

SUPREME COURT COPY

In the Supreme Court of the State of California

SUPREME COURT
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In re **SERGIO C. GARCIA**
on Admission.

Case No. S202512

Frank A. McGuire Clerk

Deputy

COPY

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**INITIAL SUPPLEMENTAL BRIEF OF AMICUS CURIAE
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IN SUPPORT OF PETITIONER**

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INTRODUCTION

In response to this Court's order of October 16, 2013, and pursuant to California Rules of Court, rule 8.520, Attorney General Kamala D. Harris submits this supplemental brief as amicus curiae in support of Sergio C. Garcia's admission to practice law. The enactment of Assembly Bill 1024 (2013-2014 Reg. Sess.) (AB 1024) has removed any legal impediment to Mr. Garcia's admission to the practice of law in California. Through AB 1024, the Legislature has expressly enlarged the power of this Court to admit attorney applicants to the State Bar of California despite the applicant's lack of lawful immigration status. The passage of the new statute fully resolves the concerns raised by the federal government in opposition to admitting Mr. Garcia to the State Bar.

By its terms 8 U.S.C. § 1621(d) contemplates that a state may authorize the licensure of undocumented immigrants by passing legislation. AB 1024 unambiguously expands the scope of the bar license to include Garcia and others who similarly lack lawful immigration status. The federal government agrees, and acknowledges that AB 1024 permits the licensure of undocumented immigrants. Once AB 1024 goes into effect in January 2014, there will no longer be any legal barrier to the admission of Mr. Garcia to the Bar, and in the exercise of its discretion the Court should admit him.

ARGUMENT

I. AB 1024 REMOVES ANY FEDERAL LAW IMPEDIMENT TO MR. GARCIA'S ADMISSION TO THE BAR

Prior to the passage of AB 1024, the United States argued that federal law prohibited Mr. Garcia's admission to the Bar due only to his lack of

immigration status. Following the enactment of AB 1024, that argument is no longer valid. The express terms of the applicable federal statute permits licensure of individuals without lawful immigration status upon the enactment of an authorizing statute. AB 1024 is such an authorizing statute.

A. Federal Law Allows a State to Pass an Express Exception to the General Federal Ban on Providing State Benefits to Undocumented Immigrants

Section 1621 of title 8 of the United States Code provides a general rule that undocumented immigrants are not eligible for “any State or local public benefit (as defined in subsection (c) of this section).” Subsection (c) in turn defines a public benefit as “any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.” Subdivision (d), however, explicitly provides that a state can provide such benefits to undocumented immigrants if appropriate legislation is enacted. Specifically, subdivision (d) provides:

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

(8 U.S.C. § 1621(d).)

As this Court has noted, subdivision (d) is “a description of the circumstances under which a state *may* make” an undocumented immigrant

‘eligible’ for those public benefits.” (*Martinez v. Regents of the University of California* (2010) 50 Cal.4th 1277, 1294.)

In these proceedings, the United States previously argued that admission to the Bar is a public benefit, and therefore that a license to practice law could not be issued to Mr. Garcia in the absence of a legislative enactment authorizing its issuance. (Amicus Br. of United States at p. 6 [undocumented immigrants “ineligible for [law] licenses” absent passage of statute pursuant to 8 U.S.C. § 1621(d)].) At the time that brief was filed, California had no statutory provision expressly authorizing issuance of a law license to an undocumented immigrant. But the United States made it plain in its briefing (and also at oral argument) that California was free to pass such a statute: “Congress has accommodated state interests by allowing States to enact measures that would provide benefits to unlawfully present aliens, *see* 8 U.S.C. §1621(d), *and the State could do so here.*” (Amicus Br. of United States at p. 12, emphasis supplied.)

B. AB 1024 Affirmatively Provides for Eligibility for Admission to the California Bar for Qualified Undocumented Immigrants

The passage of AB 1024 following oral argument dramatically alters the legal landscape of this case. AB 1024 was passed on September 26, 2013, and was signed by the Governor and chaptered by the Secretary of State on October 5, 2013. (Stats. 2013, ch. 573.) AB 1024 amends the Business and Professions Code and expressly provides for the issuance of a law license to an applicant who lacks lawful immigration status:

SECTION 1. Section 6064 of the Business and Professions Code is amended to read:

6064. (a) Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit the applicant as an

attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.

(b) Upon certification by the examining committee that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.

(Stats. 2013, ch. 573, § 1, emphasis supplied.) AB 1024 will become effective on January 1, 2014. (Cal. Const., art. IV, § 8, subd. (c)(1) [effective date of new statutes is January 1, following 90 days after enactment].)

AB 1024 plainly states that this Court is authorized to admit “an applicant who is not lawfully present in the United States” to the Bar if the applicant has otherwise fulfilled the requirements for admission. AB 1024 thus “affirmatively provides” for an undocumented immigrant’s admission, and therefore falls squarely within the requirements of 8 U.S.C. § 1621(d). (See *Martinez v. Regents of the University of California*, *supra*, 50 Cal.4th at p. 1295 [statute extending benefits to “a person without lawful immigration status” stated qualified exception under section 1621(d)].) Indeed, by letter brief dated November 12, 2013 the federal government has recognized that AB 1024 removes any federal law impediment to Mr. Garcia’s licensure: “Accordingly, starting on January 1, 2014—the effective date of AB 1024—the issuance of a law license in this case will no longer be precluded by 8 U.S.C. § 1621.” (Supp. Amicus Br. of United States at p. 2.)

There is no dispute that Mr. Garcia has fulfilled the requirements for admission to the Bar. He passed the formidable California Bar examination. His moral character was examined and confirmed, and the Committee of Bar Examiners has recommended that he be admitted to practice. Accordingly, because the Legislature has utilized the provisions of section 1621(d) and authorized this Court to issue law licenses to qualified applicants despite their immigration status issues, and because Mr. Garcia is clearly a qualified applicant, there is no longer any federal law impediment to the admission of Mr. Garcia to the California Bar.¹

¹ In its supplemental amicus brief, the federal government reiterated its prior argument that “employment authorization” of an undocumented immigrant is “distinct” from the question of granting a law license. (Supp. Amicus Br. of United States at p. 2.) As stated in our prior amicus brief, we also believe that “[i]ssues of licensure are separate and independent from issues of employment.” (Amicus Br. of Cal. Attorney General at p. 22.) Issues related to the employment of undocumented immigrants are not before the Court in this proceeding, as the scope of this case is limited to licensure.

CONCLUSION

After years of hard work and perseverance, Sergio Garcia has earned this Court's full consideration of his application for admission to the legal profession. Any obstacle to his admission formerly presented by federal law has been removed by the California Legislature through the passage of AB 1024. For all of the reasons set forth in the Attorney General's initial amicus brief, when AB 1024 becomes effective on January 1, 2014, this Court can and should follow the recommendation of the Committee of Bar Examiners and admit Sergio Garcia to the California Bar.

Dated: November 15, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached INITIAL SUPPLEMENTAL BRIEF OF AMICUS CURIAE CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS IN SUPPORT OF PETITIONER uses a 13 point Times New Roman font and contains 1,424 words.

Dated: November 15, 2013

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A handwritten signature in black ink, appearing to read 'R.C. Moody', with a long horizontal flourish extending to the right.

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Garcia on Admission*

No.: **S202512**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 15, 2013, I served the attached **INITIAL SUPPLEMENTAL BRIEF OF AMICUS CURIAE CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS IN SUPPORT OF PETITIONER** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 15, 2013, at San Francisco, California.

Susan Chiang
Declarant


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