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IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE SERGIO C. GARCIA ON ADMISSION

APPLICANT'S INITIAL SUPPLEMENTAL BRIEF

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INTRODUCTION

This Court recently issued an order requesting supplemental briefing regarding the impact of a new law on this proceeding. As discussed below, the new legislation eliminates any doubt regarding this Court's authority to issue a law license to Sergio Garcia.

In light of this new development, and consistent with the views of the United States as expressed in the Department of Justice's supplemental letter brief dated November 12, 2013, this Court should grant Garcia's application for admission to the bar.

LEGAL DISCUSSION

I. The New Law Is Fully Consistent with Federal Immigration Laws Allowing State Authorities to Provide Public Benefits to Aliens.

A. Brief overview of the federal statutory background

Under federal law, an undocumented immigrant is "not eligible for any State or local public benefit" unless a statutory exception applies. (8 U.S.C. § 1621(a).) One such exception is found in subsection (d) of this statute. It provides as follows:

> "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).)[1]

This savings clause is part of the careful balance of competing interests that Congress struck when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. No. 104–193 (Aug. 22, 1996) 110 Stat. 2268). By expressly authorizing the States to provide public benefits to undocumented immigrants, and by failing to set any limitations on the standards a State may establish for obtaining such benefits (other than requiring an affirmative enactment by the State legislature), Congress left the States largely free to determine those standards. This is consistent with Congress's background understanding that States have important interests that are implicated in providing public benefits (e.g., in their licensing schemes). While immigration, as a general rule, is a matter of national concern subject to federal governance, States have traditional authority over licensing issues.[2]

In this context, where Congress has expressly authorized the States to enact their own laws – in order to bypass the default rule adopted in section 1621(a) – there cannot be any conflict with federal law. By

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[1] This quote is based on the version found on Westlaw. The version found on Lexis is slightly different than this one (reflecting a purely cosmetic change).

[2] In addition to law licenses that are traditionally left to the States, non-professional licenses are also subject to the States' police power. (See *Cleveland v. United States* (2000) 531 U.S. 12, 21 ["licensing schemes long characterized by this Court as exercises of state police powers" include "license to transport alcoholic beverages," "license to sell corporate stock," "ferry license," and "license to sell liquor"].) Likewise, while requiring the States to have certain procedures to enforce child support orders, Congress has left it to the States to adopt the necessary procedures to "withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses" for those that owe child support. (42 U.S.C. § 666(a)(16).)

effectively inviting the States to create their own laws, Congress – having considered and balanced the respective roles of federal and State regulation – has left this issue for the States to resolve on their own.

B. The new law qualifies as an affirmative enactment of a state law within the meaning of the federal savings clause.

1. Summary of the recent legislative amendment

Consistent with the Congressional authorization provided by section 1621(d), the recent amendment provides that when an undocumented immigrant has met all of the other requirements for admission to the bar, this Court may admit such an applicant to the bar. (Amended Bus. & Prof. Code, § 6064, subd. (b).) Specifically, section 6064, as amended by Stats. 2013, ch. 573, § 1, provides as follows:

> "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." (Bus. & Prof. Code, § 6064, subd. (b).)

This amendment becomes operative on January 1, 2014. (Cal. Const. art. IV, § 8, subd. (c)(1); Govt. Code, § 9600, subd. (a).)

2. As reflected in its legislative history, the recent amendment was passed to eliminate any licensing eligibility issues.

The subject statutory amendment was introduced shortly after oral argument was held in this case as Assembly Bill 1024 (as amended September 6, 2013). As the Senate Rules Committee's Analysis explained, "[t]he Supreme Court is currently considering Sergio Garcia for admission to practice law in the State of California.... However, given his immigration status, it is an open question whether the Supreme Court can admit Mr. Garcia to practice law. To clarify the issue, this bill expressly provides that the Supreme Court may admit an applicant who is not lawfully present in the U.S. ... upon certification by the State Bar examining committee that the applicant has fulfilled the requirements for admission to practice law." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended September 6, 2013, p. 3.)

Another report further illustrates this point. According to the Senate Judiciary Committee's report, the proposed legislation "does not raise the concerns normally associated with measures that could impact pending litigation. First, this bill would not alter any of the requirements established by the State of California for admission to the State Bar.... [¶] Second, this bill is not retroactive and would not compromise the independence of the judicial branch nor circumvent its discretion to expound and interpret California law." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended September 6, 2013, p. 6.) Instead, the legislation was prepared based on Congress's open invitation to State legislatures by authorizing the enactment of such laws. (*Id.* at p. 7.)

Other pieces of legislative history confirm the same point. While some "have argued in the *Garcia* case that existing law should be sufficient, this bill seeks to further clarify the question by expressly providing that the Supreme Court may admit an applicant who is not lawfully present in the United States as an attorney at law in the courts of this state upon certification by the State Bar examining committee that the applicant has fulfilled the requirements for admission to practice law." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended September 6, 2013, p. 3.) "This bill would not disturb the existing framework for assessing the qualifications of applicants to the State Bar, nor would it impact the immigration and naturalization status of those seeking a license to practice law in the State of California. It merely clarifies that the Supreme Court may issue a law license to any qualified applicant, regardless of his or her immigration status." (*Id.* at p. 4.)

To summarize, in response to the Court's inquiry, the effect of the statutory amendment is to eliminate any dispute that California has "affirmatively" supplied the "enactment" contemplated by section 1621(d).

II. In Light of Its Legislative History, the Amended Law Should Be Applied in This Case to Admit Sergio Garcia to the Bar.

A. New legislation may be applied to pending cases.

As this Court explained in *Southern Cal. Gas Co. v. Public Util. Com.* (1985) 38 Cal.3d 64, "the Legislature may supply retroactively, through a curative or validating act, any authority it could have provided prospectively through an enabling act." (*Id.* at p. 67.) "Thus, even if the Legislature cannot 'confirm' that such authority always existed, despite

contrary judicial precedent, it may furnish the missing authority nunc pro tunc." (*Ibid.*) Other authorities similarly illustrate the practical impact of new legislation on pending cases.

In *Weissbuch v. Board of Medical Examiners* (1974) 41 Cal.App.3d 924, for example, the Board revoked plaintiff's medical license, subject to a stay of execution, based on his conviction for possession of marijuana, a substance that had been classified as a narcotic at the time of plaintiff's conviction. (*Id.* at p. 927-928.) Before the Board's decision became final, however, the Legislature amended the law, declassifying marijuana as a narcotic. (*Id.* at p. 929.) Noting that the "amendment was enacted prior to the Board's decision becoming final[,]" the appellate court ordered the Board's decision to be vacated based on the legislative amendment. (*Id.* at p. 929-930; see also *Gadda v. State Bar of Cal.* (9th Cir. 2007) 511 F.3d 933, 938 [applying statutory amendment authorizing the State Bar to enforce disciplinary cost award as a money judgment with respect to a cost award issued prior to the statutory amendment in light of the legislative intent behind the amendment].)

Given the legislative history discussed above, "the applicability of the new legislation is perhaps clearer here than in any of the previous decisions." (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 831 [ordering reversal based on new law enacted during the pendency of the appeal]; cf. Bus. & Prof. Code, § 12 ["Whenever any reference is made to any portion of this code or of any other law of this State, such reference shall apply to all amendments and additions thereto now or hereafter made"].)

B. The new legislation represents a proper balance between statutory and judicial regulation of the practice of law.

The new law is fully consistent with this Court's holding that "the Legislature … has the authority to determine qualifications for admission to the State Bar[.]" (*Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 134 [internal citations omitted].) While "the power to regulate the practice of law, including the power to admit and to discipline attorneys, has long been recognized to be among the inherent powers" of the judicial branch (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336), "this court has respected the exercise by the Legislature, under the police power, of 'a reasonable degree of regulation and control over the profession and practice of law ...' in this state." (*Id.* at p. 337 [internal citations and footnote omitted; ellipses in original].)

For example, this Court has held that "membership, character and conduct of those entering and engaging in the legal profession have long been regarded as the proper subject of legislative regulation and control[.]" (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 540-541 [quoting *State Bar of Cal. v. Superior Court* (1929) 207 Cal. 323, 331].) Consistent with this Court's "traditional respect for legislative regulation of the practice of law" (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 603), the new law should be applied here as it does "not conflict with rules for admission adopted or approved by the judiciary." (*Id.* at p. 602 [internal citation omitted].)

C. Applying the new law to this case, Sergio Garcia's application should be granted.

As acknowledged by the United States, based on the new amendment, the issuance of a law license will not be precluded by section 1621 of title 8 of the United States Code as of January 1, 2014. (Supplemental Letter Brief of U.S., dated November 12, 2013, at p. 2.) Given that the amended statute "expressly state[s] that it applies to undocumented aliens" (*Martinez v. Regents of Univ. of Cal.* (2010) 50 Cal.4th 1277, 1296), the amended statute eliminates any doubt that the State of California has bypassed the default rule set forth in section 1621(a). (See amended section 6064, subd. (b) [addressing admission of "an applicant who is not lawfully present in the United States"].)

In sum, in light of the enactment of A.B. 1024, California's "licensing law falls well within the confines of the authority Congress chose to leave to the States[.]" (*Chamber of Commerce v. Whiting* (2011) 131 S. Ct. 1968, 1981 [upholding Arizona licensing law based on a savings clause in IRCA allowing the States to impose sanctions on employers that hire unauthorized aliens through "licensing and similar laws" while expressly preempting the States from imposing civil or criminal sanctions].) Based on the new amendment, this Court should issue an order admitting Garcia to the bar.

On the other hand, because "an alien's work authorization status ... will often require deciding technical questions of immigration law" (*Whiting, supra,* 131 S. Ct. at p. 2003 (dis. opn. of Sotomayor, J.)), this Court need not address such technical questions in this administrative proceeding. The new law effectively eliminates the need for this Court to "be thrust into the role of determining [applicants'] compliance with the IRCA ... as well as determining the immigration status of each" applicant.

(*Farmer Brothers Coffee v. Workers' Comp. Appeals Bd.* (2005) 133 Cal.App.4th 533, 540-541 [rejecting IRCA preemption arguments and upholding California's statutory definition of "employee" to encompass undocumented immigrants for purposes of obtaining workers' compensation benefits].)

While the new law "does not create any authorization for employment in the United States" (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended September 6, 2013, p. 5), the United States acknowledges that "employment authorization is distinct from possession of a law license[.]" (Supplemental Letter Brief of U.S., dated November 12, 2013, at p. 2.) Accordingly, in order to evaluate Garcia's application for admission to the bar, this Court need not address the distinct issue of employment authorization.

CONCLUSION

Congress has expressly allowed each State to make its own determination on whether an undocumented immigrant may obtain a particular public benefit in that State. The California legislature recently accepted Congress's invitation to enact a law in order to provide a law license to such immigrants.

In light of the recent legislative amendment, Sergio Garcia respectfully requests that the Court enter an order admitting him to the practice of law.

Respectfully submitted,

DATED: November 14, 2013

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PROOF OF SERVICE
<u>*Garcia on Admission*</u>
Case No. S202512
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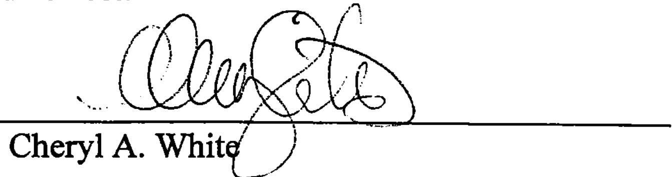

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