2018

IN RE: MARY DOE and JANE DOE, Petitioners. : Brief

Utah Supreme Court

IN THE UTAH SUPREME COURT

IN RE: MARY DOE and JANE DOE, Petitioners.	Case No. 20180806-SC

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION AND ACLU OF UTAH IN SUPPORT OF PETITIONERS

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Not applicable.

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INTRODUCTION

Pursuant to the Court's Order of November 20, 2018, amici curiae the American Civil Liberties Union and ACLU of Utah submit this brief to explain why the Court can and should issue a rule permitting undocumented immigrants to be admitted as members of the Utah State Bar.

The Utah Constitution empowers this Court to regulate the practice of law in Utah, including bar admission. It also prohibits any other branch of Utah government from regulating the practice of law, both to ensure judicial independence and to protect the integrity of judicial proceedings. This Court is therefore the sole entity that exercises the State's lawmaking authority over bar admission.

Federal law allows this Court to exercise its authority in this case. Federal law sets a default rule that undocumented immigrants are ineligible for state "public benefit[s]," which includes some "professional license[s]." 8 U.S.C. § 1621(a), (c). But even assuming a law license qualifies as a "public benefit" under § 1621(c), a "State" can make undocumented immigrants eligible for public benefits "through the enactment of a State law" that "affirmatively provides for such eligibility." *Id.* § 1621(d). Section 1621(d) thus allows the State of Utah to enact a law making undocumented immigrants eligible for bar admission. And this Court is the entity—the only entity—that makes such laws in Utah.

Nothing in § 1621(d) compels a different result. The United States may argue that § 1621(d) requires States to exercise their lawmaking authority through their legislatures only—that a state *statute* is required to opt out of the prohibition in § 1621(a). But

§ 1621(d) does not purport to dictate which branch of state government must make this decision. The text describes the process for providing eligibility using the most general terms possible—"enact[]" and "law"—without specifying *who* must do the enacting, or what *form* the law must take. As multiple dictionaries, judicial usage, and congressional usage attest, those terms refer to legal rules of all kinds, not just statutes, and to lawmaking entities of all kinds, not just legislatures. Indeed, when Congress wants to specify a particular state actor or type of state law, it regularly makes explicit reference to "statutes," "legislation," "state legislatures," and the like. By omitting those more specific words in § 1621(d), and instead using general terms, Congress left it to the States to determine which branch of state government regulates which activities. That makes sense, because Congress has no valid interest in how States choose to structure their governments, including which branch regulates public benefits.

A contrary interpretation—that only the Utah Legislature can enact a law providing public benefits—would mark a severe federal intrusion on the internal structure of Utah's government. The only effect of such a rule would be to dictate which branch of Utah's government exercises the State's lawmaking authority. The State would retain its authority to admit undocumented immigrants to the bar. But by requiring action by the Utah Legislature, this interpretation of § 1621(d) would override Utah's decision to assign bar admission decisions to the Court, thus forcing the State to distribute its own lawmaking authority according to federal instructions.

At the very least, that kind of intrusion would require an "unmistakably clear" statement in the text of § 1621(d)—a statement that is lacking here. *Gregory v. Ashcroft*,

501 U.S. 452, 460 (1991) (quotation marks omitted). The best reading of § 1621(d)'s text is that the statute is agnostic about which branch of state government provides eligibility for public benefits. But even assuming the text were ambiguous, the federalism clear-statement rule would require the Court to choose the less intrusive interpretation, the one that preserves the State's internal allocation of its own authority. Nor is there anything in § 1621's purpose that explains why Congress would have preferred one kind of state law over another. The statute was enacted to regulate public benefits, not the balance of power within state governments.

Constitutional avoidance requires the same result. A legislature-only rule would contravene the Constitution's federal structure, which empowers Congress to regulate private actors directly, but not to issue orders to state governments. Such a rule would constitute a direct order to the governments of the States, forcing them to assign their own lawmaking power to a federally-chosen arm of their governments. The U.S. Supreme Court has rejected such federally-imposed allocations of state authority in a number of contexts. And the only other court to consider this constitutional question came to the same conclusion. *See In re Vargas*, 131 A.D.3d 4, 11-12 (N.Y. App. Div. 2015).

There being no legal obstacle, this Court should provide that otherwise-eligible undocumented immigrants may be admitted to the Utah State Bar. Immigrants like the petitioners are no different than any other barred attorney in Utah. They have lived in the United States for decades, put down roots in Utah, obtained law degrees, and been admitted to the bar of another State. There is no reason to deny them the ability to

practice their profession and support their families in their home State. The Court should permit them to receive law licenses.

ARGUMENT

I. This Court Can Enact a Law Making Undocumented Immigrants Eligible for Bar Admission.

Under federal law, certain undocumented immigrants are, as a default matter, "not eligible for any State or local public benefit," 8 U.S.C. § 1621(a), which is defined to include a "professional license," *id.* § 1621(c). It is far from clear that law licenses fall within § 1621(c)'s definition of public benefits. *See In re Garcia*, 58 Cal.4th 440, 456-57 (2014) (noting uncertainty). But even if they do, the same statute provides that "[a] State may provide" that undocumented immigrants are eligible for "any State or local public benefit . . . through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." *Id.* § 1621(d).

This Court can enact the law described in § 1621(d). The Utah Constitution gives the Court exclusive authority to make laws governing bar admission for the State of Utah. Section 1621(d) does not interfere with that decision, because its text and structure impose no requirement about which branch of state government must speak for the State. Nor is there any reliable legislative history that explains why Congress would have wanted to dictate which branch exercises the State's authority over public benefits. Any such intrusion would require an unmistakably clear statement, which is nowhere to be found in the text of § 1621(d). And in all events, constitutional avoidance precludes the

intrusive version, because a legislature-only rule would violate the States' fundamental prerogative to allocate authority within their own governments.

A. The Utah Constitution Gives This Court Sole Authority to Regulate Bar Admission.

The Utah Constitution assigns this Court authority to regulate bar admission. *See* Utah Const. art. VIII, § 4 ("The Supreme Court by rule shall govern the practice of law, including admission to practice law . . . ."). This power is as old as the Court: "From its beginning, this Court has had the inherent power to regulate the practice of law . . . ." *Bailey v. Utah State Bar*, 846 P.2d 1278, 1280 (Utah 1993). Indeed, throughout the United States, "the courts have historically regulated admission to the practice of law before them." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1066 (1991); *see Hustedt v. Workers' Comp. Appeals Bd.*, 30 Cal.3d 329, 336-37 (1981) (en banc) (the same is true in "every state").

The Court's authority to decide who can be admitted to the Utah Bar is "exclusive," meaning it cannot be supplemented or displaced by the Legislature. *Injured Workers Ass'n of Utah v. State*, 2016 UT 21, ¶ 27, 374 P.3d 14 ("Our caselaw recognizing this exclusive authority is extensive."). The Utah Legislature used to have concurrent authority to regulate bar admission, but in 1984, the people of Utah ratified a constitutional amendment to remove that power from the Legislature. *Id.* ¶¶ 19, 25. Vesting sole authority in this Court was "considered essential to . . . maintaining an independent judiciary." *Id.* ¶ 23 (quoting Const. Rev. Comm'n, Report to the Governor and the 45th Legislature 27 (1984)). And to further ensure the Court's independence, the

Constitution affirmatively forbids the other branches of Utah government from exercising "any functions appertaining to" this Court, including bar admission. *See* Utah Const. art. V, § 1; *State v. Drej*, 2010 UT 35, ¶ 25, 233 P.3d 476 (Utah 2010). Thus, without "any exception," the Utah Constitution does not permit "legislative oversight" of the Court's "authority to govern the practice of law." *Injured Workers*, 2016 UT 21, ¶ 26 (quoting *Drej*, 2010 UT 35, ¶ 25).[1]

This Court has used its authority to issue a variety of rules to govern the practice of law in Utah. *See, e.g.*, Rule 14-704 ("Qualifications for Admission of Attorney Applicants"); Rule 14-718 ("Licensing of Foreign Legal Consultants"). The rule requested by the petitioners would be precisely the type of law this Court regularly enacts under its article XIII section 4 power.[2]

B. Section 1621(d) Does Not Restrict Who May Enact the Relevant State Law.

1. Section 1621(d)'s Text Permits This Court to Extend Bar Admission to Undocumented Immigrants.

Section 1621(d) allows this Court to exercise the authority conferred by the Utah Constitution. The statute provides that "[a] State" can make immigrants eligible for public benefits "through the enactment of a State law." 8 U.S.C. § 1621(d). And the way

[1] There is a Utah statute that regulates immigrants' eligibility for public benefits in general. *See, e.g.*, Utah Code § 63G-12-401. But because the Utah Constitution prohibits the Legislature from exercising this Court's powers, that statute cannot be applied to bar admission or otherwise constrain this Court's discretion over who is admitted to the Utah Bar.

[2] If the Court determines that it cannot issue the requested rule, the Utah Legislature may be able to enact such a law, because that function would no longer "appertain[] to" this Court. Utah Const. art. V, § 1.

the State of Utah enacts laws governing bar admission—the only way—is through this Court. *See Hoover v. Ronwin*, 466 U.S. 558, 580 (1984) (court acts as "the State itself" when it regulates bar admission); *see Bates v. State Bar of Ariz.*, 433 U.S. 350, 360 (1977) (same). Indeed, because the Court exercises Utah's lawmaking authority over the practice of law, the Court "act[s] in a legislative capacity" when it regulates bar admission. *Hoover*, 466 U.S. at 580, 568. And it "exercis[es] the State's *entire* legislative power with respect to regulating the Bar," because its authority in this realm is exclusive. *Supreme Court of Va. v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 734 (1980) (emphasis added) (holding that state supreme court justices had *legislative* immunity when making rules to govern the practice of law).

The United States may argue that § 1621(d) requires a statute enacted by a state legislature, and thus prevents this Court from providing bar eligibility. But § 1621(d) does not specify what form the "law" must take or who must "enact" it. Multiple aspects of its text and context make clear that the law it describes can be enacted by whichever branch of state government holds the relevant authority—not just the legislature.

First, the text's "ordinary meaning" precludes a legislature-only construction. *State v. Canton*, 2013 UT 44, ¶ 13, 308 P.3d 517 (quotation marks omitted); *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006) (instructing courts to start with a statute's "ordinary meaning"). Section 1621(d) uses the most general terms possible to describe the process for a State to provide eligibility for benefits: "the enactment of a State law." 8 U.S.C. § 1621(d). All dictionaries of which amici are aware agree that the term "law" broadly refers to "[t]he set of rules or principles dealing with a specific area." Black's

Law Dictionary, 1015 (10th Ed. 2014). And "enact" simply means "[t]o make into law by authoritative act." *Id.* at 643.[3] Thus, "Congress could not have chosen a more all-encompassing phrase" to capture the range of laws that different state entities might enact—statutes, regulations, court rules, executive orders. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 221 (2008). That choice makes sense, because States provide a wide set of public benefits through a variety of entities.

Section 1621(d) also avoids any mention of *who* must "enact[]" the opt-out law. It simply allows "the enactment" of such a law, "without respect to a specific actor." *Dean v. United States*, 556 U.S. 568, 572 (2009). The text thus demonstrates a clear "agnosticism about who does the" enacting. *Id.* (quotation marks omitted). To the extent it specifies an actor, it simply refers to "[a] State" as its subject. And as explained above, this Court acts as "the State itself" when it regulates bar admissions. *Hoover*, 466 U.S. at 580.

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[3] *See, e.g.*, Black's Law Dictionary, 643 (10th Ed. 2014) (defining "enactment" as "[t]he action or process of making into law"); The New Shorter Oxford English Dictionary, 1544 (1993) (defining "law" as "a rule of conduct imposed by secular authority" or "[a]ny of the body of individual rules in force in a State or community"); *id.* at 812 (defining "enact" as "establish (a law, legal penalty, etc.); decree (a thing, *that*)"); The American Heritage College Dictionary, 769 (3d Ed. 1997) (defining "law" as "a rule of conduct or procedure established by custom, agreement, or authority"); *id.* at 452 (defining "enact" as "to make into law"); Oxford Living Dictionary, "Law", *available at* https://en.oxforddictionaries.com/definition/law (defining a "law" as "[a]n individual rule as part of a system of law"); *id.* at "Enact", *available at* https://en.oxforddictionaries.com/definition/enact (defining "enact" as "make . . . law"); Merriam-Webster Dictionary, "Law", *available at* https://www.merriam-webster.com/dictionary/law (defining a "law" as "a rule of conduct or action" that is "binding or enforced by a controlling authority"); *id.* at "Enact", *available at* https://www.merriam-webster.com/dictionary/enact (defining "enact" as "to establish by legal and authoritative act").

Section 1621(d)'s "agnosticism" about who enacts the relevant law is confirmed by comparing it to other statutes where Congress *did* specify what kind of state law was required to opt out of a default federal prohibition. For instance, "a State may enact a *statute*" to cancel the default rule preempting certain securities laws. 15 U.S.C. § 80a-3a(c) (emphasis added). It can waive federal tax immunity through "a State *statute*" only. 5 U.S.C. § 5517(a)(1) (emphasis added). And "a State may enact *legislation*" to alter the default distribution of certain federal funds. 31 U.S.C. § 6907(a) (emphasis added).[4] These provisions show that Congress is "perfectly capable" of referring to state statutes and legislation when it wants to. *Fedorenko v. United States*, 449 U.S. 490, 512 (1981). And it is similarly capable of naming specific state actors when it so intends. *See, e.g.*, 49 U.S.C. § 44718(d)(1) ("State aviation agency" can seek to opt out of federal prohibition); 42 U.S.C. § 10706(a)(1) ("legislative body"); 42 U.S.C. § 1322 ("Governor"); 42 U.S.C. § 4021 ("insurance commissioner"). The fact that it did neither in § 1621(d)—and instead used the most general terms available—forecloses any attempt to read "law" in § 1621(d) to mean "statute." *See Kimbrough v. United States*, 552 U.S. 85, 103 (2007) ("Drawing meaning from silence is particularly inappropriate [where] Congress has shown that it knows how to" convey that meaning "in express terms.").

Congress did the same thing in the same bill that enacted § 1621, referring to a "State statute" and a "State legislature" on multiple occasions. *See* Personal

[4] These provisions govern specific areas that are typically regulated by state legislatures—taxes, appropriations—and therefore, unlike a reading of § 1621(d) that bars this Court from granting the petition, do not necessarily shift any authority between different branches of state government. Section 1621(d), by contrast, applies to a wide array of benefits and licenses provided by a broad set of state entities.

Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. No. 104-193, §§ 104(k), 395(b)(2), 415(b)(3)(B), 901(a). In fact, PRWORA speaks elsewhere of "laws enacted *by the legislature* of [a] State," *id.* § 395(b)(2) (emphasis added), a striking departure from § 1621(d)'s reference to laws enacted simply by "[a] State." Interpreting § 1621(d) to require legislation would effectively revise it to add the exact phrase—"by the legislature"—that Congress included in other provisions but omitted in § 1621(d). "Congress acts intentionally and purposely in the disparate inclusion or exclusion" of statutory language. *Russello v. United States*, 464 U.S. 16, 23 (1983). The Court should not "conclud[e] here that the differing language in the two subsections has the same meaning in each." *Id.*; *accord Nken v. Holder*, 556 U.S. 418, 430-31 (2009).

Indeed, Congress itself regularly uses "law" to refer to legal rules beyond statutes. Many statutes explicitly define "[t]he term 'State law' [to] include[] all laws, decisions, rules, regulations, or other State action having the effect of law." 29 U.S.C. § 1144(c)(1); *see id.* § 1191(d)(1) (same); 27 U.S.C. § 214(11) (similar); 15 U.S.C. § 6764(10)(A) (similar). Other federal statutes make that definition clear in context, without defining the term explicitly. *See, e.g.*, 14 U.S.C. § 823a(a) (describing "provisions of law" as "including" both "statutes and regulations"); 16 U.S.C. § 460*l*-33(c)(1)(B)(i) (referring to "applicable laws (including any applicable statute, regulation, or Executive order)"); 18 U.S.C. § 3600A(d) (referring to "any statute, regulation, court order, or other provision of law"). These statutes rule out any suggestion that Congress automatically means "statute" when it says "law." Just the opposite.

Reading § 1621(d) to require legislative action would likewise run contrary to widespread judicial usage. Courts often describe legal rules as being "enacted by [a] Court." *McFarland v. Scott*, 512 U.S. 849, 862 (1994); *see, e.g., Pyper v. Bond*, 2011 UT 45, ¶ 14 n.9, 258 P.3d 575 ("[T]he Utah Rules of Civil Procedure were enacted by this court . . . ."). And they frequently describe court-enacted legal rules as "laws." For instance, the Federal Rules of Civil Procedure are enacted by U.S. Supreme Court, which describes them as "federal law" and "the law of the United States." *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court*, 482 U.S. 522, 533 (1987). Utah courts characterize them the same way, as "federal law." *Oseguera v. Farmers Ins. Exchange*, 2003 UT App. 46, ¶ 9 n.11, 68 P.3d 1008; *see also Brickyard Homeowners' Ass'n v. Gibbons Realty Co.*, 668 P.2d 535, 540 (Utah 1983).

In addition to clashing with dictionary definitions, statutory usage, and judicial usage, a statute-only reading would not square with "the language as we normally speak it." *Watson v. United States*, 552 U.S. 74, 79 (2007). If a lawyer misappropriates client funds, thereby triggering severe penalties, no one would dispute that the person has violated state law. *See* Utah R. Prof'l Conduct 1.15(a) (requiring attorneys to safeguard client funds); Sup. Ct. R. Prof'l Prac. 14-603 (listing permissible sanctions); *In re Discipline of Lundgren*, 2015 UT 58, ¶ 25, 355 P.3d 984 (affirming disbarment). Nor could anyone dispute that this Court had enacted those laws. And while "enact" and "law" may be most frequently used in the context of legislation, they are plainly not *limited* to that context. As this Court has explained, "the typical reach of [a] statute" does

not "define the full breadth of the statute's scope." *Graves v. North Eastern Serv., Inc.*, 2015 UT 28, ¶ 65, 345 P.3d 619.

It is therefore clear that § 1621(d) does not dictate which branch of Utah's government must exercise the State's authority to provide public benefits. Congress chose the most general terms available for describing a legal rule and the process for establishing it. There is no broader phrase it could have used to capture the range of benefits that States provide and the range of state actors who provide them. If Congress had wanted to require a statute enacted by a state legislature, all it had to do was use the word "statute" or "legislature," as it has in many other statutes.

There is accordingly no basis to read § 1621(d) to require a statute enacted by the state legislature. The U.S. Supreme Court has repeatedly admonished courts not to "read[] words or elements into a statute that do not appear on its face." *Dean*, 556 U.S. at 572 (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997)). The text alone answers this Court's first question.

2. The Federalism Clear-Statement Rule Confirms that This Court May Enact the Requested Law.

Even assuming arguendo that § 1621(d) was open to multiple interpretations, principles of federalism require courts to interpret federal statutes in a way that preserves the States' internal distribution of power. For a federal statute to alter "the structure of [a State's] government," Congress "must make its intention to do so unmistakably clear in the language of the statute." *Gregory* 501 U.S. at 460. (quotation marks omitted). This clear-statement rule applies regardless of whether the more intrusive interpretation would

violate the Constitution.[5] And it forecloses a legislature-only view of § 1621(d), because that interpretation is not "unmistakably clear" from the text of the statute.

The federalism clear-statement rule applies here because the intrusive reading of § 1621(d) would "alter[] the State's governmental structure" by shifting power over bar admission from state courts to state legislatures. *City of Abilene v. FCC*, 164 F.3d 49, 52 (D.C. Cir. 1999); *see Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004) (applying the rule because an interpretation would have altered the "State's chosen disposition of its own power" by shifting power from state legislatures to political subdivisions). And the rule applies with particular force because "the regulation of the activities of the bar is at the core of the State's power." *Bates*, 433 U.S. at 361; *Leis v. Flynt*, 439 U.S. 438, 442 (1979); *see Am. Bar Ass'n v. FTC*, 430 F.3d 457, 472 (D.C. Cir. 2005) (applying *Gregory* to federal laws that affect the practice of law).

Section 1621(d) cannot satisfy the rule's high bar, because its text does not "plainly and unequivocally" state that only a legislature can enact the relevant law. *Gregory*, 501 U.S. at 467. As explained, it makes no mention of legislatures or statutes, and it uses the broadest and most general language to describe the process for providing benefits. The federalism rule is therefore dispositive here.

In fact, § 1621(d) is even *less* explicit than many of the provisions that have failed to satisfy the rule. In *Nixon*, for instance, a federal statute provided that States could not restrict "*any* entity" from entering the telecommunications business, 47 U.S.C. § 253(a)

[5] *See City of Abilene v. FCC*, 164 F.3d 49, 52 (D.C. Cir. 1999) (applying the federalism clear-statement rule while "assum[ing] *arguendo* that Congress" could enact the intrusive version); *Parker v. Brown*, 317 U.S. 341, 350 (1943) (same).

(emphasis added)—language that would naturally include municipal entities, thus limiting States' power over their subdivisions. The Supreme Court still rejected that interpretation, because the statute's text was "not limited to one reading" and did not "unequivocally" state that it applied to municipalities. *Nixon*, 541 U.S. at 141.[6]

Even more striking, the Election Clause states that certain election rules "shall be prescribed in each State *by the Legislature* thereof." U.S. Const. art. I, § 4, cl. 1 (emphasis added). Despite that language, the U.S. Supreme Court has interpreted the Clause to allow lawmaking by *whichever* branch States choose to empower—not just the legislature—because federalism requires "that States retain autonomy to establish their own governmental processes." *Az. State Legislature v. Az. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2673 (2015) (holding that a State could empower an independent commission to regulate elections). If the Constitution cannot impose a legislature-only rule explicitly, clearly a statute cannot do so implicitly, without any mention of the legislature.

[6] Where the federalism clear-statement rule applies, it is typically "fatal" to an intrusive construction of a statute. *Nixon*, 541 U.S. at 141. Numerous cases demonstrate "the Supreme Court's strong fidelity to the 'federalism canon.'" *Ho v. ReconTrust Co., NA*, 840 F.3d 618, 625 (9th Cir. 2016), *as amended*, 858 F.3d 568 (9th Cir. 2017); *see Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (collecting cases). Indeed, the one case where this Court has found that a statute satisfied the rule involved a statute that was completely "explicit" about its intent to regulate real estate transactions—no other construction was possible. *Bank of Am., N.A. v. Sundquist*, 2018 UT 58, ¶ 9, 430 P.3d 623. And the intrusion there was simply that Congress had regulated interstate commerce in an area that States traditionally regulate, not the significantly rarer and more invasive step of reordering the States' internal structure of authority.

3. Nothing in the Legislative History Overrides the Plain Meaning of the Statute's Text.

Because the statutory text is clear, this Court need not "resort to legislative history." *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994); *see World Peace Mvmt. of Am. v. Newspaper Agency Corp.*, 879 P.2d 253, 259 (Utah 1994) (same).

To the extent legislative history is relevant, it confirms that § 1621(d)'s purpose is to let States provide benefits if they choose to. Congress recognized that certain benefits would help immigrants achieve PRWORA's goal of "self-sufficiency," H.R. Rep. No. 104-651 ("House Report"), 1996 WL 393655, at *1240 (June 27, 1996); 8 U.S.C. § 1601(1), (3), and so it created a mechanism for States to provide those benefits. *See* House Report, 1996 WL 393655, at *1445; *Finch v. Comm. Health Ins. Connector Auth.*, 459 Mass. 655, 673 n.18 (2011) ("Congress is pleased for States" to provide benefits where they choose to). The intrusive reading of § 1621(d) conflicts with that purpose, because it would prevent States from providing eligibility using their own lawmaking processes. Nothing in § 1621(d)'s legislative history hints at why Congress would have wanted to punish States for having the wrong internal distribution of power.

A single, unexplained sentence in the legislative history suggests otherwise, but it is plainly not a reliable guide for interpreting § 1621(d). It states that § 1621(d) requires "the affirmative enactment of a law [1] by a State legislature [2] and signed by the Governor . . . [3] that references this provision." H.R. Conf. Rep. No. 104-725, at 383 (July 30, 1996). This describes what the text of § 1621(d) requires—"the affirmative

enactment of a law"—but then adds three additional requirements that are not in the enacted text.

This errant sentence cannot be used to interpret § 1621(d). The U.S. Supreme Court has instructed courts only to consult pieces of legislative history that "shed a *reliable* light" on the meaning of statutory text. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) (emphasis added) (refusing to rely on unreliable legislative history); *Matter of the Adoption of B.N.A.*, 2018 UT App. 224, ¶ 19 n.6 (same). But a patently inaccurate description of a statute cannot be a reliable indicator of its meaning. The sentence above is inaccurate in multiple respects, because the text of § 1621(d) makes no mention of governors, legislatures, or references to the statute.[7] Courts typically do not give weight to such a "snippet of legislative history" that is not "anchored in the text of the statute." *Shannon v. United States*, 512 U.S. 573, 583 (1994).

For that reason, the California Supreme Court concluded that the same sentence was unreliable and therefore irrelevant to § 1621(d)'s meaning. *See Martinez v. Regents of Univ. of Cal.*, 50 Cal.4th 1277, 1293, 1295-96 (Cal. 2010) ("The committee report may not create a requirement not found in section 1621 itself."). This Court, too, has disregarded legislative history that describes a narrower rule than the enacted text. *See Graves v. N.E. Servs.*, 2015 UT 28, ¶¶ 61, 67, 345 P.3d 619 (refusing to interpret a broad

[7] Giving weight to this isolated sentence would narrow § 1621(d) in multiple untenable ways that have no basis in its text. It would require benefits laws to explicitly cite § 1621(d)—the result rejected in *Martinez*. And it would mean that even a state *statute* could not provide eligibility if the governor allowed it to become law without her signature, or if the legislature overrode her veto. *See* Utah Const. art. VII, § 8.

statutory term ("fault") to have the narrower meaning ("negligence") stated in the legislative history).

The sentence's reliability is further eroded by other inaccuracies in the same committee report. The very next paragraph describes a provision that regulates "information regarding . . . citizenship and immigration status" only. 8 U.S.C. § 1373(a). But the committee report says the statute applies to "information regarding the immigration status of an alien *or the presence, whereabouts, or activities* of illegal aliens." H.R. Conf. Rep. No. 104-725, at 383 (emphasis added). Courts have uniformly rejected those additional elements, because they clearly go beyond the enacted text of § 1373. *See, e.g.*, *Steinle v. San Francisco*, --- F.3d ---, 2019 WL 1323172, *6 (9th Cir. Mar. 25, 2019); *United States v. California*, 314 F. Supp. 3d 1077, 1101-03 (E.D. Cal. 2018); *Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 331-33 (E.D. Pa. 2018); *San Francisco v. Sessions*, 349 F. Supp. 3d 924, 967-68 (N.D. Cal. 2018). The committee report's unusual descriptions of § 1373 and § 1621(d) are either simply errors or, more troublingly, the kind of "strategic manipulations" that trigger "the worst fears of critics who argue legislative history will be used to circumvent the Article I process." *Allapattah*, 545 U.S. at 568, 570.

Finally, regardless of the sentence's reliability, the federalism and constitutional avoidance principles discussed above and below trump any contrary legislative history. *See supra* Part I.B.2; *infra* Part I.C. As the U.S. Supreme Court has explained, when an interpretation would raise "grave doubts" about a federal statute's constitutionality, courts must choose a construction that avoids those doubts even if "the legislative history

point[s] somewhat more strongly in another way." *Blanchette v. Conn. Gen. Ins. Corp.*, 419 U.S. 102, 134 (1974); *see also Ratzlaf*, 510 U.S. at 147-48 (explaining that a substantive canon trumped "contrary indications in the statute's legislative history"). In other words, legislative history should not be used to alter the federal-state balance or create constitutional problems where the text of the statute does not.

4. Case Law Provides No Basis to Disregard § 1621(d)'s Plain Meaning.

Few courts have addressed whether § 1621(d) requires a statute. The New York Appellate Division and Pennsylvania Supreme Court concluded it did not, and that state courts can therefore make undocumented immigrants eligible for bar admission. *See In re Vargas*, 131 A.D.3d 4, 11-12 (N.Y. App. Div. 2015); *In re Order Amending Rule 202*, No. 790 (Pa. 2019).[8] Other courts have mostly addressed whether already-enacted statutes satisfied § 1621(d)'s other requirements, like the need to "affirmatively" provide eligibility. *See, e.g.*, *De Vries v. Regents of Univ. of Cal.*, 6 Cal. App. 5th 574, 595 (Cal. Ct. App. 2016). Because state statutes already existed in those cases, the courts had no occasion to consider whether other entities could make the relevant law. At most, these cases assumed that a statute was required, but none of them analyzed the issue, much less announced any holding.

Only one court has concluded that § 1621(d) may require a statute enacted by a legislature. *See Fla. Bd. of Bar Examiners re Questions as to Whether Undocumented Immigrants Are Eligible for Admission to the Fla. Bar*, 134 So.3d 432 (Fla. 2014)

[8] *Available at* https://bit.ly/2U67QMN. The Pennsylvania Supreme Court adopted this rule at the recommendation of the Pennsylvania Board of Law Examiners. *See* 48 Pa. Bull. 6385, Vol. 48, No. 40 (Oct. 6, 2018), https://bit.ly/2HUdCdB.

(holding that DACA recipients were not eligible for law licenses in Florida). But even there, it was not clear that the Florida Supreme Court reached a final conclusion. After stating why a statute might be necessary, the court noted the petitioners' argument that "non-legislative forms of 'State law'" could also suffice. *Id.* at 435. The court did not reject that possibility, it simply did not find any "existing" law in Florida providing benefits, *id.*—hardly a reason for why a court *could not* enact such a law.

In any event, the Florida Supreme Court's discussion of § 1621(d) omitted almost all of the relevant analysis. The court did not examine the text of § 1621(d) at all—it simply asserted, without analysis, that the "plain language" requires a statute. *Id.* at 435. It did not consider the meaning of "enact" or "law," consult any dictionaries, compare the language to other federal statutes, examine judicial usage, consider the federalism clear-statement rule, or address the constitutional problems with a legislature-only rule. *Id.* at 435 & n.5. The court's incomplete analysis provides little guidance on this question.

C. Interpreting § 1621(d) to Require State Legislation Would Raise Serious Constitutional Concerns.

Constitutional concerns present yet another reason to avoid the intrusive reading of § 1621(d). "[W]hen an Act of Congress raises a serious doubt as to its constitutionality," courts must "first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (quotation marks omitted); *see Cole v. Jordan School Dist.*, 899 P.2d 776, 778 (Utah 1995). To avoid such doubts, "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Edward J. DeBartolo Corp. v.*

Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 575 (1988) (quotation marks omitted); *see Utah Dep't of Transp. v. Carlson*, 2014 UT 24, ¶ 23, 332 P.3d 900.

1. Section 1621(d) would raise grave constitutional doubts if it dictated who must exercise the States' lawmaking authority. Congress cannot issue commands to the governments of the States, including commands about how to allocate their authority. It can only regulate private actors directly—something a legislature-only rule would not do. Section 1621(d) therefore cannot require Utah to exercise its public-benefits authority through a federally-chosen branch of its government. *Accord Vargas*, 131 A.D.3d at 11-12 (rejecting statute-only interpretation on constitutional grounds); *id.* at 9 n.9 (noting that other courts have not addressed this constitutional question).

The Constitution reflects a "fundamental structural decision" to give Congress "the power to regulate individuals, not States." *Murphy v. NCAA*, 138 S. Ct. 1461, 1475-76 (2018) (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)). Congress can therefore "exercise its legislative authority directly over [private] individuals," but it can never "issue direct orders to the governments of the States." *Murphy*, 138 S. Ct. at 1476 (quotation marks omitted). This prohibition on direct orders applies "categorically." *Printz v. United States*, 521 U.S. 898, 932-33 (1997). Indeed, "even a particularly strong federal interest" would not allow Congress to dictate how States exercise their lawmaking authority. *Murphy*, 138 S. Ct. at 1476 (quoting *New York*, 505 U.S. at 178).

This rule prohibits direct orders of all kinds. Congress cannot order state governments to enact a law, *see New York*, 505 U.S. at 174-80, or refrain from enacting a law, *see Murphy*, 138 S. Ct. at 1478, or accept federal funds, *see NFIB v. Sebelius*, 567

U.S. 519, 587 (2012), or administer a federal program, *see Printz*, 521 U.S. at 925-33. Nor can Congress dictate where a State chooses to locate its capitol, because that is "a matter pertaining purely to the internal policy of the state." *Coyle v. Smith*, 221 U.S. 559, 565, 579 (1911); *see also Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 260 (2011) (recognizing "limits on the Federal Government's power to affect the internal operations of a State").

Likewise, Congress cannot "displace a State's allocation of governmental power and responsibility" between the branches of its government. *Alden v. Maine*, 527 U.S. 706, 752 (1999). This, too, is a purely internal matter, and one that is fundamental to a State's sovereignty. *See Gregory*, 501 U.S. at 460 (A "State defines itself as a sovereign" through "the structure of its government."). Thus, in its sovereign immunity cases, the U.S. Supreme Court has explained that subjecting an unwilling State to lawsuits would shift spending decisions from the State's political branches to its courts—something the Constitution's federal structure forbids. *See Alden*, 527 U.S. at 751-52. In other words, because "[a] State is entitled to order the processes of its own governance" free from federal interference, Congress cannot alter a State's decision to "assign[]" a particular policy decision "to the political branches, rather than the courts." *Id.*; *see also Stewart*, 563 U.S. at 265 (Kennedy, J., concurring) (doubting that Congress could demand "far-reaching changes with respect to [a State's] governmental structure" even as a condition of federal funds).[9]

[9] These principles are not limited to the sovereign immunity context, but rather "inhere[] in the system of federalism established by the Constitution." *Alden*, 527 U.S. at 730.

The same is true here. If Congress cannot restructure state governments *indirectly*, by abrogating sovereign immunity, surely it cannot restructure them *directly*, by spelling out exactly which branch must regulate a given area. The Constitution simply does not allow that kind of "federally-imposed restructuring of power within state government." *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 870 (N.D. Ill. 2018) (striking down federal statute); *see also Koog v. United States*, 79 F.3d 452, 460 (5th Cir. 1996) ("[S]tate sovereignty . . . surely encompasses the right to set the duties of office for state-created officials.").

The U.S. Supreme Court has protected the States' fundamental prerogative to structure their governments in a variety of contexts. For instance, as mentioned above, the Election Clause states that certain election laws "shall be prescribed in each State by the Legislature thereof." U.S. Const. art. I, § 4, cl. 1. The Court has nonetheless held that States can choose which state entity should exercise that power. *Az. State Legislature*, 135 S. Ct. at 2673. As the Court explained, "it is characteristic of our federal system that States retain autonomy to establish their own governmental processes," including which "component of state government [is] authorized to prescribe regulations" on a given subject. *Id.* (quotation marks and alterations omitted).

Indeed, the principles that protect state sovereign immunity often also protect state autonomy more broadly. *See, e.g.*, *Gregory*, 501 U.S. at 460-61 (holding that federalism clear-statement rule applies to both Tenth and Eleventh Amendments); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (same). And as explained in the text, courts have protected States' prerogative to structure their own governments in multiple contexts, including sovereign immunity, the Elections Clause, and the anti-commandeering doctrine.

Thus, *Murphy*, *Alden*, *Arizona Redistricting Commission*, and their antecedents add up to the same core principle: Congress cannot issue direct orders to state governments, including orders dictating which branch of government must exercise a particular piece of the State's lawmaking authority. That principle forecloses any interpretation of § 1621(d) that would require state legislatures to exercise States' authority over public benefits. "A more direct affront to state sovereignty is not easy to imagine." *Murphy*, 138 S. Ct. at 1478.

2. In other litigation after *Murphy*, the United States has advanced several arguments to salvage other statutes that "issue direct orders to the governments of the States." *Murphy*, 138 S. Ct. at 1476; *see*, *e.g.*, 8 U.S.C. § 1373(a), (b) (ordering States not to enact certain laws). Every court to consider these arguments has rejected them. *See San Francisco*, 349 F. Supp. 3d at 949-953; *Philadelphia*, 309 F. Supp. 3d at 329-30; *Chicago*, 321 F. Supp. 3d at 868-73. This Court should too.

First, the United States may argue that a legislature-only rule would be a "valid preemption provision," because the federal benefits scheme regulates private actors. *Murphy*, 138 S. Ct. at 1479. That is wrong. As explained above, Congress can regulate private actors directly, but not state governments. Thus, to be valid, every rule Congress enacts must "operate[]" as one that "imposes restrictions or confers rights on private actors." *Id.* at 1480; *see id.* at 1480-81 (giving examples). Even if that description applied to § 1621's underlying eligibility rules, it plainly would not apply to a command that States exercise their public-benefits authority through their legislatures. That rule would not confer any right or impose any restriction on private actors—it would simply

govern how state governments make their own regulatory decisions. In short, "there is simply no way to understand" such a rule "as anything other than a direct command to the States." *Id.* at 1481.[10]

In other cases, the United States has argued that direct orders to the States are permissible as long as they are connected to a broader federal scheme like the Immigration and Nationality Act ("INA"). But there is no such exception to the Constitution's "fundamental structural decision . . . to withhold from Congress the power to issue orders directly to the States." *Id*. at 1475. Multiple cases make this clear. In *Printz*, the broader federal Brady Act scheme regulated private parties' handgun purchases, 521 U.S. at 902-03, but the Supreme Court still invalidated the specific rule that dictated how state officers had to participate in that scheme. The same was true in *NFIB*, where Congress had enacted an extensive federal scheme regulating private health insurance, but the Court struck down the specific rule that constituted a direct order to the States. The "same principles" applied in *Murphy* and apply here. 138 S. Ct. at 1477; *see also Galarza v. Szalczyk*, 745 F.3d 634, 644 (3d Cir. 2014) (applying anti-commandeering principles in the immigration context).

[10] That kind of direct order goes far beyond the rules in *Gregory* and *Nixon*, which the Court assumed Congress could have imposed with an explicit statement. In those cases, the intrusive version of the rule would have applied across the board, to state actors and private actors alike. The Constitution allows those kinds of generally-applicable laws. *See Murphy*, 138 S. Ct. at 1479 (anti-commandeering does not prevent federal laws that "appl[y] equally to state and private actors"); *see, e.g.*, *Garcia v. San Antonio Metro. Trans. Auth.*, 469 U.S. 528 (1985) (Congress may apply FLSA to state employees). Here, by contrast, a legislature-only rule would target the States alone. *See Printz*, 521 U.S. at 932 n.17 (striking down a statute whose "extension . . . to private citizens" would be "impossible").

Second, the United States may argue that Congress can order the States to provide public benefits through their legislatures because Congress could have instead preempted States from providing those benefits. But the fact that Congress did not preempt certain state laws does not give Congress the power to dictate which state entity enacts them. Notably, when *Murphy* listed the ways that Congress *can* validly influence state policymaking, it did not mention any congressional power to force States to enact laws a certain way simply because Congress chose not to preempt those laws. 138 S. Ct. at 1478-79.

Such a power would have remarkable consequences, because it would mean Congress could forcibly alter the internal operations of state governments in any realm where a federal regulatory scheme exists. Congress could require States to enact certain healthcare laws by initiative only, because Congress could have preempted those laws instead. *See* 42 U.S.C. ch. 157 (federal healthcare laws). Or Congress could require legislative supermajorities for state laws that affect greenhouse gas emissions. *See* 42 U.S.C. ch. 134 (federal energy laws). Or it could require that governors, not state administrative agencies, issue licenses for businesses engaged in interstate commerce. *See, e.g.*, 49 U.S.C. § 14501(a)(1) (preempting certain state regulations of interstate commerce). The United States' theory would mark a vast expansion of congressional power over state governments.

The United States has elsewhere tried to bolster this argument by suggesting that ambiguous language in *FERC v. Mississippi* establishes that Congress can issue commands in any "field" that is "pre-emptible." 456 U.S. 742, 769 (1982). It is unclear

what the government's suggested rule would actually mean, because by definition, every "field" in which Congress can legislate is "pre-emptible." *See* U.S. Const. art. I, § 8 (legislative power); *id.* art. VI, § 2 (preemption). In any event, the U.S. Supreme Court has already rejected any such reading. In *New York*, the Court struck down a federal command in the field of radioactive waste, even though "Congress could, if it wished, pre-empt state radioactive waste regulation" altogether. 505 U.S. at 160. The Court rejected Justice White's attempt to read *FERC* broadly, *id.* at 204, explaining that "even where Congress has the authority" to preempt state law, "it lacks the power directly to compel the States" to regulate according to federal instructions, *id.* at 166. And in *Murphy*, the Court counseled against reading *FERC* beyond its facts. It explained that the statute in *FERC* was constitutional because it merely asked States "to *consider* Congress's preference," and it emphasized that "*FERC* was decided well before our decisions in *New York* and *Printz*." 138 S. Ct. at 1479 (emphasis added).[11]

[11] The Supreme Court's decision in *Hodel* is inapposite for the same reason. There, "Congress enacted a statute that comprehensively regulated surface coal mining and offered States" the option of enforcing the federal regime. *Murphy*, 138 S. Ct. at 1479. Here, in contrast, a statute-only rule would dictate how States exercise *their own* authority to provide benefits using their own funds. *See* 8 U.S.C. § 1621 (regulating "State and local public benefits" only); *id.* § 1621(c) (defining benefits as those provided "by appropriated funds of a State"). Unlike in *Hodel*, § 1621(d) does not regulate States' participation in the *federal* benefits scheme—a different statute governs those. *See* 8 U.S.C. § 1611 (regulating benefits provided "by appropriated funds of the United States," many of which are disbursed by the States).

II. Qualified Bar Applicants Should Be Eligible to Practice Law Regardless of Immigration Status.

The Court should enact the law described in § 1621(d) and provide that immigrants are eligible for law licenses if they meet the normal criteria for bar admission. As many States have concluded, there is no "rational basis for withholding the privilege of practicing law" from immigrants like the petitioners in this case. *Vargas*, 131 A.D.3d at 12, 27-28; *see also* Pet. Br. 7-12 (describing such laws enacted by courts and legislatures in New York, Pennsylvania, California, Florida, Illinois Nebraska, Wyoming, and New Jersey). The Utah State Bar has come to the same conclusion, and has petitioned this Court to enact the same rule. *See In re Utah State Bar*, Case No. 20160318-SC. It would be appropriate for this Court to do so for at least five reasons.

First, in every relevant way, the petitioners are in the same position as other applicants who successfully apply for admission to the Utah State Bar. They have lived virtually their entire lives in the United States, they have excelled in law school and received law degrees, they are already members in good standing of another State's bar, and they have been working productively as lawyers for multiple years. The petitioners are no different from any other successful bar applicant in Utah. Their applications should be decided based on their qualifications to practice law, not their immigration status.

Second, the petitioners' immigration status does not reflect negatively on their moral character. Just like U.S.-born children, they know no other country as their home. They have built deeply rooted and productive lives here, and their families, communities, and careers are in Utah. They have committed no crime in doing so, because "it is not a crime for a removable alien to remain present in the United States." *Arizona v. United States*, 567 U.S. 387, 407 (2012). And in any event, past violations of the law typically do not result in any categorical prohibition against bar admission, especially when an applicant's subsequent achievements demonstrate good moral character. *See, e.g.*, *Garcia*, 58 Cal.4th at 460 (explaining that the "bare fact" of an illegal act does not prevent bar admission) (quotation marks omitted).

Third, the United States itself has determined that the petitioners should be able to live and work in the United States. The petitioners have been granted protection under the Deferred Action for Childhood Arrivals (DACA) program, which required them to show that they had a clean record and were pursuing their education diligently. The program is premised on the federal government's belief that "the United States' immigration laws were not designed 'to remove productive young people to countries where they may not have lived or even speak the language.'" *Vargas*, 131 A.D.3d at 15 (quoting Dep't of Homeland Sec., *Deferred Action for Childhood Arrivals*, at 2 (June 15, 2012)).

Fourth, the petitioners are equipped to put their Utah law licenses to good use. As DACA recipients, they have received authorization from the federal government to seek

employment in Utah and anywhere else in the United States.[12] *See* 8 C.F.R. § 274a.12(c)(14). They would accordingly have the same options to practice law as any other barred attorney in Utah.

There is no reason, however, to limit the eligibility rule to DACA recipients, because even without DACA protections, an undocumented immigrant can still put a law license to productive use in multiple ways. First, there are numerous other ways to obtain employment authorization, such as when asylum or other proceedings are pending. *See* 8 C.F.R. § 274a.12(a)(10)-(13); *id.* § 274a.12(c)(8)-(11), (14), (18)-(20), (22), (24). Second, there are many ways a person without employment authorization can productively use a law license. For instance, an attorney without employment authorization can "provide[] legal services on a pro bono basis or outside the United States." *Garcia*, 58 Cal.4th at 462 (noting the United States' agreement). That is why Utah law allows foreign law students to obtain law licenses despite their lack of employment authorization in the United States. *See* Utah Court Admission Rule 14-

[12] DACA has been in effect continuously since 2012. In November 2017, DHS issued a memorandum stating its intention to gradually rescind the program. But multiple courts have enjoined the rescission nationwide, holding that DHS's rescission decision was legally and procedurally improper. *See Regents of the Univ. of Cal. v. DHS*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018), *aff'd*, 908 F.3d 476 (9th Cir. 2018); *NAACP v. Trump*, 315 F. Supp. 3d 457 (D.D.C. 2018); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018). The Supreme Court has not yet decided whether to grant review. *See* Robert Barnes, *DACA Program Not Likely to Get Supreme Court Review This Term*, Wash. Post (Jan. 22, 2019). At the same time, Congress is considering bills that would grant DACA recipients permanent legal status. *See* Nicole Acevedo, *House Democrats Introduce Bill to Give Citizenship to DACA and TPS Recipients*, NBC News (Mar. 12, 2019). For present purposes, all that matters is that the Petitioners *currently* have both DACA protection and employment authorization. The Court need not make any predictions about how other litigation and legislation may change things in the future.

704(d). Undocumented immigrants can also work as independent contractors without violating the federal prohibition on unauthorized "employment." 8 U.S.C. § 1324a; *see* 8 C.F.R. § 274a.1(f)-(h) (prohibition does not reach "independent contractors"). Immigrants without DACA protection or employment authorization are thus perfectly capable of using law licenses productively. *See Garcia*, 58 Cal.4th at 463 n.18 (granting bar admission to undocumented immigrant who had not received DACA relief or employment authorization).[13]

Fifth, admitting the petitioners to the Utah Bar would serve the important goal of allowing immigrants to be self-sufficient and serve their communities. In the same statutory scheme as § 1621(d), Congress declared that our "national policy" is to encourage immigrants to achieve "[s]elf-sufficiency" and "rely on their own capabilities" rather than public assistance. 8 U.S.C. § 1601(1), (2)(A). The Petitioners are seeking precisely that, and are asking this Court for permission to support themselves and their families through their own work. There is no reason to prevent otherwise-eligible immigrants from being admitted to the Utah Bar.

CONCLUSION

The Court should grant the petition and provide that undocumented immigrants may be admitted to the bar if they otherwise meet the standards for admission.

[13] *See also* Br. of Am. Civil Liberties Union et al., *In re Garcia*, No. S202512, at 18-25 (Cal. *filed* July 27, 2012) (explaining ways a person without employment authorization can still work as a lawyer), https://bit.ly/2UYUnn2.

RESPECTFULLY SUBMITTED this 26th day of March 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 24(g)(1) because this brief contains 8,716 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with Utah R. App. P. 21(g) regarding public and non-public filings.

DATED this 26th day of March, 2019.

_____

John Mejia

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March 2019, two copies each of the foregoing **BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION AND ACLU OF UTAH IN SUPPORT OF PETITIONERS** were served via U.S. Mail, postage prepaid, on the following:

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