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Bar Misc. 4186
S202512

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

BRIEF OF AMICUS CURIAE OF THE MEXICAN AMERICAN BAR ASSOCIATION OF LOS ANGELES COUNTY, SUPPORTING THE APPLICANT

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of Los Angeles County
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APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to this Court's May 16, 2012 Order To Show Cause in *In re Sergio C. Garcia on Admission* (Bar Misc. 4186, S202512) and Rule 8.520(f) of the California Rules of Court, the Mexican American Bar Association of Los Angeles County ("Amicus") respectfully requests leave to file the attached brief, in support of the Applicant. This application is timely made based on the briefing schedule provided in the May 16, 2012 Order.

Interests of Amicus Curiae

Amicus is a voluntary California bar association whose members include hundreds of attorneys regulated by this Court and the State Bar of California (the "State Bar"). Through involvement with the State Bar and payment of State Bar dues, Amicus' attorney members allow the State Bar to carry out its functions, which include, among other things, attorney admissions. Amicus' attorney members have a vested interest in seeing that the State Bar fulfills one of its key missions, which is ensuring that the public is protected and served by attorneys and other legal services providers that meet the highest standards of competence and ethics. Such standards and competence have nothing to do with a person's immigration status.

Because Amicus represents a significant number of the Latino members of the State Bar, including, perhaps, some that may be undocumented and may have a similar experience to that of Sergio Garcia, Amicus offers a unique perspective on the harms resulting from an attorney admissions policy that would exclude applicants on the basis of immigration status.

The Mexican American Bar Association of Los Angeles County ("MABA"), incorporated officially in 1971 but informally in existence since the late 1950's, 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. MABA is the largest Latino voluntary local bar association in the State of California. For decades, it has represented the interests of the Latino community, promoted the administration of justice, and maintained the honor and dignity of the legal profession. MABA is committed to the advancement of Latinos in the legal profession, regardless of immigration status.

Response of Amicus

Amicus is familiar with the issues in this case and supports the position and arguments of the State Bar and the Applicant, Sergio C. Garcia. It also supports the position and arguments of the Los Angeles County Bar Association's Brief of Amici Curiae. Amicus' brief will

highlight selected arguments made in the aforementioned briefs. As explained below, Amicus asserts that the rejection of Sergio Garcia's application on the basis of immigration status runs contrary to the interests and public policy of the State of California and our federal government.

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

DATED this 18th day of July, 2012.

Respectfully submitted,

MEXICAN AMERICAN BAR ASSOCIATION OF LOS ANGELES COUNTY

Rigoberto J. Arrechiga
Elizabeth P. Uribe
Juan A. Ramos

By: Juan Ramos / by permission MAM
Juan Ramos

Attorneys for Amicus Curiae

STATEMENTS OF INTEREST OF THE AMICUS 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 Amicus' interest in this matter.

INTRODUCTION

Admitting Sergio C. Garcia to the State Bar is an issue that is important to Amicus and that, Amicus believes, ought to be important to everyone in the State of California. The issue is not about an "illegal" immigrant that broke the law to take advantage of this State. It is about the essence of the American Dream as fulfilled in California, how this State treats model individuals, whether our State penalizes innocent people, and whether our State's goal is to create a marginalized segment of society.

Sergio Garcia is an undocumented immigrant from Mexico whose parents brought him to the United States as a child. *See* Brief of Applicant at 5, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012). Like him, there are 1 million undocumented children in this country that were brought here by their parents when they were young. *See* Jeffrey Passel & D'Vera Cohn, Unauthorized Immigrant Population: National and State Trends 2010 (Feb. 2011), Pew Hispanic Center, http://www.pewhispanic.org/files/reports/133.pdf . Sergio Garcia

eventually graduated from high school, attended college, went to law school and passed the California bar exam. He now is at the doorstep to becoming a lawyer. He is hard-working, self-sufficient, contributes to this country, has no criminal record and has made every effort to comply with the law.

Amicus submits that admitting model immigrants, such as Sergio Garcia, to practice law in California is consistent with current state and federal public policy.

Under federal law, undocumented children have a right to free public education through high school. Recent federal policy has tried to address removal issues faced by undocumented adults who were brought to this country when they were young. Sergio Garcia is a model person who, under such recent federal policy, would not likely be removed. He is the type of undocumented immigrant that will contribute to this country and make it better, and that should remain in this country.

In California, recent legislation clearly supports model immigrants, such as Sergio Garcia. This State passed legislation which provides eligible qualified undocumented immigrant students who graduate from a state high school, and demonstrate both merit and need, access to private and public financial aid for state colleges and universities. Prior legislation had extended the in-state tuition entitlement to undocumented immigrants.

These state laws will ensure that all deserving undocumented students who have come here as children get the opportunity to pursue higher education and contribute to society to the fullest. Thus, an immigration status test that would prevent undocumented immigrants from State Bar admission would be counter to these recent California laws.

To the extent that, under federal law, undocumented immigrant children are guaranteed a free K-12 public education and now, in California, post K-12 undocumented students are eligible for public funds to pursue a college degree under the California Dream Act, then admission into the State Bar is the logical, inevitable next step for undocumented individuals who go on to law school and who pass the Bar Exam. Denying such model individuals, who have worked hard and excelled for years to complete all requisite steps, the license to practice law amounts to nullifying their efforts and model "citizenship" through the years. It also nullifies the investment made by the State in providing them public education through the years. Such denial of the American Dream at the door step, to individuals that deserve to remain here and have proven themselves, will have negative ripple effects to the undocumented high school graduates in this State.

What has not changed and cannot change in this country – and what California must serve as the model for – is providing a person the

opportunity to make this country better and to contribute. This 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. Refusing undocumented immigrants' admission to the State Bar is at odds with federal and California public policy.

RESPONSES TO THE COURT'S INQUIRIES

In its May 16, 2012 Order To Show Cause in In re Sergio C. Garcia on Admission (Bar Misc. 4186, S202512), the California Supreme Court listed five issues as among the issues that should be briefed. In response to the Court's Order, Amicus hereby respectfully submits the following response, which focuses on the last issue listed: What, if any, other public policy concerns arise with a grant of this application?

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

A. Undocumented immigrants are not all the same, nor are they per se criminals

Sergio Garcia is an example of a hard-working, self-sufficient immigrant that contributes to this country. He has no criminal record and has made every effort to comply with the law. He has gone to school and paid his own way through college and law school. He pays taxes and serves his community. *See* Brief of Applicant at 5, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012). Sergio

Garcia has never applied for or received public benefits and has relied on his own capabilities and resources. *See* Brief of Applicant at 17, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012).

Sergio Garcia's father filed a petition for an immigrant visa for his son in 1994. It was approved in 1995, but Sergio Garcia has been waiting, in an undocumented status, for the past 17 years for the visa to become available. *See* Brief of Comm. of Bar Exam'rs of the State Bar of Cal. at 1, In re Sergio C. Garcia on Admission, S202512 (Cal. June 18, 2012).

Sergio Garcia's undocumented status does not make him a criminal. He committed no crime when his parents brought him to this country as a minor. (See *Plyler v Doe* (1982) 457 U.S. 202, 220 [102 S.Ct. 2382, 72 L.Ed.2d 786], noting that, "At the least, those who elect to enter our territory by stealth and in violation of our law should be prepared to bear the consequences, including, but not limited to, deportation. But the children of those illegal entrants are not comparably situated.")

B. Barring undocumented immigrants from State Bar admission is at odds with federal public policy on undocumented immigrant children.

1. Our nation's Supreme Court has ruled that undocumented immigrant children have a right to a free public K-12 education.

In *Plyler*, our nation's Supreme Court noted that the law denying funding for public education to undocumented children was "directed against children, and impose[d] its discriminatory burden on the basis of a legal characteristic over which children can have little control." (*Plyler, supra,* 457 U.S. p. at 220). Sergio Garcia had no control over his immigrant status resulting from his parents' decision to come to this country.

Though applicable to free public K-12 education for undocumented children, *Plyler* has relevance to what happens to these children after they graduate high school and pursue college and graduate degrees, including those leading to professional licenses. While the Court in *Plyler* warned about the danger of creating and perpetuating a "subclass of illiterates" if undocumented children were denied an education (*Plyler, supra,* 457 U.S. p. at 230), the risk in denying a law license to these children when they become adults is creating a subclass nonetheless. The Court in *Plyler* also noted that denying undocumented immigrant students a basic education "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status" and "den[ies] them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." (*Id.* at 223). Sergio Garcia, though

no longer a child, is not accountable for his undocumented status. He was brought to this country by his parents. Denying him and other outstanding undocumented people that grew up in this country the fruits of their education amounts to imposing a lifetime of hardship on a discrete class of now-adults not accountable for their disabling status, namely, their immigration status. It also inhibits their ability to fully engage within our civic institutions and may limit their contributions to our country. It prevents our country from benefitting from their contributions, as well. In the end, we would be denying our State and this country the returns on their investment in providing these model undocumented immigrants an education.

2. June 2011 ICE Memorandum indicates that model people such as Sergio Garcia are not targeted for removal

Sergio Garcia is a model person, as discussed in Section A, *infra*. Under current federal policy, he would not unlikely to be targeted for removal.

On June 17, 2011, the Director of U.S. Immigration and U.S. Customs Enforcement ("ICE"), John Morton, released a memorandum noting that ICE employees have prosecutorial discretion when it comes to immigration enforcement ("ICE Memorandum"). The ICE Memorandum listed factors that ICE may

consider when deciding whether or not to pursue a case. Among the factors to consider when exercising prosecutorial discretions were the following: the person's length of presence in the United States, with particular consideration given to presence while in lawful status; the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child; the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States; the person's criminal history, including arrests, prior convictions, or outstanding arrest warrants; whether the person poses a national security or public safety concern; the person's ties and contributions to the community, including family relationships; whether the person has a U.S. citizen or permanent resident spouse, child, or parent; whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident. *See* John Morton, Director of U.S. Immigration and Customs Enforcement, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

(June 17, 2011), available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf. In particular, two of the positive factors that should prompt particular care and consideration include long-time lawful permanent residency and presence in the United States since childhood. *Id.* Sergio Garcia's life story is an example of these two positive factors and the many other factors listed above that would keep our federal government from pursuing him for removal.

3. June 2012 DHS Memorandum allows certain model undocumented immigrants to temporarily remain in this country.

On June 15, 2012, the Secretary of the Department of Homeland Security ("DHS"), Janet Napolitano, released a memorandum regarding the exercise of prosecutorial discretion with respect to individuals who came to the United States as children ("DHS Memorandum"). Pursuant to the DHS Memorandum, effective immediately, certain undocumented people who were brought to this country as young children and meet several key criteria will be considered for relief from removal from the country or from entering into removal proceedings. These individuals will be eligible to receive deferred action for a period of two years, subject to renewal, and will be eligible to apply for work

authorization. *See* Janet Napolitano, Sec'y of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), available at http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf. 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.* While Sergio Garcia came to this country at age seventeen and is now over thirty, and may thus not be considered for relief under the DHS Memorandum, Secretary Napolitano's statements indicate that stories such as Sergio Garcia's are behind the rationale for such federal executive pronouncements: "By this memorandum, I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. As a general matter, these individuals lacked the intent to violate the law..." *Id.*

4. Our nation's Supreme Court has also recently ruled that states should not unnecessarily "harass" undocumented immigrants whom federal officials do not seek to remove.

Our nation's Supreme Court ruled that states should not unnecessarily "harass" undocumented immigrants whom federal officials do not seek to remove. *See Arizona v. United States*, No. 11-182, 2012 WL 2368661, at 13 (U.S. June 25, 2012). If California bars Sergio Garcia and others similarly situated from gaining admission to the State Bar based on immigration status, this State would be engaging in the sort of harassment that our nation's Supreme Court has just forbidden.

C. Barring undocumented immigrants from State Bar admission is at odds with the California Legislature's intent to provide exemplary undocumented immigrants public benefits in higher education.

California's State Legislature has extended in-state tuition entitlement to certain undocumented immigrants and enacted the California DREAM Act, which provides qualified undocumented immigrant students who demonstrate both merit and need, access to private and public financial aid for state colleges and universities.

1. Undocumented immigrant students may qualify for in-state college tuition in California.

In 2001, the California Legislature extended in-state tuition to certain undocumented students. Specifically, students who have attended California high schools for at least three years and graduate – regardless of immigration status – only have to pay resident tuition rates in our State's public institutions of higher learning. *See* Cal. Educ. C section 68130.5. This law was upheld by this Court unanimously. *See Martinez v. The Regents of the University of California*, 50 Cal. 4th 1277 (2010).

2. Qualified undocumented immigrant students have access to private and public financial aid for state colleges and universities.

Qualified undocumented immigrant students who graduate from a California high school, and demonstrate both merit and need, have access to private and public financial aid for state colleges and universities.

In June 2011, the State's Legislature enacted the first half of the California Dream Act, which allowed qualified undocumented immigrants to receive privately-funded scholarships for the State's public colleges and universities. *See* Cal. Educ. C section 66021.7. In October 2011, the Legislature enacted the second half of the California Dream Act, allowing these students to also apply for state-funded financial aid. *See* Cal. Educ. C section 66021.7.

The California Dream Act will ensure that all deserving students – regardless of immigration status – get the opportunity to pursue higher education and contribute to society to the fullest. Like the students covered under the California Dream Act, Sergio Garcia has been here since he was a child and attended college here. He strives to be a productive member of the State. An immigration status test for attorney licensure would be directly at odds with those California legislative actions.

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CONCLUSION

For all the foregoing reasons, this Court should admit Sergio C. Garcia to practice law in California.

While other states may be putting barriers to the American Dream of immigrant children who through no fault of their own came to this country, California must be at the forefront in ensuring that undocumented graduates fulfill their American Dream and are productive members of society. This State's interests are best served by an attorney admissions policy that does not exclude applicants on the basis of immigration status.

DATED this 18th day of July, 2012.

Respectfully submitted,

MEXICAN AMERICAN BAR ASSOCIATION OF LOS ANGELES COUNTY

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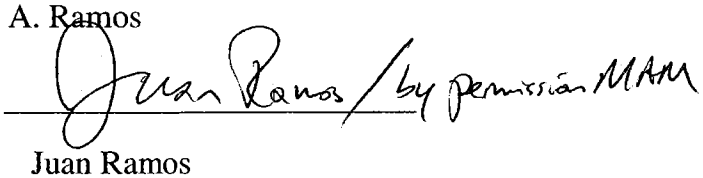
By: 
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CERTIFICATION OF WORD COUNT

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the number of words contained in this BRIEF OF AMICUS CURIAE OF THE MEXICAN AMERICAN BAR ASSOCIATION OF LOS ANGELES COUNTY, SUPPORTING THE APPLICANT, excluding the Table of Contents, Table of Authorities, and this Certificate, is 3,226 words, according to the word count feature of the program used to prepare this brief.

DATED this 18th day of July, 2012.

Juan Ramos /by permission MAM

Juan Ramos, Esq.

CERTIFICATE OF SERVICE

I, Mario A. Moya, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 899 Ellis Street, San Francisco, California 94109, in said County and State. On June 18, 2012, I served the following document:

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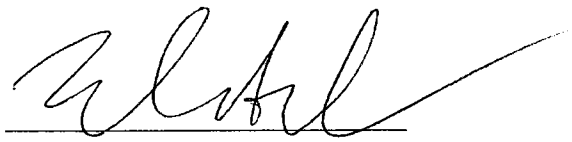
BY US MAIL: I placed a true copy in a sealed envelope, with postage thereon fully paid, in the United States mail at San Francisco, California addressed as set forth above.

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

Executed on June 18, 2012.



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