

SUPREME COURT COPY

Bar Misc. 4186
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SUPREME COURT
FILED

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

IN RE SERGIO C. GARCIA ON ADMISSION

**SUPPLEMENTAL *AMICI CURIAE* BRIEF OF
AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN
CIVIL LIBERTIES UNION OF SAN DIEGO AND IMPERIAL
COUNTIES, AMERICAN CIVIL LIBERTIES UNION OF
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PALO ALTO, DOLORES STREET COMMUNITY SERVICES,
MEXICAN AMERICAN BAR ASSOCIATION OF LOS ANGELES
COUNTY, NATIONAL IMMIGRATION LAW CENTER, AND
CESAR VARGAS**

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TABLE OF CONTENTS

ARGUMENT.....	1
I. There Are No Legal Barriers to this Court’s Ability to Grant Law Licenses to Eligible Applicants, Regardless of their Immigration Status.....	1
A. California Has Affirmatively Provided For Individuals Who Are Not Lawfully Present in the United States to be Admitted to the Bar, as Authorized by 8 U.S.C. § 1621(d).....	1
II. AB 1024 Obviates the Need to Address Any Other Issues of Federal Law.....	3
CONCLUSION.....	4

TABLE OF AUTHORITIES

Federal Cases

<i>Hoover v. Ronwin</i> (1984) 466 U.S. 558	3
<i>Leis v. Flynt</i> (1979) 439 U.S. 438	3

State Cases

<i>Martinez v. The Regents of the Univ. of Cal.</i> (2010) 50 Cal.4th 1277	2, 4
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Federal Statutes

8 U.S.C. § 1621	1, 2, 3
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State Statutes

AB 1024 (2013-2014 Reg. Sess.)	1, 2, 3
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INTRODUCTION

On October 16, 2013, this Court vacated the previous submission of this matter in light of the passage of AB 1024 (2013-2014 Reg. Sess.) by the California Legislature and approval of that bill by the Governor. The Court further requested that the Parties file supplemental briefs addressing the effect of the recently enacted legislation on this proceeding and permitted *amici curiae* to file supplemental briefing as well.

Here, *amici* write to make two key points regarding the impact of AB 1024 on this case:

(1) AB 1024 removes any legal barriers to this Court's ability to admit Sergio Garcia to the State Bar of California, as the Legislature has now affirmatively provided that individuals who are not lawfully present in the United States may be admitted to the practice of law, as authorized by 8 U.S.C. § 1621(d).

(2) As a result, this Court need not address any other issues of federal law to resolve this case, including whether 8 U.S.C. § 1621(c) applies to admission to the practice of law.

ARGUMENT

- I. **There Are No Legal Barriers to this Court's Ability to Grant Law Licenses to Eligible Applicants, Regardless of their Immigration Status.**
 - A. **California Has Affirmatively Provided For Individuals Who Are Not Lawfully Present in the United States to be Admitted to the Bar, as Authorized by 8 U.S.C. § 1621(d).**

The California Legislature, by the passage of AB 1024 (2013-2014 Reg. Sess.), has provided explicit authorization for undocumented immigrants to be admitted to the California bar. As a result, there are no

legal barriers to this Court's ability to grant law licenses to eligible applicants such as Mr. Garcia, regardless of their immigration status.

Congress, through 8 U.S.C. § 1621,¹ has placed limitations on the states' ability to award certain "public benefits" to undocumented immigrants, including "professional license . . . provided by an agency of a State or local government or by appropriated funds of a State or local government." (8 U.S.C. § 1621(c)(1)(A)). However, Congress included a savings clause that allows the states to provide these public benefits to undocumented immigrants so long as they "enact[] a State law after August 22, 1996, which affirmatively provides for such eligibility." (8 U.S.C. § 1621(d)).

Even assuming that law licenses are professional licenses as defined by 8 U.S.C. § 1621(c)(1), AB 1024 constitutes an affirmative provision that fully satisfies the requirements of § 1621(d). AB 1024, passed in 2013, modifies California Business and Professional Code § 6064 to add subsection (b), which states that:

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.

Because AB 1024 affirmatively and expressly provides that undocumented immigrants are eligible for law licenses, it satisfies the requirements of 8 U.S.C. § 1621(d). (See *Martinez v. The Regents of the Univ. of Cal.* (2010) 50 Cal.4th 1277, 1296 [holding California Education Code § 68130.5

¹ Section 1621 was passed as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) Pub. L. No. 104-193 (Aug. 22, 1996) 110 Stat. 2105. No other provision of federal law potentially prohibits undocumented immigrants from becoming members of the California bar.

satisfied 8 U.S.C. § 1621(d) because it included an “express[] state[ment]” that the statute’s in-state tuition rules “applies to undocumented aliens, rather than conferring a benefit generally without specifying that its beneficiaries may include undocumented aliens.”]). Accordingly, 8 U.S.C. § 1621 does not bar this Court from admitting individuals to the Bar based on their lack of lawful presence.

In addition, there are no other legal prohibitions on undocumented immigrants’ eligibility for membership in the California bar. No other federal law presents any limitation or preemption of California’s power to regulate membership to its bar. (Cf. *Hoover v. Ronwin* (1984) 466 U.S. 558, 569 n.18 [admission and discipline of attorneys is a “core of the State’s power to protect the public.”]; (*Leis v. Flynt* (1979) 439 U.S. 438, 442 [noting that “the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia” and that “[t]he States prescribe the qualifications for admission to practice”])). Furthermore, since California law now expressly provides that undocumented immigrants can become members of the bar, state law imposes no barriers to their admission.

II. AB 1024 Obviates the Need to Address Any Other Issues of Federal Law.

Because the California Legislature unequivocally authorized undocumented immigrants like Mr. Garcia to become members of the California Bar, this Court need not, and should not, address any other issues of federal law, including the issue of whether 8 U.S.C. § 1621(c) applies to admission to the practice of law. Regardless of whether membership in the Bar is a “professional license” for purposes of 8 U.S.C. § 1621(c)(1), California’s passage of AB 1024 has affirmatively provided for undocumented immigrants to become members of the Bar, satisfying 8 U.S.C. § 1621(d)’s savings clause. As such, whether California Bar

membership is a professional license as defined by 8 U.S.C. § 1621(c)(1)(A) is immaterial to the determination of whether this Court can admit Mr. Garcia to the Bar. (See *Martinez*, 50 Cal.4th at 1294-96 [holding that California’s in-state tuition law satisfied 8 U.S.C. § 1621(d) without addressing the issue of whether in-state tuition was a “benefit” within the meaning of 8 U.S.C. § 1621(c)(1)]).

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the pending motion for the admission of Sergio C. Garcia to the practice of law in California be granted.

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Dated: November 15, 2013

Respectfully submitted,



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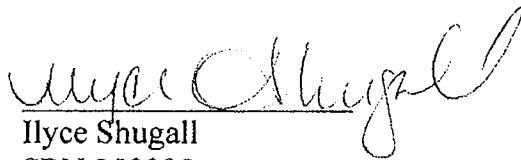
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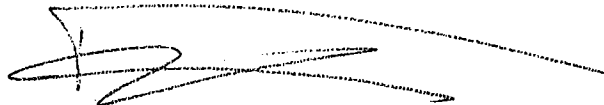
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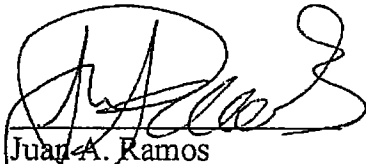


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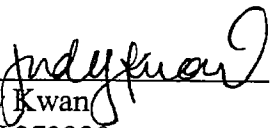
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**CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULE OF
COURT 8.204(c)(1)**

I certify that this brief complies with the type-volume limitation of California Rule of Court 8.204(c)(1). This brief is printed in 13 point Times New Roman font, and, exclusive of the portions exempted by Rule 8.204(c)(3) contains 954 words.

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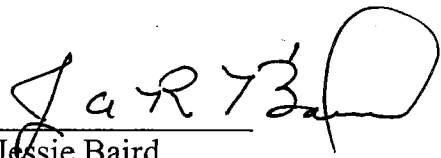
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