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IN THE  
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IN RE SERGIO C. GARCIA ON ADMISSION

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APPLICANT'S SUPPLEMENTAL REPLY BRIEF

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**TABLE OF CONTENTS**

	Page
<b>INTRODUCTION</b> .....	1
<b>DISCUSSION</b> .....	1
I.    The Immigration Laws Adopted by Congress Preclude the Arguments Advanced by Kierniesky. ....	1
II.   The Argument Raised by DeSha Should Be Summarily Rejected As Well.....	3
<b>CONCLUSION</b> .....	3
<b>CERTIFICATE OF WORD COUNT</b> .....	5

**TABLE OF AUTHORITIES**

Page

**Cases**

*Arizona v. United States*  
(2012) 132 S. Ct. 2492 .....1

*Connerly v. State Personnel Bd.*  
(2006) 37 Cal.4th 1169 .....3

*Elk Grove Unified Sch. Dist. v. Newdow*  
(2004) 542 U.S. 1 .....3

*Elkins v. Moreno*  
(1978) 435 U.S. 647 .....2

*In Re Rainford*  
(BIA 1952) 20 I. & N. Dec. 598 .....2

*Tibke v. INS*  
(2d Cir. 1964) 335 F.2d 42 .....2

**Statutes**

8 U.S.C.

§ 1182(a)(6)(A)(i) ..... 1

§ 1227(a)(1)(A) ..... 1

§ 1227(a)(1)(B) ..... 1

§ 1229b(b)..... 1

§ 1255(i)..... 1, 3

§ 1255(i)(1)(B)(i) ..... 3

**Other Authorities**

Act of Aug. 26, 1994, Pub.L. No. 103-317,  
§ 506(b), 108 Stat. 1765 ..... 3

H.R. Rep. No. 104-469, 2d Sess., p. 134 (1996).....2

H.R. Rep. No. 104-879, 2d Sess., p. 112 (1997).....2

## **INTRODUCTION**

This Court's recent order requested supplemental briefing regarding the impact of recent legislation. The amicus letter filed by Kierniesky completely disregards the adjustment-of-status procedure allowed under federal immigration laws. The amicus brief by DeSha erroneously mixes the licensing issue – the dispositive issue presented here – with the distinct issue of employment eligibility. Given that these issues involve apples and oranges, the Court should reject the arguments raised by both of these individuals.

## **DISCUSSION**

### **I. The Immigration Laws Adopted by Congress Preclude the Arguments Advanced by Kierniesky.**

The first amicus letter brief, seeking to use buzz words to create the false impression of criminal conduct, repeatedly refers to Garcia's presence here as a form of "lawlessness." (Kierniesky Letter, p. 1.) In reality, however, "it is not a crime for a removable alien to remain in the United States." (*Arizona v. United States* (2012) 132 S. Ct. 2492, 2505 [internal citation omitted].)

Instead, an alien who is merely present in the country without federal authorization may be subject to civil removal proceedings (after administrative and judicial review). (See 8 U.S.C. §§ 1182(a)(6)(A)(i), 1227(a)(1)(A)-(B).) At the same time, Congress has given the Executive Branch discretion to grant various forms of relief from removal, up to and including permanent cancellation of removal and adjustment to lawful-permanent-resident status. (See, e.g., 8 U.S.C. §§ 1229b(b), 1255(i).) Given

that immigration proceedings are inherently time-consuming (as evidenced by the long waiting period faced by Garcia in connection with his visa petition), the mere act of waiting for a visa to become available does not contribute to “lawlessness.”

Although Congress is fully aware of the visa backlog faced by Garcia and other immigrants, Congress for the most part has not acted to eliminate the backlog or the resulting waiting periods. (See H.R. Rep. No. 104-469, 2d Sess., p. 134 (1996) [“there is a backlog of 1.1 million spouses and minor children of lawful permanent residents waiting for admission or for legal status”].) Congress, however, has rejected proposals to eliminate or reduce the backlog. (See *id.* at p. 84; H.R. Rep. No. 104-879, 2d Sess., p. 112 (1997).) To the extent that Kierniesky argues that an immigrant defies the law by merely waiting in this country for a visa to become available, Kierniesky’s fight is with Congress, not with Garcia (or with this Court for that matter).

Furthermore, Kierniesky’s argument completely disregards the operation of the current immigration system. Under the current system, “adjustment of status is merely a procedural mechanism by which an alien [already in the United States] is assimilated to the position of one seeking to enter the United States.” (*In re Rainford* (BIA 1992) 20 I.&N. Dec. 598, 601.) Before Congress created the mechanism of adjustment of status, however, “aliens in the United States who were not immigrants had to leave the country and apply for an immigrant visa at a consulate abroad.” (*Elkins v. Moreno* (1978) 435 U.S. 647, 667.) Under the adjustment-of-status procedure, an alien already in the United States is treated as if he were seeking admission from abroad but is generally permitted to remain here while the application is pending. (*Tibke v. INS* (2d Cir. 1964) 335 F.2d 42, 44-45.) As a result, the notion that an immigrant’s reliance on the

adjustment-of-status process for citizenship contributes to lawlessness is totally false.<sup>1</sup>

Accordingly, the arguments raised by Kierniesky should be rejected.

## **II. The Arguments Raised by DeSha Should Be Summarily Rejected As Well.**

DeSha's arguments are flawed because the issue of license eligibility is completely distinct from the issue of employment eligibility. The United States agrees with Garcia regarding this point. (See Supplemental Letter Brief of U.S., dated November 12, 2013, p. 2 ["employment authorization is distinct from possession of a law license"].) Accordingly, this Court need not address the issue of employment eligibility.

### **CONCLUSION**

Although the Court's order requesting supplemental briefing contemplated amicus briefing to "facilitate informed judicial consideration" of the issues presented here (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177), the supplemental opposition briefs filed by the two individual *amici* appear to represent a "heckler's veto" in response to the recent statutory amendment. (*Elk Grove Unified Sch. Dist. v. Newdow* (2004) 542 U.S. 1, 33 (conc. opn. of Rehnquist, C.J.).)

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<sup>1</sup> There is no question that Congress has made adjustment of status available to undocumented immigrants. (See 8 U.S.C. § 1255(i) (enacted by Act of Aug. 26, 1994, Pub.L. No. 103-317, § 506(b), 108 Stat. 1765).) Under the current law, this statutory relief encompasses aliens as to whom a family-based visa petition was filed by April 30, 2001. (See 8 U.S.C. § 1255(i)(1)(B)(i).) Garcia's visa petition was filed by his father in 1994 and approved in 1995. (CBX Op. Br. 1.)

In conclusion, Garcia respectfully requests an order admitting him to the bar.

Respectfully submitted,

DATED: December 2, 2013

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

By  \_\_\_\_\_

Robert Cooper  
Attorney for Applicant  
SERGIO C. GARCIA



**CERTIFICATE OF WORD COUNT**

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By \_\_\_\_\_



Robert Cooper  
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**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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