, most of whom are California attorneys who live and practice in and around the Santa Clara County area of California.

The Bar Association of San Francisco ("BASF"), established in 1872, is a nonprofit voluntary membership organization with over 7,500 members, most of whom are California attorneys who live and practice in and around the greater San Francisco Bay area of California.

The Beverly Hills Bar Association ("BHBA"), established in 1931, is a nonprofit voluntary membership organization with over 5,000 members, most of whom are California attorneys who live or practice in or around the Beverly Hills and Century City areas of Los Angeles County, California.

The Kern County Bar Association ("KCBA"), established in 1950, is a nonprofit voluntary membership organization with almost 500 members, most of whom are California attorneys who live and practice in and around Kern County, California.

The Marin County Bar Association ("MCBA"), established in 1957, is a nonprofit voluntary membership organization with about 800 members, most of whom are California attorneys who live and practice in and around Marin County, California.

The Mexican American Bar Association of Los Angeles County ("MABA"), officially incorporated in 1971 but informally in existence since the late 1950s, is a nonprofit voluntary membership organization with over 800 members, most of whom are California attorneys who live and practice in the southern California area.

The Multicultural Bar Alliance of Southern California ("MCBA") is a coalition of 17 diverse women and minority bar associations in the metropolitan Los Angeles Area.* The MCBA's constituent bars have an aggregated total membership of over 2,000, most of whom are California

* The MCBA includes the Arab American Lawyers Association of Southern California; Asian Pacific American Bar Association ("APABA"); Asian Pacific American Women Lawyers Alliance ("APAWLA"); Black Women Lawyers Association of Los Angeles ("BWL"); Iranian American Lawyers Association; Italian American Lawyers Association; Japanese American Bar Association ("JABA"); John M. Langston Bar Association; Korean American Bar Association ("KABA"); Latina Lawyers Bar Association ("LLBA"); Lesbian and Gay Lawyers Association ("LGLA"); Mexican American Bar Association ("MABA"); Philippine American Bar Association ("PABA"); South Asian Bar Association ("SABA"); Southern California Chinese Lawyers Association ("SCCLA"); Ventura County Asian American Bar Association ("VCAABA"); and Women Lawyers Association of Los Angeles ("WLALA").

attorneys who live and practice in and around the greater Los Angeles, California area.

The Riverside County Bar Association ("RCBA"), established in 1894, is a nonprofit voluntary membership organization with approximately 1,200 members, most of whom are California attorneys who live and practice in and around the greater Riverside, Temecula, and Coachella Valley areas of California.

The Sacramento County Bar Association ("SCBA"), established in 1918, is a nonprofit voluntary membership organization with approximately 2,000 members, most of whom are California attorneys who live and practice in the greater Sacramento Region, in California.

The San Bernardino County Bar Association ("SBCBA"), established in 1875, is a nonprofit voluntary membership organization with over 925 members, most of whom are California attorneys who live and practice in the Inland Empire area of southern California.

The San Diego County Bar Association ("SDCBA"), established in 1899, is a nonprofit voluntary membership organization with over 10,000 members, most of whom are California attorneys who live and practice in San Diego County, California.

The Santa Clara County Bar Association ("SCCBA"), established in 1919, is a nonprofit voluntary membership organization with over 3,800

members, most of whom are California attorneys who live and practice in California's Santa Clara, Santa Cruz and San Mateo Counties.

The South Asian Bar Association of Northern California ("SABA-NC"), established in 1993, is a nonprofit voluntary membership organization with over 400 members, most of whom are California attorneys who live and practice in the northern California area.

LACBA, ACBA, AABA, APABA-SV, BASF, BHBA, KCBA, MCBA, MABA, MCBA, RCBA, SCBA, SBCBA, SDCBA, SCCBA, and SABA-NC are voluntary California bar associations that represent the interests of their members, encourage legal reform, promote the administration of justice, and support the independence of the judiciary. Amici believe that persons who meet all standards for admission to the State Bar of California should be treated equally and that immigration status is unrelated to the fitness to practice law.

Response of Amici

Amici are familiar with the issues in this case and support the position of the State Bar and the Applicant in this matter. Amici's brief will highlight certain authorities and arguments the opening briefs did not fully address.

As set forth in greater detail in the brief filed herewith, Amici assert that the rejection of the Applicant's admission is not, and should not, be compelled by federal law, and that the blanket screening and rejection of

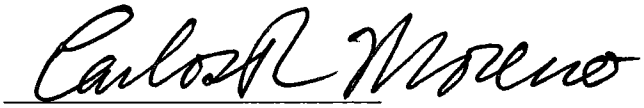
applicants on the basis of immigration status would run contrary to the interests and public policy of the State. Amici's brief takes no position on what federal immigration law or policy should be but, rather, focuses on the interests of the State of California, our Legislature and this Court in connection with regulation of the practice of California law.

No party or counsel for any party, other than counsel for Amici, has authored the proposed brief in whole or in part or funded the preparation of the brief.

DATED this 17th day of July, 2012.

Respectfully submitted,

IRELL & MANELLA LLP
Carlos R. Moreno
Eric A. Webber
BJ Ard

By: 
Carlos R. Moreno
Attorneys for Amici Curiae

STATEMENTS OF INTEREST OF THE AMICI CURIAE AND SOURCE OF AUTHORITY TO FILE

Pursuant to Rule 8.520(f) of the California Rules of Court, this brief is filed with an accompanying Application for Leave To File which sets forth Amici's interest in this matter.

INTRODUCTION

Amici submit that the application of federal law, and specifically 8 U.S.C. § 1621, to the instant proceeding is improper and unwarranted, and would essentially conscript the State Bar and this Court into the interpretation and enforcement of federal immigration law. Further, imposing federal immigration law requirements upon attorney licensure would inappropriately and unnecessarily subordinate the Court's and the State's interests in public protection to federal policy unrelated to that goal.

The Court wields plenary power over the practice of law in California, including the determination whether to admit applicants to the State Bar. For federal law to impose an additional admission requirement would be unprecedented. Moreover, the Court and the State Legislature have previously decided that factors like citizenship and residency are irrelevant to attorney licensure. California has, accordingly, admitted applicants to the State Bar for over four decades without regard to these factors. There is no reason that federal law should now deprive the State

from reaching its own determination as to whether immigration status is similarly irrelevant.

In addition, from California's perspective, the State's interests are best served by an attorney admissions policy that does not screen or exclude State Bar applicants on the basis of immigration status. As with citizenship and residency, immigration status bears no direct relation to the State Bar's core function of insuring the quality and character of attorneys. Accordingly, requiring the State Bar to investigate all State Bar applicants' immigration status—and, potentially, the immigration status of all current State Bar members admitted since 1972—would impose a potentially heavy burden on the State while doing little, if anything, to advance California's interests in the professional competence of lawyers or the protection of consumers of legal services.

The State Bar is ill-equipped, moreover, to take on the burden of independently investigating the federal immigration status of all attorneys who apply to or currently practice California law. Those inquiries are time-consuming and burdensome because determinations of an individual's immigration status, as well as related determinations of whether to pursue remedies against the individual for any potential violation of federal laws, are complex, fact-specific, and often-changing processes involving significant discretion on the part of federal immigration officials charged with the interpretation and enforcement of the relevant law. The State

Bar's resources could be severely taxed by such an undertaking, requiring either a diversion of funds from the Bar's core functions or an increase in dues that would be felt by attorneys and, ultimately, by clients across the State.

To the limited extent that immigration status might be relevant to an attorney's fitness to practice California law, it is unnecessary to address the matter via blanket inquiries in connection with State Bar admissions. If there is a determination by competent federal authorities or other compelling evidence that a State Bar member has committed an immigration law violation that bears on the attorney's fitness to practice law, the State Bar's existing disciplinary system is adequate to address the matter on a case-by-case basis, just as it would address any other violation of law by a State Bar member.

In addition to being poor public policy, barring undocumented immigrants from State Bar admission would frustrate the express intentions of the State Legislature. The State Bar Act eschews citizenship or residency requirements for admission to the State Bar and, for the past six years, has expressly encouraged licensure of non-citizens, including LL.M. students enrolled at law schools throughout California, many of whom have no interest in practicing law in California or in the United States. Other California statutes expressly encourage the development and integration of undocumented Californians into the civic life and economy of this State.

Through the enactment of the California DREAM Act and the extension of in-state tuition entitlement to certain undocumented immigrants, California has shown an intent to accord the same benefits it provides other California residents to undocumented immigrants—such as Mr. Garcia—who have come here as children and who strive to become educated and productive members of the State. An immigration status test for attorney licensure would be directly at odds with those California legislative actions.

RESPONSES TO THE COURT'S INQUIRIES

I. 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?

No, 8 U.S.C. § 1621 does not and should not compel the Court to exclude undocumented immigrants from admission to the Bar. Amici agree with the State Bar and the Applicant that the statute does not apply because, *inter alia*, the Court is not an "agency," the issuance of a license does not depend on "appropriated funds of a State or local government," and federal law in no respect preempts this Court's rules, regulations, or decisions on the subject. *See* Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 6-16, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012); Brief of Applicant at 7-18, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012).

A. 8 U.S.C. Section 1621 should not be applied to displace the State's plenary power over the practice of law in California.

Since 1850, this Court has recognized its plenary power to regulate the practice of law in California. *See People ex rel Mulford v. Turner*, 1 Cal. 143, 150 (1850); *see also In re Attorney Discipline Sys.*, 19 Cal. 4th 582, 592 (1998) ("Our inherent authority over the discipline of licensed attorneys in this state is well established."); *Hustedt v. Workers' Comp. Appeals Bd.*, 30 Cal. 3d 329, 336 (1981) ("In California, the power to regulate the practice of law, including the power to admit and to discipline attorneys, has long been recognized to be among the inherent powers of the article VI courts.").

The courts have rightly applied federal law to state bar admission processes to remedy constitutional violations, *see, e.g.*, *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 246-47 (1957) (finding a denial of due process when an applicant was denied bar admission on the basis of factors such as prior Communist Party membership); *Potts v. Honorable Justices of Supreme Court of Hawaii*, 332 F. Supp. 1392, 1398 (D. Haw. 1971) (holding that a pre-examination residency requirement violated an applicant's equal protection rights), and to remedy violations of federal anti-discrimination laws, *see, e.g.*, *Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153 (9th Cir. 2011) (applying the Americans With Disabilities Act to a national provider of bar examinations). Amici find no

cases, however, in which federal law has been applied to add new criteria to a state bar's requirements for attorney admission. Nor should federal law be read to do so in this case. Amici agree with the State Bar that, in this domain of traditional state concern, "state law will be displaced only when affirmative congressional action compels the conclusion it must be," and that there is no sign of such Congressional intent here. Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 8-9 (quoting *Martinez v. Regents of Univ. of California*, 50 Cal. 4th 1277, 1287 (2010)). The application of 8 U.S.C. § 1621 to the State Bar's admissions process, accordingly, appears unwarranted and unintended.

B. The decision whether to admit undocumented immigrants to the State Bar belongs to California, and should not be dictated by federal law on a subject unrelated to the State's attorney licensure objectives.

If 8 U.S.C. § 1621 were applied to attorney admissions, it would subordinate the Court's and the State's interests in regulating California lawyers to federal policy on an unrelated subject. Compared to federal authorities, this Court is better attuned to the unique considerations relevant to the practice of California law and the needs of justice in this State.[1]

[1] Moreover, if 8 U.S.C. § 1621 were interpreted to apply to attorney admissions, the State Bar would be burdened with implementing federal immigration policies without the benefit of federal funding to offset the costs. *See* Section V.C, *infra*. Such an outcome is problematic of itself, and may appear to open the door for the federal government to impose other costly burdens on the State Bar in the future.

Given that fact, and given that this Court and the Legislature have expressly determined that citizenship and residency are irrelevant to attorney licensure in California, such subordination would be particularly inappropriate here.

Although the narrow question whether undocumented status should be a *per se* bar to attorney licensure is one of first impression for this Court, it bears a striking resemblance to the citizenship and residency requirements the State has previously rejected. Federal law should not be interpreted to deprive this Court and the State Legislature of the ability to answer this question on their own. Because neither immigration status nor legal employability in the United States bears any direct relation to the State Bar's core function of ensuring the quality and character of attorneys, *see* Part III.B, *infra*, this Court should find that, like citizenship and residency, immigration status is irrelevant to attorney licensure in California.

In a unanimous opinion by Justice Mosk, this Court held in *Raffaelli v. Comm. of Bar Exam'rs*, 7 Cal. 3d 288, 303 (1972), that citizenship is no criterion for admission to the bar. Supporting this result, this Court cited approvingly to federal court decisions striking down residency requirements on equal protection grounds. *See id.* at 293-94, 302-03. *Raffaelli*'s holding has stood undisturbed for forty years.

The Legislature itself had stricken residency as a requirement for admission to the State Bar in 1970. *Compare* 1959 Cal. Stat. 3148 (imposing a residency requirement), *with* 1970 Cal. Stat. 513 (striking the residency requirement). More recently, in 2005, the Legislature enacted California Business & Professions Code Section 6060.6 to allow individuals who are not eligible for Social Security Numbers to use federal tax identification numbers or other forms of identification to obtain a California law license. 2005 Cal. Legis. Serv. ch. 610 (A.B. 664) (West). Section 6060.6's history makes clear that the Legislature enacted it for the specific purpose of permitting foreign law students—non-citizens who are ineligible for Social Security Numbers—to take the State Bar exam and apply for admission to the State Bar. *See* Cal. Bill Analysis, S. Floor, 2005-2006 Reg. Sess., A.B. 664 (Aug. 31, 2005).

C. 8 U.S.C. Section 1621 should be held inapplicable to attorney licensure, on statutory grounds, because this interpretation avoids potential Constitutional obstacles.

The Applicant argues that applying 8 U.S.C. § 1621 to this Court's attorney licensure decisions may be impermissible under the Tenth Amendment to the United States Constitution. *See* Brief of Applicant at 15-16. Avoiding this potential constitutional problem is an additional reason to hold that 8 U.S.C. § 1621 does not apply to state bar admissions. *See People v. Engram*, 50 Cal. 4th 1131, (2010) ("Under well-established

precedent, of course, a statute must be construed, if reasonably possible, in a manner that avoids a serious constitutional question.").

Moreover, the State Bar and Applicant advance compelling statutory arguments by which to interpret 8 U.S.C. § 1621 as inapplicable to attorney admissions. *See* Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 5-16; Brief of Applicant at 6-21. This Court should decide the matter on these non-Constitutional grounds. *People v. Tindall*, 24 Cal. 4th 767, 783 (2000) ("[C]ourts should avoid resolving constitutional issues if a case can be decided on statutory grounds.") (quoting *De Lancie v. Superior Court*, 31 Cal. 3d 865, 877, n. 13 (1982)); *People v. Williams*, 16 Cal. 3d 663, 667 (1976) ("[W]e do not reach constitutional questions unless absolutely required to do so to dispose of the matter before us.").

There is a potential constitutional issue lurking in the interpretation of 8 U.S.C. § 1621, particularly because its application to attorney admissions would subordinate the Court's plenary power to the service of federal policy in an unrelated area. The United States Supreme Court has recently affirmed that "[i]mpermissible interference with state sovereignty is not within the enumerated powers of the National Government, and action that exceeds the National Government's enumerated powers undermines the sovereign interests of States." *Bond v. United States*, 131

S. Ct. 2355, 2366 (2011) (citations omitted).[2] The principle that Congress may not compel the States to execute a federal program may be especially applicable when that program arises in a domain in which the federal government wields exclusive power. This Court and the United States Supreme Court agree that the power to regulate immigration is exclusively federal. *See Arizona v. United States*, No. 11-182, 2012 WL 2368661, at *5 (U.S. June 25, 2012) ("The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens."); *DeCanas v. Bica*, 424 U.S. 351, 354 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power."); *Purdy & Fitzpatrick v. State*, 71 Cal. 2d 566, 572 (1969) ("Congress possesses the exclusive right to regulate immigration and naturalization. State laws which substantially encroach upon the exercise of this power cannot stand.") (citations omitted); *see also New York v. United States*, 505 U.S.

[2] Accordingly, the United States Supreme Court has struck down Congress's attempts to interfere with a state's internal affairs, such as the chartering of banks, *Hopkins Fed. Sav. & Loan Ass'n v. Cleary*, 296 U.S. 315, 338, (1935), and the dissolution of corporations, *Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U.S. 120, 127-28 (1937). The High Court has also invalidated Congress's attempts to commandeer a state's regulatory apparatuses for such purposes as compelling state law enforcement officials to perform background checks, *Printz v. United States*, 521 U.S. 898, 933 (1997), or forcing a state to choose between taking title to nuclear waste or enacting specific regulations, *New York v. United States*, 505 U.S. 144, 174-75 (1992).

144, 156 (1992) (explaining that the Tenth Amendment "disclaims any reservation" of the federal government's exclusive powers to the states).

Accordingly, the imposition of federal immigration-status requirements on California's attorney licensure process may face a constitutional obstacle. *Cf. Sturgeon v. Bratton*, 174 Cal. App. 4th 1407, 1412 (Cal. Ct. App. 2009) ("The federal government has the exclusive authority to enforce the civil provisions of federal immigration law relating to issues such as admission, exclusion, and deportation of aliens. As such, Congress is prohibited by the Tenth Amendment from passing laws requiring states to administer civil immigration law.") (citations omitted). In light of these concerns, 8 U.S.C. § 1621 should not be interpreted to apply to attorney licensure.

II. 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, and, if not, what significance, if any, should be given to the absence of such legislation?

There is no California legislation expressly stating that undocumented immigrants are eligible for professional licenses. Amici agree with the State Bar, however, that the power to admit and discipline attorneys rests solely with this Court and that legislative action is no pre-requisite to this Court's ability to determine whether to admit an applicant to the practice of law. *See* Brief of Comm. of Bar Exam'rs of the State Bar

of Cal. at 16-19, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012).

Moreover, refusing undocumented immigrants admission to the State Bar would appear to be at odds not only with California's established attorney licensure practices, discussed in Section I.B, *supra*, but also with other California public policy. The Legislature has indicated its intent to provide undocumented immigrants like Mr. Garcia with public benefits in higher education. Specifically, the Legislature enacted Education Code Section 68130.5 in 2001 to permit students, including undocumented immigrants, who attended California high schools for at least three years and graduated, or earned a California GED, to pay resident tuition rates in State institutions of higher learning. 2001 Cal. Legis. Serv. ch. 814 (A.B. 540) (West). Following this Court's recent, unanimous opinion in *Martinez v. Regents of Univ. of California*, 50 Cal. 4th 1277 (2010), which upheld Section 68130.5, the Legislature enacted the California DREAM Act of 2011 and thereby expanded the ability for undocumented immigrants to receive privately funded scholarships and state-funded financial aid while attending public colleges and universities. 2011 Cal. Legis. Serv. ch. 93 (A.B. 130) (West); 2011 Cal. Legis. Serv. ch. 604 (A.B. 131) (West). Additionally, as noted in Section I.B., *supra*, the Legislature specifically enacted California Business & Professions Code Section 6060.6 to permit

non-citizens such as foreign law students to sit for the Bar exam. *See* 2005 Cal. Legis. Serv. ch. 610 (A.B. 664) (West).

Against this backdrop, the Legislature's silence cannot be read to suggest any intent to deny professional licenses to productive members of society like Mr. Garcia. *See Lantzy v. Centex Homes*, 31 Cal. 4th 363, 382 (2003) ("[L]egislative inaction is a weak reed upon which to lean.") (quotation marks omitted); *People v. Cruz*, 13 Cal. 4th 764, 784 (1996) ("[W]e frequently have expressed reluctance to draw conclusions concerning legislative intent from legislative silence or inaction."). Like the students covered under the California DREAM Act, Mr. Garcia has been here since he was a child, attended college and professional school here, and appears intent to contribute to this State's civic and economic life.

III. Does the issuance of a license to practice law impliedly represent that the licensee may be legally employed as an attorney?

A. Licensure is not equivalent to employment.

No, the issuance of a license does not impliedly represent that the licensee may be legally employed as an attorney. Amici agree with the State Bar and the Applicant that, under both federal and California law, a license to practice law is not equivalent to an authorization of employability. *See* Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 19-24, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18,

2012); Brief of Applicant at 7-18, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012).

B. Neither immigration status nor legal employability in the United States bears any direct relation to the State Bar's core function of ensuring the quality and character of attorneys.

Membership in the State Bar implies something very important, but very different from legal employability in the United States. Rather than certify employability, a Bar license signifies that an attorney possesses the competence and character required to practice California law. Neither immigration status nor legal employability in the United States bears any direct connection to these qualities.

The licensure system is designed to "ensure[] that only those qualified to practice a profession are entitled to serve the public." *In re Attorney Discipline Sys.*, 19 Cal. 4th 582, 609 (1998). As the body charged with the admission and discipline of attorneys, the State Bar can require "high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 239 (1957).

There is no reason to believe that immigration status should factor any differently in the evaluation of an attorney's competence or character

than citizenship or residency. *See* Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 29-37 (applying the rationale of *Raffaelli v. Comm. of Bar Exam'rs*, 7 Cal. 3d 288, 303 (1972), to an applicant in Mr. Garcia's shoes). Moreover, both this Court and the State Legislature agree that neither citizenship nor residency bears any rational connection to the State Bar's purpose of ensuring professional competency and good character. As previously noted, this Court in *Raffaelli* expressly rejected the notion that an attorney's citizenship or residency weighed on his or her competency to practice law. 7 Cal. 3d at 303 ("It is well established that the purpose behind occupational licensing is to protect the public from unqualified practitioners, and it seems clear that citizenship bears no relationship to one's professional or vocational competency or qualification.") (quotation marks omitted); *id.* at 302-03 (explaining that the rationale for rejecting a citizenship or residency requirement is the lack of relevance to fitness to practice law); *see also In re Griffiths*, 413 U.S. 717, 719 (1973) ("[A]dmission to the practice of law in the courts of a State 'in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State, or in any case, to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State.'") (quoting *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139 (1872)).

As explained in Section I.B., *supra*, the Legislature expressed the same conclusion in enacting Business and Professions Code Section 6060.6 to allow individuals who are ineligible for Social Security Numbers—particularly foreign law students, a group of non-citizens—to use alternate forms of identification in the licensure process. 2005 Cal. Legis. Serv. ch. 610 (A.B. 664) (West). Furthermore, the Legislature has rejected residency as an admission requirement since 1970. *Compare* 1959 Cal. Stat. 3148, *with* 1970 Cal. Stat. 513.

C. Because the State Bar has admitted non-citizens and non-residents to the practice of California law for over forty years, its licensure practices belie any implication that a licensee may be legally employed here.

The State Bar has admitted attorneys without regard to citizenship or residency for over forty years in light of *Raffaelli*, 7 Cal. 3d 288. Moreover, the State Bar has admitted candidates who do not qualify for Social Security Numbers for over six years since the effective date of Business and Professions Code Section 6060.6 on January 1, 2006. 2005 Cal. Legis. Serv. ch. 610 (A.B. 664) (West). These licensure practices belie any implied representation that a licensee may be legally employed in the United States, as an attorney or otherwise. There is no reason to find that the admission of an applicant in Mr. Garcia's position gives rise to a different implication.

D. California's licensure of non-citizens and non-residents is good policy in light of the increasingly international and transnational character of law practice and legal education.

As international trade and investment grows, law practice becomes more transnational and multi-jurisdictional. Driven by those developments, more and more law firms establish offices in multiple countries. California, with one of the largest and most open economies in the world today, plays a prominent role in those developments. Accordingly, access to foreign-educated lawyers who are familiar with and even competent to practice California law as well as non-United States law is an invaluable asset to clients in California and throughout the United States. Similarly, more and more United States-educated lawyers are stationed overseas, practicing California law and other American law far from our shores. As of 2006, the AmLaw Global 100 employed 10% of their lawyers outside the United States, and U.S. firms had an average of five foreign offices. Harvard Law School Program on the Legal Profession, *Analysis of the Legal Profession and Law Firms (as of 2007)*, http://www.law.harvard.edu/programs/plp/pages/statistics.php (last visited July 17, 2012). Data from the U.S. Commerce Department Bureau of Economic Analysis also show that, as of 2006, dollar receipts from the cross-border sale of legal services by U.S. firms were about $5 billion, roughly 1-2% of all U.S. law office revenue. *Id.*

Due in part to the increased need to be able to practice law in multiple jurisdictions, many foreigners come to the United States on student visas and attend law school in California. Many California law schools have established LL.M. programs by which foreign legal graduates become eligible to apply for admission to the bar in California. *See, e.g.*, UCLA School of Law, *LL.M. Program*, http://www.law.ucla.edu/prospective-students/admission-information/llm-program/Pages/default.aspx (last visited July 17, 2012). LL.M. students attend classes full-time for one nine-month academic year and are then eligible for admission to the State Bar. Upon graduation, a foreign student may take the California Bar Examination and, after demonstrating good character, be admitted to the State Bar and permitted to practice California law even if he or she does not intend to practice law in California or even this country. *See* Cal. State Bar R. 4.30.

Some foreign State Bar members work legally in the United States under temporary work visas. Others, either uninterested or unable to remain in the United States to work here legally, return to their home country or go elsewhere abroad to practice law outside the United States. These realities are reflected in the current residence data for California attorneys. For instance, we understand from the State Bar that there are currently about 46,260 members of the Bar with non-California addresses in the United States, and about 3,130 members who have addresses outside

the United States. Moreover, since 2006 when California Business and Professions Code Section 6060.6 came into effect, we understand that 1,373 applicants have requested an exemption from the Social Security requirement.[3]

Even though many of these foreign-born applicants cannot or will not be employed in this State, the State Bar continues to license them, and its decision to do so benefits the legal profession, our clients, and the broader economy. To preclude applicants from joining the State Bar and practicing California law from outside the United States merely because they lack the right to immigrate or be employed here would be pointless at best. In an increasingly globalized economy in which California law plays a significant role in cross-border trade and investment, rejection of these applicants would clearly be contrary to the interests of our State.

---

[3] This figure does not capture the entire population of non-citizen applicants since 2006. Some non-citizens qualify for Social Security Numbers and would therefore use these identifiers for purposes of the Bar Exam. *See, e.g.*, 20 C.F.R. § 422.104(a)(3) (providing a Social Security Number to an alien "who cannot provide evidence . . . showing lawful admission" or an alien "without authority to work in the U.S." if the applicant has "a valid nonwork reason").

IV. If licensed, what are the legal and public policy limitations, if any, on an undocumented immigrant's ability to practice law?

A. Undocumented lawyers are subject to the same generally applicable federal law limitations on their ability to be employed as other undocumented immigrants, and these limitations should be interpreted and enforced exclusively by federal authorities.

Amici agree with the State Bar and the Applicant that nothing in California law precludes the application of federal immigration law to undocumented lawyers. Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 25-29, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012); Brief of Applicant at 22-25, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012). These federal laws should, however, be interpreted and enforced exclusively by competent federal authorities. *See Arizona v. United States*, No. 11-182, 2012 WL 2368661, at *5 (U.S. June 25, 2012) (describing the importance of discretion by federal officials in the enforcement of immigration law); *id.* at *11-12 (rejecting a state's attempt to impose penalties on immigrants engaged in unauthorized employment beyond those imposed under federal law); *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407, 1412 (Cal. Ct. App. 2009) ("The federal government has the exclusive authority to enforce the civil provisions of federal immigration law relating to issues such as admission, exclusion, and deportation of aliens.").

Amici further agree with the State Bar and the Applicant that an attorney in Mr. Garcia's position could use a law license in many ways without qualifying as an "employee," notably by working as an independent contractor or rendering pro bono services. Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 25-29; Brief of Applicant at 24-25. These activities would subject neither the attorney nor his clients to penalties under the Immigration Reform and Control Act of 1986 ("IRCA"). *See* 8 U.S.C. § 1324a(a)(1).

B. Undocumented lawyers would be subject to the same rules of conduct and State Bar disciplinary procedures as any other member of the State Bar, and these are sufficient to address situations when immigration status might be relevant to an attorney's fitness to practice California law.

As applicants to or members of the State Bar, undocumented lawyers are subject to the same California Business and Professions Code, the same Rules of Professional Conduct, and the same State Bar Rules of admission and discipline as lawyers who are citizens or documented legal residents of the United States. These rules, implemented via individualized case-by-case assessment of particular matters that come to the State Bar's attention, are adequate to address the impact of any federal immigration or employment law violation on an attorney's fitness to practice law. It would be not only unnecessary, but also inconsistent with the State Bar's treatment of possible attorney violations of any other category of law, to screen all State Bar applicants and members—or even only those who are

not citizens or legal residents of the United States—on a blanket basis for actual or potential federal immigration law violations.

In this matter, the State Bar has already investigated Mr. Garcia's moral character and determined that he meets all the necessary requirements for admission, notwithstanding his undocumented status. Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 2. Amici see no basis to contest that determination because, among other things, Mr. Garcia's presence in the United States as an undocumented immigrant is not a criminal violation. *See Arizona* 2012 WL 2368661, at *13 (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984)). In addition, this Court has previously held that the possibility that an attorney might be deported does not affect his fitness to practice law.[4]

---

[4] As the State Bar points out, Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 34-36, this Court has unanimously held that the possibility that an alien may be deported is no reason to deny him a license:

> [I]t is said that an alien lawyer is subject to deportation or internment in the event that war breaks out between the United States and his native land, or in similar situations of international emergency. But the risk of such an emergency is not foreseeable; and even if it eventuates, deportation or internment is by no means an inevitable consequence. More importantly, that risk is easily outweighed by the possibility that a lawyer, even though a citizen, may be involuntarily removed from his practice by death, by serious illness or accident, by disciplinary suspension or disbarment, or by conscription. In any of the latter circumstances the client will undergo the same inconvenience of having to obtain substitute counsel.

Once admitted to the State Bar, should Mr. Garcia or any other undocumented attorney commit a violation of federal immigration or employment law bearing on fitness to practice, the existing attorney discipline mechanisms established by this Court and the State Bar are sufficient to address the situation appropriately. California law requires all attorneys "[t]o support the Constitution and laws of the United States and of this state." Cal. Bus. & Prof. Code § 6068(a). As such, a conviction of a felony or misdemeanor involving moral turpitude constitutes a cause for disbarment or suspension of an attorney's license. *Id.* § 6101(a). When such an action arises, the prosecuting agency notifies the State Bar of the pending action immediately upon finding out the defendant is an attorney. *Id.* § 6101(b). If the attorney is convicted, the clerk of court transmits the record of conviction to the State Bar, and the Bar, in turn, transmits the record to the Supreme Court if the conviction involves or potentially involves moral turpitude. *Id.* § 6101(c).

Upon learning of the conviction, the Court may suspend the attorney until the time for appeal has expired, *id.* § 6102(a); in practice, the State Bar Court typically effects these suspensions because the Supreme Court has conferred this power upon the State Bar Court by operation of California Rule of Court 9.10. Once the conviction is final, the Supreme

---

Raffaelli v. Comm. of Bar Exam'rs, 7 Cal. 3d 288, 299 (1972) (footnote omitted).

Court must disbar the attorney if the offense is a felony "and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." Cal. Bus. & Prof. Code § 6102(c).[5] The Court otherwise conducts a hearing to determine whether the offense involved moral turpitude and bases its disciplinary decision on this hearing. *Id.* § 6102(e). Even then, the offense is not tried anew; rather, "the record of conviction shall be conclusive evidence of guilt." *Id.* § 6101(a).

The State Bar Board of Trustees or any committee appointed by the board may also investigate any acts relating to the unlawful practice of law and may enjoin these acts in a civil action brought by the State Bar in Superior Court. *Id.* §§ 6030, 6044. For instance, the State Bar may investigate and hold liable individuals who advertise themselves as entitled to practice law without being authorized to practice law in the state. *Id.* § 6126.3.

The Rules of Professional Conduct of the State Bar of California apply to the activities of members both in and outside the state, unless members lawfully practicing outside the state are specifically required to

---

[5] Section 6102(d) defines a crime as a "felony" if one of the following criteria is fulfilled: (1) "[t]he judgment or conviction was entered as a felony"; or (2) "[t]he elements of the offense . . . would constitute a felony under the laws of the State of California at the time the offense was committed." Cal. Bus. & Prof. Code § 6102(d).

follow different rules of professional conduct. Cal. R. Prof. Conduct 1-100(D)(1) (current as of January 2012). Members are prohibited from, among other things, aiding any person in the unauthorized practice of law or practicing law in violation of a jurisdiction's professional regulations. *Id.* R. 1-300.[6] The Board of Trustees of the State Bar has the authority to discipline members of the State Bar for a willful breach of the Rules of Professional Conduct by reproval, public or private, or by recommending that the Supreme Court suspend the attorney from practice for a maximum of three years. Cal. Bus. & Prof. Code §§ 6077, 6078.

If any undocumented State Bar member violated federal immigration or employment law, the federal authorities could pursue an enforcement action against the attorney. The State Bar and the Court could also discipline the attorney, through suspension or disbarment if the circumstances warranted. In such a case, however, the most sensible course of proceedings would be for federal authorities to investigate the matter in the first instance and, thereafter, alert the State Bar to the violation for

---

[6] Moreover, the existing Rules of Professional Conduct are adequate to protect clients under the circumstances arising if an undocumented attorney is threatened with deportation. California Rule of Professional Conduct 3-700(A)(2) requires an attorney to take "reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client" before withdrawing from a representation. As the State Bar points out, an undocumented immigrant would be entitled to a hearing and certain other procedural safeguards that would, arguably, give him sufficient time to transfer his clients' files if he were forced to leave the country. Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 35-36.

consideration of appropriate discipline. As explained in Part V, *infra,* the State Bar is ill-suited to undertake the initial investigation of immigration law matters even in occasional individual cases, let alone on a blanket basis for all applicants to or members of the State Bar. Accordingly, it would be a wasteful use of scarce resources not to have State Bar action await the federal authorities' determinations in such matters.

V. What, if any, other public policy concerns arise with a grant of this application?

A. The State Bar should determine fitness to practice California law objectively and on an individual basis for each attorney, without resort to *per se* exclusions based on any particular personal characteristic.

Attorneys who meet all State Bar standards for licensure should be admitted to practice California law. And State Bar admission decisions should be made case-by-case for each individual applicant, based on an objective determination of that applicant's fitness to practice California law. By granting Mr. Garcia's application for admission, this Court would confirm—to the benefit of current California lawyers, aspiring future California lawyers, and their clients—that no particular personal characteristic of an individual attorney, of itself, precludes the attorney from being found fit to practice.

Currently, nothing in California law bars attorneys from State Bar membership solely on the basis of a single personal characteristic. Rather, under existing State Bar procedures, decisions about an attorney's

admission to or expulsion from the State Bar are made through the individualized, case-by-case assessment of a particular attorney's fitness to practice law—including, if applicable, assessment of whether any violations of law by the attorney affect his or her fitness to practice. *See Giovanazzi v. State Bar*, 28 Cal. 3d 465 (1980) (en banc) ("In arriving at a proper discipline consistent with the purpose of disciplinary proceedings to protect the public from attorneys unfit to practice we must balance all relevant factors including mitigating circumstances on a case-to-case basis.") (citations omitted). The mere fact that an applicant was undocumented would be insufficient to show that he violated the law, or had any propensity toward future violations, in any manner that would bear on his fitness to practice law. *See Raffaelli v. Comm. of Bar Exam'rs*, 7 Cal. 3d 288, 298 (1972) ("(A) person does not demonstrate instability, nor does he show a tendency towards crime, simply because he is not a citizen of this country.") (quoting *People v. Lovato*, 258 Cal. App. 2d 290, 296 (1968)).

This Court should neither require nor permit the State Bar to exclude from State Bar membership entire groups defined by a single personal characteristic such as immigration status. Although such an exclusion may be within the Court's power to order, and might appear easy for the State

Bar to implement,[7] it would be nonetheless poor public policy. Such a blanket exclusion would be a departure from the State Bar's established practice of individualized, case-by-case determinations of attorneys' fitness to practice. It would, moreover, disserve the interests of fairness, consistency, and rationality in connection with lawyer licensing because it would ham-handedly exclude applicants on the basis of factors divorced from their fitness to practice law. *See* Section III.B, *supra.* The wholesale rejection of all undocumented applicants would also be contrary to this State's broader public policies favoring the integration of undocumented immigrants. *See* Part II, *supra.*

B. The State Bar is ill-equipped to evaluate the immigration and employment status of all current and prospective members, let alone to determine a violation of federal law by any of them.

By confirming that immigration status, like citizenship and residency, is irrelevant to licensure of California attorneys—and therefore admitting Mr. Garcia to the State Bar—this Court would spare the State Bar

[7] For example, the State Bar might try to implement such a blanket exclusion by asking each applicant to declare his or her citizenship and immigration status, disqualifying admittedly undocumented applicants as a matter of course and, if any successful applicants were subsequently found to have answered the question inaccurately, disbarring them summarily. But any cosmetic appearance that such a process would be simple or effective is belied by the complexity of federal immigration law. For instance, if the specific requirements of 8 U.S.C. § 1621 were applied to State Bar admission, the necessary State Bar determinations would go beyond determining whether an applicant is undocumented. *See* Section V.B, *infra.*

the burden of assessing the immigration and employment status of all State Bar applicants and, potentially, all current State Bar members. The assessment of immigration status and legal employability in the United States, and the determination of actual or potential violations of federal immigration law relating to that status, are extremely fact-specific and difficult tasks that the State Bar is ill-equipped to undertake.

Indeed, if the specific requirements of 8 U.S.C. § 1621 were applied to attorney admissions, the State Bar would be required to undertake a more laborious inquiry than simply determining whether an applicant is undocumented. This complexity arises because Section 1621 exempts "qualified aliens" as defined under 8 U.S.C. § 1641; nonimmigrants as defined under the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*; and aliens who are paroled under 8 U.S.C. § 1182(d)(5) for less than one year. 8 U.S.C. § 1621(a). Each of these exceptions references a complicated statutory scheme in which the discretion of federal immigration officials plays a significant role.[8] Accordingly, even under 8 U.S.C. § 1621, the exclusion of all undocumented immigrants would be not only overly simplistic but also over-inclusive.

---

[8] For example, the definition of "qualified alien" in 8 U.S.C. § 1641 includes a host of very specific federal immigration law categories, membership in which depends on complex, fact-specific determinations about the relevant alien and his or her personal circumstances.

To determine whether an applicant could be granted a professional license under the terms of 8 U.S.C. § 1621—or even just to determine the facts related to immigration status necessary to apply California's own standards for fitness to practice law—the State Bar would be forced to interject itself into the highly complex scheme of statutes and regulations that is federal immigration law, albeit with neither the expertise nor the discretion that the federal government wields in this arena. *See* 8 U.S.C. §§ 1101, *et seq.*; *Arizona v. United States*, No. 11-182, 2012 WL 2368661, at *5 (U.S. June 25, 2012). The determinations whether and under what conditions federal immigration law allows an alien to be present, to reside, or to do work in the United States depend on a wide variety of facts and circumstances unique to the individual and his activities here, and also involve considerable discretion on the part of federal immigration officials. *See Arizona*, 2012 WL 2368661, at *5. As an initial matter, federal officials exercise discretion over whether to pursue removal or other remedies against the alien at all. *Id.* Even if removal proceedings are instituted, aliens may seek discretionary relief, such as asylum, cancellation of removal, or voluntary departure. *Id.* Furthermore, an individual alien's legal immigration status may change over time, with or without the exercise of discretion by federal immigration officials. For example, a non-citizen may gain the right to work and reside in the United States through marriage, 8 U.S.C. § 1430; through a work permit, *id.* § 1153(b)(1)-(3);

through a temporary visa obtained by a prospective U.S. employer, *id.* §§ 1101(a)(15), 1184(c); or through investment in a U.S. business, *id.* § 1153(b)(5), among other routes. Indeed, Mr. Garcia's own petition for an immigration visa, filed on November 18, 1994, was approved in January of 1995, and he will likely be entitled to adjust his status to lawful permanent residency once a visa becomes available. *See id.* § 1255(i); Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 1 & n.1, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012).

Absent a definitive determination of the relevant questions by federal authorities, the required case-specific determination of whether an individual had violated federal immigration or employment law would force the State Bar to conduct a time-intensive and complex investigation of an individual's immigration and employment statuses—in each case, both current and past statuses—and then to apply complicated immigration law rules to the relevant facts and circumstances to determine actual or potential violations of federal law by the individual based on that history. Only then could the State Bar determine whether the terms of 8 U.S.C. § 1621 would permit the individual to receive a professional license, and whether any immigration or employment violations affected the individual's fitness to practice California law.

Amici believe that, currently, the State Bar lacks the expertise and other institutional resources necessary to perform those tasks competently other than in an occasional, isolated case.

C. Requiring the State Bar to investigate all attorneys' immigration status and authorization to work in the United States would impose a potentially great burden on the State Bar with no countervailing benefit.

Forcing the State Bar to share the burden of enforcing federal immigration law would harm the ability of the State Bar to perform its core function of public protection. Particularly because immigration status bears no direct relation to the fitness of an attorney to practice law, *see* Section III.B, *supra*, and because the Bar's involvement in immigration matters would not advance federal policy in any meaningful way, *see* Section V.D, *infra*, the costs of requiring the Bar to shoulder this burden outweigh any benefits that might result. Indeed, any such benefits are likely negligible.

Amici believe that the State Bar lacks the expertise and other institutional resources necessary to perform, more than occasionally, the intensive, individualized inquiry required to determine an individual's immigration status and identify actual or potential violations of federal immigration or employment law by the individual. *See* Section V.B, *supra*.

Moreover, if the Bar were to take on the burden of evaluating attorneys with respect to these matters, the frequency and number of such determinations could be great. Conceivably, the State Bar would need to

expend resources to make such determinations not only for prospective applicants, but also for all currently active attorneys admitted to the State Bar during the four decades since *Raffaelli*, 7 Cal. 3d 288 (holding that citizenship cannot be required for admission to the State Bar). Such a task would be particularly onerous because, as we understand from the State Bar, the Bar had not collected data on member citizenship or immigration status, after the *Raffaelli* decision in 1972, until it began requesting some such information from new applicants in 2008.

To conduct such an inquiry for each of the approximately 238,296 members of the State Bar—including 46,264 members with non-California addresses and 3,134 members with non-U.S. addresses—would tax the resources and institutional capacity of the State Bar in a way that would be neither productive nor prudent. The Bar would likely need to establish special committees and dedicate staff to investigating the immigration status of all current and prospective State Bar members. Furthermore, because an individual's immigration status and employability may change over time, *see, e.g.*, 8 U.S.C. § 1255, State Bar might need to re-assess the immigration and employment status of all non-citizen State Bar members periodically and disbar those who no longer met the federally-imposed criteria for membership.

As the result of a requirement to investigate the immigration status and immigration law compliance of each member, the State Bar could be

forced to raise its member dues, an increase which might ultimately fall to the residents of the State of California in the form of higher fees for legal services. Alternatively, the Bar itself could be forced to divert resources from its core functions, again to the detriment of clients who look to the Bar for protection and attorneys who look to it for guidance.

As noted in Section IV.B, *supra*, Amici believe that it would be a far better use of scarce resources for the State Bar to address member immigration law violations, just as it addresses any other violations of law by a State Bar member, through the existing disciplinary process as such violations come to the State Bar's attention—and, preferably, after the federal authorities have made a determination in the matter.

D. Denying Mr. Garcia a license to practice California law would not advance federal immigration policy in any meaningful way.

Federal immigration policy generally does not focus on the deportation of productive, law-abiding individuals such as Mr. Garcia. On June 15, 2012, the Secretary of the Department of Homeland Security, Janet Napolitano, released a memorandum regarding the exercise of prosecutorial discretion with respect to individuals who came to the United States as children. *See* Memorandum from Janet Napolitano, Sec'y of Homeland Security, to David V. Aguilar, Acting Comm'r, U.S. Customs and Border Prot. (June 15, 2012), *available at* http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-

as-children.pdf. Under the President's new policy, the United States will not institute removal proceedings against eligible individuals who, among other things, 1) came to the United States under the age of sixteen; 2) have continuously resided in the United States for at least five years prior to June 15, 2012; 3) are currently in school or graduated from high school; 4) have not committed serious crimes; and 5) are not above age thirty. *Id.*

Furthermore, the United States Supreme Court indicated in its June 25, 2012, ruling in *Arizona v. United States* that states should not unnecessarily "harass" undocumented immigrants whom federal officials do not seek to remove. 2012 WL 2368661, at *13. Likewise, the Court recognized that states should not interfere with the "complexities involved in enforcing federal immigration law." *Id.* For California to adopt a policy of denying undocumented immigrants the ability to practice law would be precisely the type of impermissible harassment and interference the High Court forbade the States from engaging in.

Even though Mr. Garcia does not qualify for special consideration under the June 15, 2012 executive order—he is five years past the age thirty cutoff—Mr. Garcia would likely be low on the list of undocumented aliens to be deported. Because he has applied for a visa, entered the country as a minor, demonstrated his strong work ethic and resourcefulness by paying his own way through law school, and committed no felonies or other crimes that would constitute grounds for deportation, his application to adjust his

status will likely be granted and he likely will be allowed to remain in this country. Expending the State Bar's resources to check and re-check the immigration status of undocumented applicants is therefore not only wasteful from the State's perspective, but also at odds with the fundamental tenor of the federal government's position toward productive, educated individuals like Mr. Garcia.

CONCLUSION

8 U.S.C. § 1621 should not be understood or permitted to interfere with this Court's plenary power over the practice of California law. Such interference would run contrary to the Court's and the State's interests. Moreover, it would be bad policy for the Court to require the State Bar to investigate or disqualify attorney applicants on the basis of their immigration status. Given the complexity of federal immigration law determinations as well as the large number of current and prospective State Bar members whose citizenship, residency, and immigration status the State Bar does not know, the investigation would require the expenditure of a significant amount of the State Bar's limited resources. Such an investigation would nonetheless yield no benefit to the State of California because immigration status does not correlate directly with an applicant's fitness to practice law. Moreover, to the extent immigration status is relevant, the existing State Bar discipline system is sufficient to address matters on an individualized, case-by-case basis.

For the foregoing reasons, as well as those stated in the Opening Briefs of the State Bar and the Applicant, this Court should determine that immigration status is irrelevant to State Bar admission and admit the Applicant, Sergio C. Garcia, to the practice of law in California.

DATED this 17th day of July, 2012.

Respectfully submitted,

IRELL & MANELLA LLP
Carlos R. Moreno
Eric A. Webber
BJ Ard

By: 
Carlos R. Moreno
Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. Pursuant to California Rule of Court 8.520(c)(1), I hereby certify that the number of words contained in the foregoing Application for Leave To File an Amici Curiae Brief and Amici Curiae Brief, including footnotes but excluding the Table of Contents, Table of Authorities, this Certificate, and signature blocks, is 10,028 words as calculated using the word count feature of the program used to prepare this brief. I further certify that the foregoing documents are printed on recycled paper.

By: _____
BJ Ard, Esq.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On July 17, 2012, I served the foregoing document described as:

APPLICATION OF AMICI CURIAE LOS ANGELES COUNTY BAR ASSOCIATION, ALAMEDA COUNTY BAR ASSOCIATION, ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA, ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF SILICON VALLEY, BAR ASSOCIATION OF SAN FRANCISCO, BEVERLY HILLS BAR ASSOCIATION, KERN COUNTY BAR ASSOCIATION, MARIN COUNTY BAR ASSOCIATION, MEXICAN AMERICAN BAR ASSOCIATION, MULTICULTURAL BAR ALLIANCE OF SOUTHERN CALIFORNIA, RIVERSIDE COUNTY BAR ASSOCIATION, SACRAMENTO COUNTY BAR ASSOCIATION, SAN BERNARDINO COUNTY BAR ASSOCIATION, SAN DIEGO COUNTY BAR ASSOCIATION, SANTA CLARA COUNTY BAR ASSOCIATION, AND SOUTH ASIAN BAR ASSOCIATION OF NORTHERN CALIFORNIA FOR LEAVE TO FILE AN AMICI CURIAE BRIEF; PROPOSED BRIEF OF AMICI CURIAE SUPPORTING THE APPLICANT

on each interested party, as stated on the attached service list.

☒ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by FedEx, an express service carrier which provides overnight delivery, as follows. I placed a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed, as stated on the attached service list, with fees for overnight delivery paid or provided for.

- ☒ (BOX DEPOSIT) I deposited such envelopes or packages in a box or other facility regularly maintained by the express service carrier.
- ☐ (CARRIER PICK-UP) I delivered such envelopes or packages to an authorized carrier or driver authorized by the express service carrier to receive documents.

Executed on July 17, 2012, at Los Angeles, California.

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

Denise S. Balugo
(Type or print name)

Denise S. Balugo
(Signature)

SERVICE LIST

Attorneys for Sergio C. Garcia

Jerome Fishkin
Fishkin and Slatter LLP
1575 Treat Boulevard, Suite 215
Walnut Creek, CA 94598

Phone: 925.944.5600

Attorneys for Committee of Bar Examiners of the State Bar of California

Joseph Starr Babcock
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Phone: 415.538.2070

Rachel Simone Grunberg
Office of the General Counsel,
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Phone: 415.538.2070

Robert E. Palmer
Gibson Dunn and Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612-4412

Phone: 949.451.3800

Mark A. Perry
Gibson Dunn and Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Phone: 202.955.8500

Donald K. Tamaki
Minami Tamaki LLP
360 Post Street, 8 Floor
San Francisco, CA 94108-4903

Phone: 415.788.9000