

**AMERICAN BAR ASSOCIATION****LAW STUDENT DIVISION****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, that the American Bar Association supports the principle that bar admission should  
2 not be denied based solely on immigration status.

3  
4 FURTHER RESOLVED, that the American Bar Association urges Congress to amend 8 U.S.C. §  
5 1621(d) to insert, at the conclusion of all existing language, the following sentence:

6  
7 “A state court vested with exclusive authority to regulate admission to the bar may, by rule,  
8 order, or other affirmative act, permit an undocumented alien to obtain a professional license to  
9 practice law in that jurisdiction.”



## REPORT

*“[W]e conclude that the fact that an undocumented immigrant’s presence in this country violates federal statutes is not itself a sufficient or persuasive basis for denying undocumented immigrants, as a class, admission to the State Bar,”*<sup>1</sup> Chief Justice Tani Cantil-Sakauye wrote in her opinion on Sergio Garcia’s application to practice law in the State of California. *“[T]he fact that an undocumented immigrant is present in the United States without lawful authorization does not itself involve moral turpitude or demonstrate moral unfitness so as to justify exclusion from the State Bar, or prevent the individual from taking an oath promising faithfully to discharge the duty to support the Constitution and laws of the United States.”*<sup>2</sup>

### **Introduction**

Jose Godinez-Samperio, whose parents brought him to the United States on a tourist visa and then never returned to Mexico, was denied permission to practice law in the state of Florida. He was denied admission despite having earned a law degree from Florida State University and passing the Florida state bar exam in 2011.<sup>3</sup> In addition, the Chair-Elect of ABA Law Student Division, Thomas E. Kim, whose parents brought him to the United States on a tourist visa and then never returned to South Korea, will face uncertainty on whether he can practice law in the state of Oregon after he earns his law degree from Arizona State University in 2018.

The California Supreme Court recently ruled that based on a newly-minted California state law, Sergio Garcia,<sup>4</sup> who is also an undocumented immigrant,<sup>5</sup> would be admitted to the California State Bar and to the practice of law. This strange dichotomy illustrates the complicated situation that arises when state legislatures and courts step in to decide what rights should be granted to the estimated more than 11 million undocumented immigrants living in the country.

The question of whether an individual should be admitted to the practice of law by the State Bar and thereby obtain a license to practice law in the state is governed by state law. For example, in *In re Garcia*, the court explained that to obtain admission to the State Bar under the California

---

<sup>1</sup> *In re Garcia*, 58 Cal. 4th 440, 461, 315 P.3d. 117, 131 (2014).

<sup>2</sup> *In re Garcia*, 315 P.3d. at 130.

<sup>3</sup> Though the state of Florida did not have a law that specifically authorized an undocumented immigrant to obtain a law license at the time the Florida Supreme Court heard Mr. Godinez-Samperio’s case, the Florida legislature has since passed a law providing such authorization.

<sup>4</sup> Mr. Garcia’s parents brought him to the United States when he was a seventeen-month-old, returned to Mexico when he was 9 years old, and then returned to the United States when he was 17 years old. His father, a lawful permanent resident of the U.S. who has since become a citizen, filed an immigration visa petition (petition for an alien relative) on Garcia’s behalf in 1994. The petition was approved the following year, but Mr. Garcia is still on the wait list for the actual visa due to the limited number of visas available for applicants from Mexico.

<sup>5</sup> The term “undocumented immigrant” is used in this Resolution to refer to “[a] non-United States citizen who is in the United States but who lacks the immigration status required by federal law to be lawfully present in this country and who has not been admitted on a temporary basis as a nonimmigrant . . . . Although no shorthand term may be perfect, the United State Supreme Court and the California Legislature have at times used the term ‘undocumented immigrants’ to refer to this category of persons.” *In re Garcia*, 315 P.3d at 120, n. 1.

Constitution, it is the California Supreme Court—rather than the Legislature or Governor—that possesses the ultimate authority, and bears the ultimate responsibility to resolve questions of general policy relating to admission to the State Bar.<sup>6</sup>

As exemplified by the aforementioned illustrations and the plight of other deserving undocumented immigrant law graduates seeking access to the legal profession, this is a situation that necessitates a long-term, national, consistent solution, which can be aided by the involvement of the American Bar Association.

### **Legal Analysis Supporting Bar Admission for Undocumented Immigrants**

Article I, section 8 of the United States Constitution gives Congress the power “to establish a uniform rule of naturalization,” while Article VI provides that federal law “shall be the supreme law of the land . . . any thing in the Constitution or laws of any State to the contrary notwithstanding.” Over the last twenty years, Congress has passed various laws to discourage the inflow of undocumented immigrants. Specifically, in 1996, as part of welfare reform, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), which makes non-citizens who are not “qualified aliens” ineligible for federal, state, and local “public benefits.”<sup>7</sup> Notably, 8 U.S.C. § 1621 does not simply forbid the state from granting any professional license to an undocumented immigrant; instead, the proscription is qualified. Section 1621 only restricts the state from granting “any . . . professional license . . . provided by an agency of a State . . . or by appropriated funds of a State . . . .”<sup>8</sup> A state may, however, provide state and local public benefits to a non-qualified alien if it passes a law after August 22, 1996 affirmatively providing for such eligibility.<sup>9</sup>

As California Attorney General Kamala Harris argued in her *amicus curiae* brief in support of Mr. Garcia’s application to practice law in California, 8 U.S.C. § 1621(c) is inapplicable to the situation of undocumented immigrants attempting to obtain licenses to practice law because legal licensing is not provided by a state agency but by the plenary power of the state courts:

Section 1621 does not apply because, although admission to the Bar is surely a professional license, neither of the two statutory qualifications is met. The license to practice law is not provided by ‘an agency of the state,’ but by this Court. Nor is the license provided by ‘appropriated funds of the state;’ instead it is funded by fees paid by its members directly to the State Bar, which is never appropriated by the Legislature.<sup>10</sup>

<sup>6</sup> *In re Garcia*, 315 P.3d. at 129.

<sup>7</sup> 8 U.S.C. §§ 1611 and 1621.

<sup>8</sup> 8 U.S.C. § 1621(c) (emphasis added).

<sup>9</sup> 8 U.S.C. § 1621(d).

<sup>10</sup> *In re Garcia*, Brief of Amicus Curiae of California Attorney General Kamala D. Harris in Support of Petitioner (Jul. 18, 2012), <http://www.courts.ca.gov/documents/4-s202512-amicus-ca-atty-general-kamala-harris-071812.pdf>

### A. State Supreme Courts, which issue licenses to practice law, are not state agencies within the meaning of 8 U.S.C. § 1621

In a right that has been zealously protected, it is state courts that issue law licenses. Indeed, although the State Bar in many states assists with the bar admission process, every State in the Union recognizes that the power to regulate lawyers and the practice of law rests in the judiciary.<sup>11</sup> United States Supreme Court Chief Justice Rehnquist wrote: “In the United States, the courts have historically regulated admission to the practice of law before them, and exercised the authority to discipline and ultimately to disbar lawyers whose conduct departed from prescribed standards.”<sup>12</sup>

The PRWORA does not define the term “agency of a state” in 8 U.S.C. § 1621, § 1611 (which contains the definitions for the PRWORA), or in § 1101(a) (which is incorporated in 8 U.S.C. § 1611 by reference).<sup>13</sup>

In the absence of a statutory definition, it is appropriate to use the ordinary and natural meaning of a statutory term.<sup>14</sup> Absent statutory language to the contrary, statutory references to an “agency” are generally interpreted to exclude the courts.<sup>15</sup> In *Hubbard v. United States*, the United States Supreme Court concluded that a court is not an agency for purposes of 18 U.S.C. § 1001. The Court noted that:

In ordinary parlance, federal courts are not described as “departments” or “agencies” of the government. As noted by the Sixth Circuit, it would be strange indeed to refer to a court as an “agency.” And while we have occasionally spoken of the three branches of our Government, including the Judiciary, as department[s],” that locution is not an ordinary one. Far more common is the use of “department” to refer to a component of the Executive Branch.<sup>16</sup>

While *Hubbard* only directly addressed 18 U.S.C. § 1001, the analysis for 8 U.S.C. § 1621 would be the same. There is nothing found in the text of 8 U.S.C. § 1621 or in any related legislation that warrants abandoning the presumptive definitions. Rather, the statutory framework requires the opposite be done. By explicitly differentiating between “administrative agencies” and “courts” in other sections of the PRWORA,<sup>17</sup> Congress demonstrated that it fully understood the common meaning of “agency.” Had Congress intended to prohibit the types of benefits dispensed

---

<sup>11</sup> See, e.g., *Hustedt v. Workers’ Comp. Appeals Bd.*, 30 Cal.3d 329, 336-37, 636 P.2d 1139, 1142-43 (1981) (cited in *Brief of Amici Curiae the La Raza Lawyers Association of Sacramento and the Asian/Pacific Bar Association of Sacramento in Support of the Committee of Bar Examiners’ Motion for Admission of Sergio C. Garcia to the State Bar of California*, 2012 WL 3526010 (Cal., July 23, 2012)).

<sup>12</sup> *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1066, 111 S. Ct. 2720, 2740 (1991).

<sup>13</sup> *In re Sergio C. Garcia on Admission*, 2012 WL 3236333 (Cal., July 18, 2012).

<sup>14</sup> *FDIC v. Meyer*, 510 U.S. 471, 476, 114 S. Ct. 996, 1001 (1994) (citing *Smith v. United States*, 508 U.S. 223, 228, 113 S. Ct. 2050, 2054 (1993)).

<sup>15</sup> *Shepard v. NLRB*, 459 U.S. 344, 351, 103 S. Ct. 665, 670 (1983) (citing *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 141-44, 60 S. Ct. 437, 440-42 (1940)).

<sup>16</sup> *Hubbard v. United States*, 514 U.S. 695, 699-700, 115 S. Ct. 1754, 1757 (1995) (internal citations omitted).

<sup>17</sup> See Title III of the PRWORA (42 U.S.C. § 666(a)(5)(D)(i)(II)); see also Section 365 of PRWORA (42 U.S.C. § 666(a)(15)), which clearly differentiate between courts and administrative agencies.

by “courts,” it would have undoubtedly included “courts” in section 1621. Further, because it would be implausible to assume that Congress did not recognize and appreciate the time-honored and ubiquitous role of the courts in issuing law licenses when it was drafting section 1621, it is significant that the statute specifically mentions professional licenses that are issued by “state agencies.”

### **B. Licenses to practice law are not provided with appropriated state funds**

A bar license is simply not the kind of public benefit that is proscribed by 8 U.S.C. § 1621 because it is not “provided . . . by appropriated funds of a state.”<sup>18</sup> Some could argue that bar licenses come from appropriated funds of the State and therefore State Courts are prohibited under 8 U.S.C. § 1621 from issuing such licenses to undocumented immigrant law graduates. However, this expansive view of 8 U.S.C. § 1621 is flawed. A professional license “provided . . . by appropriated funds of a state” is one that is paid for or subsidized by appropriated<sup>19</sup> funds of state, instead of by the licensee.

Individual states do not, as a general matter and without exceptional circumstances where the lawyers in question are state employees, pay for or subsidize the bar admission process or the bar licenses of individual attorneys. Rather, each attorney is responsible for paying for the license him or herself in the form of dues. Aside from the salaries paid to judges and other court personnel who may be involved in the admission process, bar admissions are financed entirely through fees.

A bar license, unlike the other public benefits listed in section 1621, does not provide any payment or assistance to the bar applicant; it merely authorizes an individual to engage in the practice of law. Clearly then, 8 U.S.C. § 1621 was not meant to capture or encompass bar licenses.

### **C. Construing federal law as excluding licenses to practice law avoids significant constitutional issues**

The exclusive federal authority to regulate immigration established in the Constitution does not extend to ancillary matters. The Tenth Amendment of the United States Constitution protects states from undue federal restrictions on state sovereignty. A state’s “separation of powers” in its government structure falls within the protected realm of state sovereignty. If 8 U.S.C. § 1621(d) were construed to require state legislative action to admit certain immigrant applicants to the state bar, the federal law would upset the separation of powers in those states that have assigned bar

---

<sup>18</sup> As with “agency of a state,” the Welfare Reform Act of 1996 does not define “appropriated funds of a state.”

<sup>19</sup> “Appropriated” funds generally refer to state revenues allocated by statute. *See* Black’s Law Dictionary, 110 (8th ed. 2004) (defining “appropriation” as “[t]he exercise of control over property; a taking of possession . . . [a] legislative body’s act of setting aside a sum of money for a public purpose”).

admission to the judicial system.<sup>20</sup> Avoiding this Tenth Amendment problem supports the construction of 8 U.S.C. § 1621 so that it does not apply to state bar admissions decisions.<sup>21</sup>

In addition, the Contracts Clause of the United States Constitution protects against state impairment of contracts, particularly where the state is a party to the contract. There is a strong argument that a state interpretation of federal law that prohibits the admission of a class of law school graduates would constitute an impairment of the implied contract between a student and a law school within the state. This is particularly applicable to a public law school. That implied contract,<sup>22</sup> which is formed at admission to the law school, includes the assurance that the student will be permitted to practice law once they complete the law school requirements and satisfy other requisites of bar admission. Avoiding this Contracts Clause problem also counsels a proper interpretation of 8 U.S.C. § 1621 in a manner to exclude state bar admissions decisions.<sup>23</sup>

Consequently, because law licensure falls within the sole control of state judiciaries, because licenses to practice law are not provided with appropriated state funds, and in order to avoid significant constitutional issues, it is appropriate for the American Bar Association to support the principle that bar admission should not be denied based solely on immigration status.

### **Practical Reason Supporting Bar Admission for Undocumented Immigrants**

Undocumented immigrants can work and make valuable contributions to the legal profession regardless of work authorization status. Deferred Action for Childhood Arrivals

---

<sup>20</sup> The Tenth Amendment applies to undue federal intrusion on state sovereignty, including separation of powers, even though the remainder of the federal statute may fall within the Congress's power to regulate immigration. Acting within enumerated powers does not permit the Congress to invade a state's sovereignty. *See, e.g., N.Y. v. United States*, 505 U.S. 144, 166, 112 S. Ct. 2408, 2423 (1992) ("We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts."). In other words, Congress cannot hide behind one of its clear powers to invade a state's sovereignty. Thus, for example, Congress could not tell a state that only one named unelected individual may determine whether a state will provide state-funded benefits to immigrants; that would plainly violate a state's right to select its own policymakers. The potential violation of a state's duly adopted separation of powers detailed here is of the same nature.

<sup>21</sup> Ultimately, no one need conclusively decide whether or not there would be a Tenth Amendment violation had Congress intended to interfere with a state's separation of powers. Under the doctrine of constitutional avoidance, the mere fact of a potential issue counsels interpreting the statute so as to avoid imputing such a constitutionally knotty intention.

<sup>22</sup> The existence of such an implied contract would not independently violate 8 U.S.C. § 1621 because in most states where public universities admit undocumented students, legislative action has already been taken under section 1621(d) to permit the admission of undocumented students, and, in over a dozen states, to further permit certain undocumented students to pay a lower in-state tuition rate.

<sup>23</sup> Again, because this is simply an application of the doctrine of constitutional avoidance in the context of statutory construction, no one need determine conclusively whether there would be a Contracts Clause violation. This, of course, includes not having to determine whether there is in fact an implied contract as describe here.

(“DACA”)<sup>24</sup> allows immigrants under 31 years of age who were brought to the United States by their parents to live and work legally in the United States. Since 2012, more than a half-million people have applied for DACA,<sup>25</sup> according to U.S. Citizenship and Immigration Services. While many of the undocumented immigrant law graduates like Godinez-Samperio and Vargas qualify for DACA status, others, like Garcia, do not because they were simply too old at the time DACA came into effect. Regardless of whether an undocumented immigrant qualifies for DACA status, he or she may still legally work and practice law in certain circumstances.

Federal law does not prohibit an unauthorized alien from working as an attorney; it merely prohibits him or her from working as an “employee” in the conventional employer-employee relationship. Section 274A of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1324a, and its implementing regulations, which exclusively govern work authorization in the United States, do not apply to individuals working on a pro bono basis or those working outside the employer-employee relationship as an independent contractor or as self-employed.<sup>26</sup>

The term “employment” includes “any service or labor performed by an employee for an employer within the United States. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent.”<sup>27</sup> Notably, 8 C.F.R. § 274a.1(f)-(g) expressly excludes independent contractors in the definition of “employee” and “employer”:

*(f) The term employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section.*

*(g) The term employer means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor*

<sup>24</sup> Dep’t of Homeland Sec., *Deferred Actions for Childhood Arrivals*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. (February 1, 2017), <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

<sup>25</sup> A recent survey of 1,608 DACA program participants conducted by Harvard University's National UnDACAmented Research Project found that 42 percent expect to obtain a master's degree, a professional degree, or a law degree. CITE STUDY. Consequently, Michael A. Olivas’ – an immigration law professor at the University of Houston who submitted an amicus brief supporting Mr. Garcia’s case – prediction that there are likely dozens more undocumented immigrants who will want to enter state bar associations in the coming years is not unlikely. See Jennifer Medina, *Allowed to Join the Bar, But Not to Take a Job*, NEW YORK TIMES (Jan. 3, 2014), [https://www.nytimes.com/2014/01/03/us/immigrant-in-us-illegally-may-practice-law-california-court-rules.html?\\_r=0](https://www.nytimes.com/2014/01/03/us/immigrant-in-us-illegally-may-practice-law-california-court-rules.html?_r=0).

<sup>26</sup> It is unlawful for a person or other entity to hire an alien for employment or continue to employ an alien, “knowing the alien is an unauthorized alien.” 8 U.S.C. § 1324a(a)(1)-(2).

<sup>27</sup> 8 C.F.R. § 274a.1(h).

or services, the term employer shall mean the independent contractor or contractor and not the person or entity using the contract labor.

(emphasis added). 8 C.F.R. § 274a.1(g) further clarifies that the “person or entity using the contract labor” is not an “employer.”

Indeed, while an undocumented immigrant may not be employed as an employee, he or she may use his license to do pro bono work, work as an independent contractor, establish a solo law practice, or provide legal advice outside of the United States. Each of these activities are permissible under federal immigration law and would not subject the undocumented attorney or his or her clients to penalties under the IRCA.<sup>28</sup>

### The Situation in the States

As more undocumented immigrants apply to become members of their respective State Bars, States around the nation will have to address the question of whether undocumented law graduates are eligible to obtain a law license. The following states are currently tackling or have resolved the issue of granting undocumented law graduates admission to practice law:

- **California:** Sergio Garcia was born in Mexico and brought to the United States by his parents when he was only 17 months old. Due to the massive visa backlog for Mexican nationals, Mr. Garcia’s visa application was on hold for over 19 years. During that time, however, Mr. Garcia went to school and ultimately graduated with a law degree from Cal Northern School of Law. He also took and passed the bar exam in California, a state with one of the lowest bar passage rates in the country. Yet, Mr. Garcia’s admission was revoked by the state bar due to his immigration status.

On October 5, 2013, Governor Edmund G. Brown signed A.B. 1024 into law, making California the first state to pass legislation that explicitly permits individuals who have met all eligibility requirements to be admitted to the State Bar regardless of their immigration status.<sup>29</sup> A.B. 1024 was passed in direct response to the *In re Garcia* case, which was at the time pending before the California State Supreme Court.<sup>30</sup> Merely two days before the piece of legislation was rewritten, oral arguments heard in the *Garcia* case centered around the applicability of 8 U.S.C. § 162. The legislature rewrote A.B. 1024 to expressly authorize its Supreme Court to issue a law license to “an applicant who is not lawfully present in the United States [who] has fulfilled the requirements for admission to practice law.”<sup>31</sup>

Notably, on November 12, 2013, the U.S. Department of Justice filed a letter brief with the California State Supreme Court withdrawing its opposition to Mr. Garcia’s application for a

<sup>28</sup> 8 U.S.C. § 1324a(a)(1).

<sup>29</sup> See also Senate Bill 1159 (Cal., 2014),

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB1159](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1159).

<sup>30</sup> Assemblywoman Lorena Gonzalez, A.B. 1024 Fact Sheet (Sept. 13, 2013),

[http://asmdc.org/images/AB1024\\_FactSheet.pdf](http://asmdc.org/images/AB1024_FactSheet.pdf).

<sup>31</sup> A.B. 1024 (2013), [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1001-1050/ab\\_1024\\_bill\\_20131005\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1001-1050/ab_1024_bill_20131005_chaptered.pdf).

law license and conceding that federal law would no longer preclude the issuance of the bar license upon the effective date of A.B. 1024. Also, in her brief, the California Attorney General wrote that “admitting Garcia to the bar would be consistent with state and federal policy that encourages immigrants, both documented and undocumented, to contribute to society.”

Merely one day after A.B. 1024 went into effect, the California State Supreme Court found that the statute removed the federal obstacle to Mr. Garcia being admitted to the State Bar, stating that “[i]n light of the recently enacted state legislation, we conclude that the Committee's motion to admit Garcia to the State Bar should be granted. The new legislation removes any potential statutory obstacle to Garcia's admission posed by section 1621, and there is no other federal statute that purports to preclude a state from granting a license to practice law to an undocumented immigrant.”<sup>32</sup>

- **Florida:** Jose Manuel Godinez-Samperio was brought by his parents to the United States from Mexico at age nine on a tourist visa. The family stayed in the United States after Mr. Godinez-Samperio's visa expired. Mr. Godinez-Samperio attended school and graduated as valedictorian of his high school class. He later graduated with honors from Florida State University College of Law, and passed the bar exam in 2011. By this time, Mr. Godinez-Samperio had also attained DACA status and held federal work authorization. Yet, his admission remained on hold for three years because of his immigration status.

On March 6, 2014, the Florida Supreme Court, in *In Florida Bd. Of Bar Examiners*,<sup>33</sup> denied Mr. Godinez-Samperio admission to the Florida State Bar, finding that its hands were tied by the state legislature, which had not taken advantage of the exception in 8 U.S.C. § 1621(d). Under that federal statute, states were allowed to authorize public benefits to undocumented immigrants as deemed appropriate.

In response to this decision, on April 25, 2014, the Florida Senate amended and passed an existing family law bill (HB 755)<sup>34</sup> to allow a noncitizen to obtain a law license from the state Supreme Court. The bill's language limited the scope of the non-citizen provision to an “unauthorized immigrant” who came to Florida as a minor, has lived in the State for at least 10 years, and has met Bar admission requirements. Subsequently, on May 1, 2014, the Florida House of Representatives amended and passed HB 755 to change the scope of the noncitizen provision to an “unauthorized immigrant” who came to the United States as a minor, has lived in the United States for 10 years, is a legally documented worker, has been issued a Social Security card, is registered for selective service (if male and required to do so), and has met Bar admission requirements. Governor Rick Scott signed HB 755 into law on May 12, 2014. Florida became the second state to pass legislation that explicitly permits individuals who have

<sup>32</sup> *In re Garcia*, 315 P.3d at 121.

<sup>33</sup> *Florida Bd. Of Bar Examiners*, 2014 WL 866065 (Fla. March 6, 2014).

<sup>34</sup> H.B. 755, 2014 Legis. Fla. H. Rep. (Fla. 2014),  
<https://www.flsenate.gov/Session/Bill/2014/755/BillText/er/PDF>.

met all eligibility requirements to be admitted to the State Bar regardless of immigration status.<sup>35</sup>

- **New York:** Cesar Vargas is an honor student and graduate of New York Law School with a 3.7 grade point average. He interned for a State Supreme Court justice, a Brooklyn District Attorney, and a Congressman. Mr. Vargas passed the state bar exam but was denied admission to the New York bar because he was brought to the United States from Mexico when he was five years old and has no immigration status.

Three years after Mr. Vargas passed the bar exam, on June 3, 2015, a five-judge panel of the New York Appellate Court issued its opinion in *Matter of Vargas*<sup>36</sup> that Mr. Vargas could be admitted to practice law in New York, the state that had been his home since he was five years old. The court indicated that federal law “unconstitutionally infringes on the sovereign authority of the state to divide power among its three coequal branches of government.”

In 2016, the New York Board of Regents also authorized DACA recipients to obtain a professional license and certain teacher certifications if they have met all other requirements for licensure, without consideration of their citizenship status.

- **Oregon:** Thomas E. Kim is an undocumented law student who is a DACA recipient. Mr. Kim is a full-tuition merit scholar and a top-tier second year student at Sandra Day O’Connor College of Law at Arizona State University. He has clerked for Davis Wright Tremaine, a prominent Pacific Northwest corporate law firm, and for the Federal Public Defender’s Office for the District of Arizona–Capital Habeas Unit representing clients in habeas corpus proceedings in the District Court, United States Court of Appeals, and the United States Supreme Court. He was brought to the United States from South Korea when he was thirteen years old. Mr. Kim will graduate from law school in 2018 and hopes to seek admission to the Oregon State Bar.
- **Nebraska:** Nebraska noticed a trend of young immigrants who were leaving the state after obtaining their education because they were unable to obtain professional licenses based on their immigration status. In 2016, Nebraska passed LB 947, which allows for DACA recipients to obtain a professional or commercial license, including a law license.
- **Illinois:** As of 2016, Illinois passed SB 23 allowing for DACA recipients who hold work authorization to apply and be admitted to practice law in the state.
- **Wyoming:** In 2015, the Wyoming legislature repealed language requiring that a bar applicant be a U.S. citizen. This allowed for noncitizens seeking entry into the Wyoming State Bar to be admitted if they meet all requirements, without regard to their immigration status.

---

<sup>35</sup> Florida Board of Bar Examiners, *Petition for Advisory Opinion* (Dec. 13, 2011), [http://www.floridasupremecourt.org/pub\\_info/summaries/briefs/11/11-2568/Filed\\_12-13-2011\\_Petition.pdf](http://www.floridasupremecourt.org/pub_info/summaries/briefs/11/11-2568/Filed_12-13-2011_Petition.pdf)

<sup>36</sup> *Matter of Vargas*, 2015 NY Slip Op 04657 [131 AD3d 4] (N.Y., 2015), [http://www.courts.state.ny.us/reporter/3dseries/2015/2015\\_04657.htm](http://www.courts.state.ny.us/reporter/3dseries/2015/2015_04657.htm).

- **Other Measures:** There is a movement in other states to allow for the licensing of persons without regard to their immigration status in different professions. Utah has allowed for the licensing of occupational therapists or therapy assistants. South Dakota has allowed for the licensing of dentists and dental hygienists. In West Virginia and Nevada, an alien person who meets the requirements to teach may be issued a permit to teach.

The cases in California, Florida, and New York do not exist in a vacuum. Similar cases will continue to emerge across the country. Without clear direction and encouragement from organizations like the American Bar Association, many states will likely be stymied by the question of whether to proceed on their own or wait for action on the federal level. When signing California's law, Governor Edmund G. Brown, Jr. made his stance clear when he said "I'm not waiting." Neither should the American Bar Association.

### **Conclusion**

There is undeniably an overwhelming need – both currently and on behalf of a growing number of qualified, but undocumented immigrants – for the American Bar Association to weigh in on the issue of bar admissions. This resolution acknowledges that unmet need, and proposes a long-term and consistent solution moving forward by the American Bar Association's support of the principle that bar admission should not be denied based solely on immigration status.

### **Summary**

American Bar Association supports the principle that bar admission should not be denied based solely on immigration status.

### **Financial Report**

The adoption of this resolution entails no financial expense to the ABA or Law Student Division.

Respectfully submitted,

Kareem S. Aref, Chair of Law Student Division

August 2017

**GENERAL INFORMATION FORM**

Submitting Entity: Law Student Division

Submitted By: Kareem S. Aref, Chair of Law Student Division

1. Summary of Resolution.

American Bar Association supports the principle that bar admission should not be denied based solely on immigration status.

There is undeniably an overwhelming need – both currently and on behalf of a growing number of qualified, but undocumented immigrants – for the American Bar Association to weigh-in on the issue of bar admissions. This resolution acknowledges that unmet need, and proposes a long-term and consistent solution moving forward. Undocumented immigrants have the desire, and increasingly the education to gain admittance to practice law before this nation’s various state bars; they simply need the authorization to do so. That is what this Resolution seeks.

2. Approval by Submitting Entity. Approved by the Law Student Division assembly on April 24, 2017.

3. Has this or a similar resolution been submitted to the House or Board previously? No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? N/A.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A.

6. Status of Legislation. N/A.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Notice will go out to all law students and select ABA entities.

8. Cost to the Association. (Both direct and indirect costs) The adoption of this resolution entails no financial expense to the ABA

9. Disclosure of Interest. (If applicable) Thomas E. Kim, Chair-Elect of Law Student Division.

## 10. Referrals.

Section of Legal Education and Admissions to the Bar  
Commission on Immigration  
NABE  
NOBC  
Conference of Chief Justices

## 11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Thomas E. Kim  
1712 SW San Mateo Ter. Beaverton OR 97006  
971-255-2806  
[123ThomasKim@gmail.com](mailto:123ThomasKim@gmail.com)

## 12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Thomas E. Kim  
1712 SW San Mateo Ter. Beaverton OR 97006  
971-255-2806  
[123ThomasKim@gmail.com](mailto:123ThomasKim@gmail.com)

Rene Morency  
4579 Laclede #321 St. Louis MO 63108  
314-795-0652  
[jurisd2016@planetsuccessdomains.net](mailto:jurisd2016@planetsuccessdomains.net)

John Weber  
3311 Thrush Rd. Louisville KY 40213  
502-472-2037  
[johnweber.ky@gmail.com](mailto:johnweber.ky@gmail.com)

## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

American Bar Association supports the principle that bar admission should not be denied based solely on immigration status.

### 2. Summary of the Issue that the Resolution Addresses

Like many undocumented law students in the United States, the Chair-Elect of ABA Law Student Division, Thomas E. Kim, whose parents brought him to the United States on a tourist visa and then never returned to South Korea, will face uncertainty on whether he can practice law in the state of Oregon after he earns his law degree from Arizona State University in 2018.

Undocumented immigrants have the desire, and increasingly the education to gain admittance to practice law before this nation's various state bars; they simply need the state-by-state authorization to do so. That is what this Resolution seeks.

### 3. Please Explain How the Proposed Policy Position Will Address the Issue

The recommended Resolution will enable the American Bar Association to facilitate and urge the appropriate governing bodies of American states and territories to enact rules permitting undocumented immigrants, who have met all the necessary prerequisite qualifications for admission in their respective jurisdiction, to join State Bars.

There is undeniably an overwhelming need – both currently and on behalf of a growing number of qualified, but undocumented immigrants – for the American Bar Association to weigh-in on the issue of bar admissions. This resolution acknowledges that unmet need, and proposes a long-term and consistent solution moving forward.

### 4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.