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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

Frank A. McGuire Clerk  
Deputy

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**IN RE SERGIO C. GARCIA ON ADMISSION**

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

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**SUPPLEMENTAL REPLY  
AMICUS CURIAE BRIEF  
IN OPPOSITION TO  
ADMISSION**

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## I. INTRODUCTION

### A. Background of Amicus

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

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

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

This supplemental reply brief is filed in the interests of protection of the public and the integrity of the courts and legal profession. The primary purpose is to highlight matters which otherwise might result in invited errors.

**B. Procedural History**

On May 16, 2012, the Court issued an Order to Show Cause to the Committee of Bar Examiners (“Committee”) to show cause why its pending motion for admission to the State Bar of an illegal immigrant, Sergio C. Garcia (“Applicant”), should be granted. The issues were fully briefed as of September 14, 2012. This included 17 amicus briefs, including a brief from the California Attorney General supporting admission and a brief from the Attorney General of the United States (“USDOJ”) strongly opposing admission. Only two other amicus briefs opposed admission, including the brief of this amicus.

Oral argument was heard on September 4, 2013, and the matter was taken under submission. The overwhelming consensus was that admission would be denied by a vote of 7-0. The alarmed California legislature swiftly passed AB 1024 on September 12, 2013, adding section 6064(b) to the Business and Professions Code, permitting the practice of law by persons not legally present in the United States. The bill was signed into law on October 5, 2013, effective January 1, 2014.

On October 16, 2013, the Court issued an order vacating submission and requesting supplemental briefs from the parties and interested amici addressing the effects of the new legislation on this proceeding. Eight supplemental briefs were filed by November 20, 2013. Supplemental reply briefs may be filed by December 2, 2013.

All briefs now filed in this matter concur that 8 U.S.C. § 1621(c) does not prevent the admission of Applicant. Five initial supplemental briefs contend that all issues are now resolved in Applicant's favor.



**C. Overview of Supplemental Reply Amicus Brief**

First, the initial supplemental brief of the California Latino Legislative Caucus is critiqued because it has six serious errors. This addresses most of the errors set forth in all briefs supporting admission, including those issues not yet resolved.

Second, a list is presented of four issues still warranting a finding by the Court. This includes two new contentions that (1) attorneys unlawfully present cannot meet their statutory duty under Bus. & Prof. Code §§ 6147-6148 to make fee contracts, since agreements for the services of unauthorized aliens are illegal under federal law, and (2) advising clients to enter into such illegal contracts is an ethical violation under Rule 3-210 of the Rules of Professional Conduct.

Third, a list of legal conclusions, previously supported properly by statutes and case law, rather than political arguments, is presented.

**II. SERIOUS ERRONEOUS STATEMENTS IN THE  
INITIAL SUPPLEMENTAL BRIEF OF THE  
CALIFORNIA LATINO LEGISLATIVE CAUCUS**

**A. Attorneys Not Lawfully Present in the United States  
Can Not be Paid for Legal Services.**

The initial supplemental brief of the California Latino Legislative Caucus (“CLLC”), at page 3, erroneously states, “Absent an explicit employer-employee relationship Mr. Garcia would be able to have clients, as any other person admitted ‘to practice law ... as an attorney at law in all the courts of this state.’ ”

No authority is cited for this statement. It clearly overlooks the hiring restrictions of 8 U.S.C. § 1324a(a)(1)(A), which broadly prohibit “a person or other entity” from hiring “an unauthorized alien.” An “employer” is only one of many “persons” prohibited.

The USDOJ’s initial amicus brief, at page 14, states strongly, “the United States ... in particular disagrees with the assertion that Mr. Garcia can work legally as an independent contractor or solo practitioner without federal work authorization.”

The California Attorney General's initial amicus brief, at page 24, agrees with the position of USDOJ: "The [IRCA] makes it unlawful for a person or entity to knowingly hire an unauthorized alien. (8 U.S.C. § 1324a (a)(1)(A).)" Also, at page 2, "federal law does not currently permit an employer to hire Garcia."

**B. The Passage of AB 1024 Does Not Answer All Issues in the Order to Show Cause.**

CLLC's initial supplemental brief, at page 7, has a heading stating, "The passage of AB 1024 answers all the issues set forth in this Court's initial Order to Show Cause ... ."

This position is supported by a statement on page 8 that, "The rights of an applicant admitted under 6064(b) are *exactly the same* as an applicant admitted under 6064(a)." (emphasis in original.) This is followed by a statement that California law does not permit restrictions on the practice of law as part of the admission to practice, i.e., that this Court may not impose restrictions on admitted lawyers just because they are unlawfully present. At page 9, CLLC shows agreement with this amicus that licensing explicitly represents legal employability.

This amicus agrees that this Court cannot and should not issue licenses stating restrictions. That makes two reasons that admission should be denied, so that clients will not be misled about the federal prohibition against hiring attorneys unlawfully present, and attorneys will not commit the ethical offense of advising clients to violate the federal laws against hiring unauthorized aliens. (Rule 3-210 of the Rules of Professional Conduct.)

CLLC argues on page 9 that the Senate Judiciary Committee considered the impact of federal law, but only cited examples of federal venues not subject to state law.

It is only partially true that any part of the legislature “considered the impact of federal law” on AB 1024. All five legislative analyses mentioned the statutory duty to “support the Constitution of the United States,” but none mentioned the statutory duty under Bus. & Prof. Code § 6068(a) to “support the *laws* of the United States.” (italics added.) Moreover, none mentioned that 8 U.S.C. § 1324a (a)(1)(A) prohibits any type of payment for the services of an unauthorized alien, nor that the USDOJ had filed a brief in this case stating that clearly, nor that the California Attorney General filed a brief concurring on that issue.

**C. The USDOJ Did Not Say That Attorneys Not Lawfully Present May Be Precluded From Being Employed By Only a Law Firm, Corporation, or Public Agency.**

CLLC's initial supplemental brief, at page 10, states, "The United States, in its original opposition Amicus brief citing 8 U.S.C. § 1324(a), also claimed that attorneys not lawfully present in the United States but licensed to practice law *may* be precluded by federal law from being employed by *a law firm, corporation, or public agency.*" (italics added.)

There are three errors in that statement. First, there is the very serious error that the USDOJ brief made no such statement nor anything close to it. Second, there is no citation to the page where that claim is alleged to have been made. (That brief writer also could not find it.) Third, the applicable statute is § 1324a(a)(1)(A), not § 1324(a), which pertains only to importing and harboring illegal aliens.

The actual position of the USDOJ on the subject is on page 14 of its initial amicus brief: "the United States ... in particular disagrees with the assertion that Mr. Garcia can work legally as an independent contractor or solo practitioner without federal work authorization."

The USDOJ thus did not present the uncertainty of “*may* be precluded” nor any loophole permitting use of a contract to obtain the services of an attorney unlawfully present.

**D. Independent Contractors Are Not Exempt from the Hiring Restrictions of 8 U.S.C. § 1324a(a)(1)(A).**

CLLC’s initial supplemental brief, at page 11, states CLLC’s concurrence with the position of the Committee that “ ‘independent contractors’ are exempted from § 1324.” It cites no authority for that position, other than page 28 of the Committee’s Opening Brief. (CLLC means § 1324a, not § 1324.)

The CLLC took no note of (1) the Committee’s failure to cite authority for this exemption, (2) the strong disagreement of the USDOJ, (3) the applicable statutes and regulations, and (4) the fact that the Committee did not repeat this error after it was pointed out by the USDOJ, the California Attorney General, and this amicus.

The Committee's Answer of September 6, 2013 is completely silent on the issue. Its initial supplemental brief, on page 6, now admits that "federal law creates certain limitations on employment," and that "Mr. Garcia would be bound by federal law in this area."

Also on page 11, the CLLC brief repeats its false statements that "The framework of the [IRCA] is limited to regulating immigration status in the context of employer-employee relationships, and the statute's implementing regulations make explicit that it does not encompass other contractual relationships."

The falsity of these two statements concerning the employment relationship and contracts is shown by the statutes and regulations themselves.

"It is unlawful for a person or other entity to hire, or to recruit, or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien." (8 U.S.C § 1324a(a)(1)(A)). (See also 8 C.F.R. § 274a.5.)

“A person or other entity who uses a contract, subcontract, or exchange ... to obtain the labor of an alien in the United States knowing the alien is an unauthorized alien ... , shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).” (8 U.S.C § 1324a(a)(4).)

“The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and § 274a.5 of this part.” (8 C.F.R. § 274a.1(j).)

**E. The *Alabama* Case Did Not Hold That The Federal Government May Not Restrict The Contract Rights of Illegal Aliens.**

CLLC’s initial supplemental brief, at page 13, states that *U.S. v. Alabama* (11th Cir. 2012) 691 F.3d 1269, 1293-1294 “found unequivocally no federal interest in discrimination in the enforcement of contracts” and it “highlights ... the lack of any federal prohibition” on “the right to contract.”



Neither statement is true. Even if true, they would not be precedential in California, located within Ninth Circuit jurisdiction. The pertinent holding is, “Because this power [to restrict the contract rights of unlawfully present aliens] *is retained only by the federal government,*” state restrictions on such contracts are pre-empted. *Id.*, at 1294. (italics added.) The case says nothing about federal restrictions on employment contracts. (Set forth on pages 10-11 above.)

**F. The *Alabama* And *Lozano* Cases Did Not Indicate That It Is Illegal for a State to Attempt to Bar Applicant From Establishing Employment Contracts.**

CLLC’s initial supplemental brief, at page 14, states that *Alabama, supra*, and *Lozano v. City of Hazleton* (3d Cir. 2013) 724 F.3d 297 “strongly indicate that it would be unlawful for a state to attempt to bar Mr. Garcia from establishing these types of contracts,” referring to “professional services on a contractual basis.”

There is no citation to a page where such an indication may be found, nor any hint of the language used in either case. Inspection of the two cases reveals no such indication, strong or otherwise.

There is no need for any action to bar Mr. Garcia from establishing contracts for professional services. Such contracts violate 8 U.S.C § 1324a(a)(1)(A), and cannot be “established” or “made” under existing California law. They are void *ab initio*. “Where a contract has but a single object, and such object is unlawful, ... the entire contract is void.” (Civil Code § 1598.) (See also § 1599.)

### **III. FOUR ISSUES WARRANTING FINDINGS**

#### **A. Does Business and Professions Code Section 6067 Preclude Admission of Undocumented Immigrants Due to Their Failure to Uphold All Federal Laws by Their Unlawful Presence in the United States?**

This topic is thoroughly briefed in the initial brief of this amicus, at pages 13-14, and in his initial supplemental brief, at page 11, which are not repeated here. No brief thus far has shown how an undocumented alien can take the oath of admission, which necessarily includes the statutory duty in Bus. & Prof. Code § 6068(a) to “support the laws of the United States.”

Nobody should be allowed to take the oath nor practice law while unlawfully present and subject to deportation.

The term “unlawfully present attorney” should remain an oxymoron, rather than become a census statistic.

**B. Can Applicant Evade the Federal Restrictions on Employment by Calling Himself an Independent Contractor Attorney?**

This topic is thoroughly briefed in the initial brief of this amicus, at pages 25-29, and in this brief at pages 5-6 and pages 9-11, which are not repeated here. The USDOJ concurs with this amicus in its brief, at pages 14-15, stating on page 14, “The United States ... in particular disagrees with the assertion [of the Committee] that Mr. Garcia can work legally as an independent contractor or solo practitioner without federal work authorization.”

The California Attorney General concurs with amicus in her brief, at pages 2 and 24, as set forth on page 6 above.

Title 8 U.S.C. § 1324a(a)(2) requires a person who hires an unauthorized alien to terminate the employment upon learning of the alien's unauthorized work status. The implementing regulation, 8 C.F.R. § 274a.3, repeats this warning.

**C. Does the Issuance of a License to Practice Law Explicitly Represent that the Licensee May be Legally Employed as an Attorney?**

This topic is thoroughly briefed in the initial brief of this amicus, at pages 21-23, which is not repeated here. The license informs all viewers that this Court has licensed the member as an “attorney and counselor to practice in all Courts of the State.” **The CLLC now agrees with this amicus**, as shown in its initial supplemental brief, at pages 8-9. It is hard to imagine how even the most sophisticated of clients can read the license and not believe that the licensee can be hired as an attorney.

This is a trap which the Court should not allow.

**D. Can An Attorney Unlawfully Present Meet The Fee Contract Requirements of Bus. & Prof. Code §§ 6147 and 6148 When The Agreement is Unlawful Under 8 U.S.C § 1324a(a)(1)(A)?**

California Civil Code § 1598 makes such illegal contracts void *ab initio*. Moreover, encouraging clients to enter into such illegal contracts is an ethical violation under Rule 3-210 of the Rules of Professional Conduct. Fee contracts are required by statutes and they are too valuable for protection of the public to be waived for attorneys unlawfully present.

#### **IV. CONCLUSIONS**

Most of the conclusions of this amicus are set forth in his initial brief, at pages 32-34. Briefly, those of major importance are:

1. Mr. Garcia cannot take the oath of attorney because he does not support federal immigration laws.

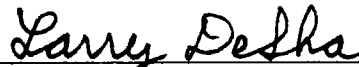
2. He cannot accept pay for legal services because such pay is proscribed by 8 U.S.C. § 1324a.
3. He cannot provide the statutory fee contracts because such contracts are void due to their illegality, and his advice to clients to hire him would be an ethical violation.
4. Granting a law license to Mr. Garcia will mislead prospective clients to erroneously believe that he is legally present in the United States, can enter an illegal contract for legal services, and can be paid for legal services.
5. The best way to protect the public in this matter is to deny his admission to practice until he becomes legal, can take the oath of office truthfully, can be hired for pay, and can enter into legal fee contracts.

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

Dated: November 29, 2013

Respectfully submitted,



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LARRY DESHA

Attorney Amicus Curiae in Pro Per

## CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this SUPPLEMENTAL REPLY AMICUS CURIAE BRIEF IN OPPOSITION TO ADMISSION contains 2,800 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: November 29, 2013

  
\_\_\_\_\_  
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Dated: November 29, 2013

  
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**No Further Entries**