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

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

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

BRIEF OF *AMICUS CURIAE* AD HOC COALITION OF UTAH LAW PROFESSORS IN SUPPORT OF PETITIONERS

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[1] In preparing this brief, *amicus* relied on briefs submitted as part of litigation on substantially the same issue in California and New York, as well as materials provided by the Utah State Bar and Kristen Olsen. We express gratitude for that assistance.

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INTRODUCTION & SUMMARY OF ARGUMENT

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105, now codified in relevant part at 8 U.S.C. §§ 1601 *et seq*. Sections 1621(a) and (d) of Title 8 make certain aliens ineligible "for any State or local public benefit," in the absence "of a State law [that] affirmatively provides for such eligibility." These provisions do not prohibit the admission of otherwise eligible undocumented immigrants to the practice of law in Utah, and this Court should enter an order allowing all undocumented immigrants to apply for admission to the practice of law in Utah.

First, a license to practice law in Utah is not a "State or local public benefit" as defined in 8 U.S.C. § 1621(c)(1) because it is not "provided by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C. § 1621(c)(1)(A). The Utah Supreme Court, which issues licenses to practice law in Utah, is not "an agency of a State or local government" but an independent branch of state government granted plenary power under the Utah Constitution to administer and regulate admission to the Utah Bar. Utah Const. art. VIII, § 4. Neither is the Utah State Bar, the entity to which the Utah Supreme Court has delegated the administrative tasks of bar admission, "an agency of a State or local government." Rather, the Utah State Bar is incorporated as a private non-profit entity and receives no public funds. *See* Exhibit A, *Certificate of Existence: Utah State Bar, Utah Department of Commerce* and Exhibit B, *Declaration of John C. Baldwin, Executive Director of the Utah Bar*. Moreover, in Utah, admission to the Bar is not provided through "appropriated funds of a State or local

government" but through fees charged directly to applicants and members of the Bar. Only private funds finance law licensing in Utah. Because the Utah Supreme Court is not "an agency of a State or local government" and law licensing in Utah is financed by private funds rather than by "appropriated funds of a State or local government," section 1621 does not apply to bar admission in Utah.

Second, even if this Court decides that a license to practice law in Utah is a "State or local public benefit" under section 1621(c), this Court may nonetheless authorize the Utah State Bar to admit otherwise eligible undocumented immigrants to practice law in Utah. Section 1621(d) of Title 8 allows a state to provide a "State or local public benefit" for which an alien would otherwise be ineligible under section 1621(a) through an "enactment of a State law . . . which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d). Because the Utah Constitution provides the Utah Supreme Court the exclusive power to regulate law licensing in Utah, Utah Const. art. VIII, this Court is the only entity able to opt-out of section 1621(c)'s prohibitions with respect to law licensing in Utah. Therefore, section 1621(d) should not be read to require a legislative-enactment opt-out. Principles of constitutional avoidance, federalism, and the Tenth Amendment exact respect for Utah's structure of its sovereign powers. Congress cannot commandeer state sovereignty to its own ends. Through its state constitution, Utah has chosen to give authority over bar admission to its courts, without requiring additional action by its legislature. Accordingly, the power to override the prohibitions in section 1621(c) with respect to law licensing in Utah may be exercised by this Court, a power the state legislature

cannot usurp. Congress has no power to decree otherwise, and section 1621(d) should not be read to do so.

Finally, the Court should enter an order that allows all undocumented immigrants, rather than the narrow class of undocumented immigrants specified in the Petitioners' proposed order, to apply for admission to the practice of law in Utah. Such a rule would conserve judicial resources by avoiding this Court's separate consideration of every possible variation on immigration status that might make an individual ineligible for receipt of a "State or local public benefit" under section 1621. In addition, a broad order and rule would be consistent with the underlying purposes of section 1621.

ARGUMENT

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105, now codified in relevant part at 8 U.S.C. §§ 1601 *et seq*. ("PRWORA"). Section 1621(a) of Title 8 provides that "[n]otwithstanding any other provision of law," certain categories of aliens, including the class of aliens often referred to as "undocumented immigrants,"[2] are "not eligible for any State or local public benefit." 8 U.S.C. § 1621(a). Under 8 U.S.C. § 1621(d), however, "a State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible

[2] 8 U.S.C. § 1621 excludes any alien who is not "a qualified alien," "a nonimmigrant," or "an alien who is paroled into the United States . . . for less than one year" and references other parts of the U.S. Code for definitions of those terms. Here, we use the term "undocumented immigrant" to refer generally to any noncitizen who does not meet the definitions of "qualified alien," "nonimmigrant," or "alien who is paroled into the United States."

under subsection (a) only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d).

These provisions do not prohibit the admission of undocumented immigrants to the practice of law in Utah. First, a license to practice law is not a "State or local public benefit" as defined in section 1621(c). Second, even if a license to practice law is a "State or local public benefit," this Court may nonetheless authorize admission of undocumented immigrants under the provisions of section 1621(d).

I. 8 U.S.C. § 1621(C) DOES NOT PROHIBIT THE ADMISSION OF UNDOCUMENTED IMMIGRANTS TO PRACTICE LAW IN UTAH BECAUSE A LICENSE TO PRACTICE LAW IN UTAH IS NOT A "STATE OR LOCAL PUBLIC BENEFIT."

Though 8 U.S.C. § 1621 makes certain aliens ineligible for a "State or local public benefit," the statute's own definition of that term squarely excludes a license to practice law in Utah. Section 1621(c) defines "State or local public benefit" in relevant part as "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C. § 1621(c)(1)(A). A license to practice law in Utah is not "provided by an agency of a State." Neither is a license to practice law in Utah provided "by appropriated funds of a State or local government." As a result, a Utah law license is not a "State or local public benefit" for which undocumented immigrants are ineligible under federal law.

A. A Utah Law License Is Not Provided by an Agency of a State or Local Government.

Section 1621(c) defines a "State or local public benefit" to include professional licenses that are "provided by an agency of a State or local government." 8 U.S.C. §

1621(c)(1)(A). The Utah Constitution expressly and exclusively vests the regulatory power over the legal profession in Utah—including the authority to admit persons to practice law—in this Court. Utah Const. art. VIII, § 4. *See also, Injured Workers Ass'n of Utah,* 2016 UT 21, ¶ 14, 374 P.3d 14, 18. This Court, in turn, has delegated the functions of administering the bar examination and certifying applicants for licensure to the Utah State Bar, through its Board of Bar Commissioners. *See* Utah Supreme Court Rules Governing the Utah State Bar, Rule 14-104(a) ("The Board, by delegation from the Supreme Court, shall have the power to determine the qualifications and requirements for admission to the practice of law and to conduct examinations of applicants; and it shall from time to time certify to the Court those applicants found to be qualified."). Neither the Utah Supreme Court nor the Utah State Bar is "an agency of a State or local government."

1. The Utah Supreme Court Is a Co-Equal Branch of State Government, Not an Agency.

The Utah Supreme Court is the third and co-equal branch of the Utah state government. As such, it is not an "agency." This is consistent with federal law and state law interpretations of the term "agency."

Section 1621 provides no definition of the term "agency" and that provision's legislative history provides no insight into its definition. Neither does 8 U.S.C. § 1611, the comparable statute prohibiting an "agency of the United States" from providing "federal public benefits" to undocumented immigrants, include a definition of "agency." However, "agency" is defined elsewhere in federal law to expressly *exclude* the courts. For example, the Administrative Procedure Act—the foundational statute for federal government

regulation—defines the term "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency, *but does not include . . . the courts of the United States*." 5 U.S.C. § 551 (emphasis added). Likewise, the Federal False Statements Statute excludes courts from its definition of agency. *See Hubbard v. United States,* 514 U.S. 695, 700 (1995) (quoting 18 U.S.C. § 6 which defines "agency" as "any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense"). The U.S. Supreme Court has likewise interpreted the term "agency" to exclude courts: "In ordinary parlance, federal courts are not described as 'departments' or 'agencies' of the Government . . . . [I]t would be strange indeed to refer to a court as an 'agency.'" *Hubbard,* 514 U.S. at 699.

Utah state law also specifically excludes courts from the definition of "agency." Utah's Administrative Procedures Act makes the point: "'Agency' . . . does not mean . . . the courts . . . ." Utah Code § 63G-4-103 (1)(b). *See also*, Utah Code § 63I-1-102(1) (not including courts in the definition of "agency" subject to legislative oversight and periodic review); Utah Code § 63J-1-102(1) (not including courts in the definition of "agency" under the Budgetary Procedures Act).

Absent any context that might suggest otherwise, the term "agency" in section 1621 must be interpreted consistently with how it is used in other statutes. Here, the most closely analogous federal and state laws support the conclusion that the term "agency" does not include the courts.

2. The Utah State Bar Is Not "An Agency of a State or Local Government."

The Utah State Bar, to which the Utah Supreme Court has delegated the functions of administering the bar examination and certifying applicants for licensure to the Utah State Bar, is likewise not "an agency of a State or local government." Rather, the Utah State Bar is incorporated in Utah as a domestic non-profit entity. *See* Exhibit A, *Certificate of Existence: Utah State Bar, Utah Department of Commerce* and Exhibit B, *Declaration of John C. Baldwin, Executive Director of the Utah Bar*. Thus, even on the counter-factual argument that the Utah State Bar is the attorney licensing entity in Utah rather than this Court, section 1621 would not prohibit it from admitting undocumented immigrants to the bar.

B. A Utah Law License Is Not Provided by "Appropriated Funds of a State or Local Government."

In addition to defining a "State or local public benefit" to include a professional license "provided by an agency of the State," section 1621 also defines "State or local public benefit" to include a professional license "provided by appropriated funds of a State or local government." In Utah, the issuance of law licenses is not funded by "appropriated funds" under accepted interpretations of that term.

As with the term "agency," PRWORA does not define the phrase "appropriated funds of a State." Other law and sources are, therefore, helpful in determining its meaning. *See Marcus v. Dir., Office of Workers' Compensation Progs., U.S. Dept. of Labor*, 548 F.2d 1044, 1047 n.4 (D.C. Cir. 1976). The term "appropriated" means "to set apart for or assign to a particular purpose or use." *Appropriate*, Merriam Webster Online Dictionary,

https://www.merriam-webster.com/dictionary/appropriate#h2 (last visited Mar. 21, 2019); *see also Black's Law Dictionary* 117–18 (9th ed. 2009) (defining "appropriation" as "[a] legislative body's act of setting aside a sum of money for a public purpose"). This ordinary meaning of the term has been adopted by both federal and Utah state courts. *See Wilcox v. Jackson ex dem. McConnel,* 38 U.S. 498, 509 (1839) ("Appropriation . . . is nothing more or less than setting it apart for some particular use."); *Ute Indian Tribe v. Utah*, 773 F.2d 1087, 1090 (10th Cir. 1985). *Accord State v. Perank*, 858 P.2d 927, 948 (Utah 1992); *Bateman v. Board of Examiners*, 7 Utah 2d 221, 223 n.2, 235, 322 P.2d 381 (Utah 1958).

The question here is whether the Utah legislature has "set apart" funds for the Utah Supreme Court for a "particular use" prohibited by section 1621. The answer is no. Neither the Utah State Bar nor the Utah Supreme Court use funds "set apart" by the Utah legislature for the licensing of attorneys. Rather, as described more fully below, the licensing of attorneys in Utah is funded by private licensing fees and Utah State Bar membership dues. While the Utah Supreme Court is an entity funded by Utah legislative appropriations, the Court's role in attorney licensing—entry of the final order for admission to the practice of law—cannot itself fairly be described as being funded by "appropriated" money. No governmental entity sets aside funds for that specific purpose.

1. Attorney Licensing in Utah Is Funded Solely Through Private Money.

As discussed above, the Utah Supreme Court has delegated the functions of attorney licensing in Utah to the Utah State Bar through its Board of Bar Commissioners. Utah Supreme Court Rules Governing the Utah State Bar, Rule 14-104(a). These licensing

functions are *not* funded by any appropriated funds of a state or local government. Rather, they are funded solely by licensing fees paid by the applicants themselves and bar membership dues paid by Utah attorneys. *See* Exhibit B, *Declaration of John C. Baldwin*, ¶ 5. Utah Supreme Court Rules specifically provide for applicants to pay fees to facilitate the tasks associated with admission to the bar and for members to "pay to the Bar a license fee . . . to effectuate the purposes of this chapter." Utah Supreme Court Rules Governing the Utah State Bar, Rules 14-104(c), 14-107. Even when the Utah Supreme Court clerk issues the final certificate of admission to a successful bar applicant, Utah rules require the applicant to pay a fee for the certificate. Utah Supreme Court Rules Governing the Utah State Bar, Rule 14-104(d). Private licensing fees and member dues are the sole source of funding for attorney licensing in Utah. *See* Exhibit B, *Declaration of John C. Baldwin*, ¶ 5.

This Court should not be persuaded by the New York Supreme Court's finding in *Matter of Vargas* that law licensing is accomplished through "appropriated funds," because the financial structure of law licensing in Utah is substantially different than that in New York. *See Matter of Application of Cesar Adrian Vargas*, 10 N.Y.S.3d 579, 590 (2015) (outlining specific ways the use of New York State's annual judiciary budget supports law licensing activities including, especially, the time-intensive evaluation of character and fitness by judges). The relevant tasks of bar admission in Utah—expenses of administering the bar examination, character and fitness evaluation, costs associated with the swearing-in ceremony, salaries of Utah State Bar admissions counsel and staff, etc. —are privately

funded. Exhibit B, *Declaration of John C. Baldwin*, ¶¶ 6-12. The Utah legislature does not appropriate funds to pay for law licensing.

2. The Utah Supreme Court's Order of Admission Does Not Change the Private Financial Structure of Law Licensing in Utah.

After the Utah State Bar's Board of Bar Commissioners has certified applicants for licensure, the Utah Supreme Court makes the final order of approval for admission to the bar. Utah Supreme Court Rules Governing the Utah State Bar, Rule 14-104(c). While the Utah Supreme Court is an entity funded by Utah legislative appropriations, the Court's role in attorney licensing—entry of the final order for admission to the practice of law—cannot itself fairly be described as being funded by "appropriated" money. No governmental entity sets aside funds for that specific purpose. This Court's final act of approval does not transform the private financial structure of law licensing in Utah into one of appropriated funds.

Courts in California, Nevada, and Ohio have held that government actions much more involved than a final bar admission order—enforcement of child support payments, payment of prevailing wage rates under a public contract, and administration of a worker's compensation fund—do not transform private funds into public funds or benefits. *See Cty. of Alameda v. Agustin*, 2007 Cal. App. Unpub. Lexis 7665, *12 (Cal. Ct. App. Sept. 24, 2007) (deciding that "child support collection services" provided by the state to enforce payment of private child support orders are not a public benefit under section 1621);[3]

[3] Utah Rules of Appellate Procedure, Rule 30(f) allows citation of unpublished opinions "so long as all parties and the court are supplied with accurate copies at the time all such

Campos v. Anderson, 67 Cal. Rptr. 2d 350, 353 (Cal. Ct. App. 1997) (finding that state and local governments' active assistance in collecting child support payments does not change the fact that the source of the payments are private); *City Plan Dev. Inc. v. Office of Labor Comm'r* 117 P.3d 182, 190 (Nev. 2005) (finding that the payment of prevailing wage rates by a contractor to workers under a public contract is not a "local public benefit" for purposes of section 1621); *Rajeh v. Steel City Corp*., 813 N.E.2d 697, 707 (Ohio Ct. App. 2004) (reasoning that workers' compensation is distinguishable from many of the benefits listed in section 1621 because it was intended to serve as a tort remedy and is funded by employers rather than the government, even though the state government administers the funds).

Likewise, when allowing noncitizens access to certain benefits, courts in New York and New Jersey have emphasized that PRWORA prohibits *public* benefits, i.e., those provided through public moneys, not privately funded endeavors. *See, e.g.*, *Trs. of the Pavers & Rd. Builders Dist. Council Welfare, Pension, Annuity & Apprenticeship Skill Improv. & Safety Funds v. M.C. Landscape Group, Inc*., 2015 U.S. Dist. LEXIS 177271, *25 (E.D.N.Y. 2015) (recognizing the exclusion of ERISA from federal public benefits under 8 U.S.C. § 1611 because ERISA is privately funded and administered); *Herrera v. Metro. Life Ins. Co*., 2011 U.S. Dist. LEXIS 145409, *26–*30 (S.D.N.Y. 2011) (excluding the "proceeds of federal group life insurance obtained by federal employees" from federal public benefits under 8 U.S.C. § 1611 such that a beneficiary's undocumented status did

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decisions are first cited." An accurate copy is attached as Exhibit C, *County of Alameda v. Agustin*, 2007 Cal.App. Unpub. Lexis 7665.

not make him illegible to receive the proceeds after his spouse's death); *Caballero v. Martinez*, 897 A.2d 1026, 1031 n.1 (N.J. 2006) (finding that 8 U.S.C. §§ 1621(a) & (c) did not apply to exclude an undocumented person from recovery under New Jersey's Unsatisfied Claim and Judgement Fund because the fund was administered by a "private, non-profit entity," funded "by fees levied on liability insurance companies doing business" in the state, and, unlike other listed public benefits, eligibility was compensatory rather than needs-based).

If this Court nonetheless believes to the contrary—that the final order of this Court approving certified applicants to the bar transforms the entire privately funded licensing endeavor into one of "appropriated funds"—*amicus* suggest a simple solution: this Court implement, under its Rules Governing the Utah State Bar, a reasonable fee charged to all applicants specifically identified as funding the Supreme Court's final order process. The fee could be similar to the one charged to successful applicants for the certificate the Supreme Court clerk issues under Utah Supreme Court Rules Governing the Utah State Bar, Rule 14-104(d). A final order process fee would be in line with the private fee financial structure of law licensing in Utah and would remove the slightest doubt that a Utah bar license is *not* "provided by appropriated funds of a State or local government."

In sum, a Utah law license is not "provided by an agency or a State or local government or by appropriated funds of a State or local government" and is therefore not a "State or local public benefit." Section 1621, therefore, does not apply to preclude this Court from issuing a law license in Utah to undocumented immigrants.

II. THE UTAH SUPREME COURT HAS AUTHORITY TO OPT OUT OF SECTION 1621(C) PROHIBITIONS FOR LAW LICENSING IN UTAH UNDER SECTION 1621(D).

Even if this Court decides that a license to practice law in Utah is a "State or local public benefit" under section 1621(c), the Utah Supreme Court may nonetheless authorize admission of undocumented immigrants under the provisions of 8 U.S.C. § 1621(d). Under section 1621(d), a state may grant a "State or local public benefit" to aliens who would otherwise be ineligible "only through the enactment of a State law" after 1996. On first blush, this language may appear to empower only state legislatures, rather than other branches of the state government, to override the ineligibility provision. A closer look at the Utah Constitution and federal constitutional principles, however, weighs against such an interpretation.

The Utah Constitution vests the power to regulate admission to the practice of law in Utah exclusively in the Utah Supreme Court. This Court, then, is the only entity that may exercise the authority granted in section 1621(d), and this Court may do so to extend eligibility for admission to practice law in Utah to undocumented immigrants. Utah's choice to give authority over bar admission to this Court, without requiring additional action by its legislature, is one that is entitled to respect under the Tenth Amendment's state sovereignty protections. Interpreting section 1621(d) to require an act of the Utah legislature would render the state of Utah unable to avail itself of this federally-provided, opt-out provision without the Utah legislature impermissibly encroaching on this Court's constitutionally-conferred power.

A. The State of Utah Has Exercised Its Sovereignty to Entrust Governance of Lawyers and Law Licensing Exclusively to the Utah Supreme Court.

As a factual matter, Utah allocates its sovereign power to govern the practice of law differently than do the three other states that have opted out of section 1621's prohibition with respect to law licensing: California, Florida, and New York. In California and Florida, the judiciary and the legislature share the power to govern the practice of law. *In re Garcia*, 315 P.3d 117, 124 (Cal. 2014); *Fla. Bd. of Bar Exam'rs*, 134 So. 3d 432, 439 (Fla. 2014). Thus, no *ultra vires* action occurred when each respective state legislature enacted a law to opt out of section 1621's prohibitions on law licensing for certain noncitizens. In New York State, the judiciary governs the practice of law but as a matter of ordinary legislation. *See Matter of Vargas*, 10 N.Y.S.3d at 582. The New York Supreme Court itself exercised that governance power to opt out of section 1621's prohibition on admission of certain noncitizens to the bar. *Id*. The New York Supreme Court rejected a literal reading of section 1621(d) to require a legislative-enactment opt out, holding instead that "the processes by which a state chooses to exercise, by one of its coequal branches of government, the authority granted by the federal legislation is not a legitimate concern of the federal government." *Id*. at 594.

Like New York State, Utah entrusts governance of lawyers and law licensing exclusively to the judiciary, but does so constitutionally rather than through ordinary legislation. Utah Const. art. VIII, § 4. The question of federal congressional interference with state sovereignty is thus even more significant in Utah than it was in New York. Prior to 1985, Utah's Constitution allocated regulation of lawyers and law practice jointly to the

state legislature and the Utah Supreme Court, much like California and Florida currently do. *See Injured Workers*, 2016 UT 21, ¶ 19. In 1984, Utah made a considered judgment that, as a matter of constitutional structure, the Utah Supreme Court alone should exercise the sovereign authority to govern the practice of law. *Id*. at ¶¶ 21, 25. Utah Supreme Court case law consistently reaffirms that exclusivity. *See id. at* ¶ 19; *In re Discipline of Harding,* 2004 UT 100, ¶ 18, 104 P.3d 1220 ("[A]ttorney discipline proceedings, being the exclusive province of this court, are conducted under the rules and directions we give."); *In re Schwenke*, 2004 UT 17, ¶ 35, 89 P.3d 117 ("[W]e take this opportunity to emphasize that the Utah Constitution is clear in its pronouncement that this court controls the practice of law. Under *article VIII, section 4 of the Utah Constitution*, we have the exclusive constitutional mandate to do so.") (emphasis added); *Pendleton v. Utah State Bar*, 2000 UT 96, ¶ 9, 16 P.3d 1230 ("The Utah Constitution grants exclusive power to this court to 'govern the practice of law . . . .'"); *Utah State Bar v. Summerhayes & Hayden, Pub. Adjusters*, 905 P.2d 867, 869-70 (Utah 1995) ("This Court has the exclusive authority to regulate the practice of law in Utah."); *Schwenke v. Smith*, 942 P.2d 335, 336-37 (Utah 1997) ("The Utah Constitution vests sole authority for regulating the practice of law in this court."); *Barnard v. Sutliff*, 846 P.2d 1229, 1237 (Utah 1992) ("[O]nly this court has the rule-making power over the practice of law and the procedures of the Bar.").

While "there may be exceptions to the separation-of-powers doctrine" and thus to this Court's exclusive power to govern the practice of law and bar admissions, "any exception must be found within the Utah Constitution." *Injured Workers,* 2016 UT 21, ¶ 13 (citing *State v. Drej*, 2010 UT 35, ¶ 25, 233 P.3d 476). No such exception exists. The

Utah legislature could not act directly to opt-out of section 1621's prohibitions nor could this Court delegate such authority to it. *Id*. at ¶ 43. If the Utah legislature were to "enact a State law" that section 1621(d) purports to require, that enactment would violate the Utah Constitution and overstep the legislature's authority.

B. The Tenth Amendment and Principles of Federalism Protect Utah's Constitutional Structure and Allow This Court to Opt-Out of Section 1621 Prohibitions if Those Prohibitions Apply to Law Licensing in Utah.

Interpreting section 1621(d) to require an act of the Utah legislature would render Utah unable to exercise the federally-provided right to opt out of section 1621(a) without the Utah legislature engaging in an unconstitutional act or Utah amending its Constitution. This outcome not only is absurd but also raises serious questions of federalism and divided sovereignty that this Court can avoid by interpreting section 1621(d)'s opt-out provision to be satisfied by a ruling and order from this Court.

First, an interpretation that excludes Utah from section 1621(d)'s opt-out provision impermissibly discriminates against Utah. The U.S. Congress cannot discriminate against one state by excluding it from a right or benefit it purports to provide to all states based on an individual state's constitutional structure and exercise of sovereignty. Neither can the U.S. Congress require a state to restructure its government in order to avail itself of a right or benefit provided to other states whose governmental structures differ. This, too, amounts to an impermissible distinction among states. Utah, by virtue of its admission into the Union, must be on equal footing with the other states of the Union and therefore must be

able to exercise the opt-out provision in section 1621 without an amendment to its state constitution.

Second, requiring Utah to restructure its government to allow Utah to exercise section 1621's opt-out provision is an impermissible commandeering of state power. The federal government has broad authority over immigration, but that power does not include the power to dictate a state's constitutional structure. This is especially true here, where the federal government has not made a policy decision about whether undocumented immigrants should be eligible for a "State or local benefit." To the contrary, the U.S. Congress has expressly left that decision to each state. Interpreting section 1621 as requiring Utah to make a constitutional amendment in order to exercise a decision left expressly to each state runs afoul of the U.S. Constitution's Tenth Amendment.

1. Congress Must Give Utah Equal Access to Section 1621(d)'s Opt-Out Provision.

If Utah's constitutional structure prevents the state from exercising section 1621(d)'s opt-out provision, section 1621 violates well-established principles of federalism and divided sovereignty. All states are admitted to, and continue as a part of, the Union on an equal footing. *Coyle v. Smith*, 221 U.S. 559, 570 (1911) ("[T]here is to be found no sanction for the contention that any State may be deprived of any of the power constitutionally possessed by other States, as States, by reason of the terms in which the acts admitting them to the Union have been framed."); *see also Alden v. Maine*, 527 U.S. 706, 713–14 (1999). The equal footing requirement means that Utah may structure its sovereign powers as it chooses and Congress cannot exclude Utah, because of its

constitutional structure, from options available to states that structure their sovereign powers differently. *See Alden,* 527 U.S. at 713–14. The Tenth Amendment "expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the states' integrity or their ability to function effectively in a federal system." *Fry v. United States*, 421 U.S. 542, 547 n.7 (1975). In doing so, the amendment recognizes the well-settled principle that "the States entered the federal system with their sovereignty intact." *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 779 (1991). California and Florida exercised a legislative opt-out of section 1621's prohibitions with respect to bar admissions. Utah's legislature, however, cannot enact a law regulating admission to the practice of law because Utah's constitution vests that power exclusively in this Court. The absurd result of interpreting section 1621 to require a state legislature's act, then, is that Utah would be unable to exercise a federally-provided option that is available to states with other kinds of government structures.

While an amendment to Utah's constitution would cure Utah's ineligibility to exercise the opt-out provision, requiring a constitutional amendment in order for Utah to exercise its federally-provided option would likewise be impermissible for the same reasons. The U.S. Congress cannot require of Utah something it does not require of other states, especially when it comes to basic matters of state sovereignty, in order for a state to exercise section 1621's opt-out provision. Indeed, the U.S. Congress cannot dictate state constitutional structures after a state has been admitted to the Union. *See, e.g.*, *Coyle*, 221 U.S. at 569 ("No fundamental principles could be added by way of amendment, as this would have been making part of the state constitution.") (citation omitted).

This disparate access to section 1621(d)'s opt-out provision would be an impermissible violation of Utah's protected equal footing among the states. This Court may avoid this result by interpreting section 1621(d) to allow a judicial opt-out where a state's constitution requires a judicial opt-out. A judicial opt-out would not question "the primacy of federal law" but only serve to implement "the law in a manner consistent with the constitutional sovereignty of the States." *Alden,* 527 U.S. at 732.

2. Congress Cannot Commandeer State Powers to Its Own Ends.

In addition to violating Utah's guaranteed equal footing with other states, requiring a constitutional amendment to (or a violation of) Utah's constitution, in order to exercise section 1621(d)'s opt-out provision, is an impermissible commandeering of state powers.

The federal government admittedly has broad power over immigration that binds the states. *See Mathews v. Diaz*, 426 U.S. 67, 81–82 (1976). Here, however, the federal government has not exercised that power to implement a particular immigration-related policy. To the contrary, the U.S. Congress has expressly given states the power to decide whether they will provide any particular "State or local benefit" to undocumented immigrants. The U.S. Congress can more accurately be described as providing a particular process for making that decision. Section 1621(d), then, represents not a federal judgment on whether benefits should be extended to noncitizens, but rather a federal judgment on which branch of state government should decide whether to extend those benefits. This, however, is not a legitimate concern of the federal government because Congress's power does not extend to an individual state's constitutional structure.

A legislative-enactment requirement, if section 1621(d) were read to impose one, would be unconstitutional because principles of state sovereignty recognized by the Tenth Amendment protect the integrity and independence of state governments against undue interference from the federal government. "[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York v. United States,* 505 U.S. 144, 162 (1992); *see also Coyle,* 221 U.S. at 565. But that is precisely what a legislative-enactment requirement would do.

The sovereignty recognized by the Tenth Amendment bars both direct and indirect forms of interference by the federal government. Congress may not direct a state to enact a specific law or implement a specific policy. *New York v. United States*, 505 U.S. 144 (1992), affirmed that "Congress may not simply 'commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" *Id*. at 161 (quoting *Hodel v. Va. Surface Mining & Reclamation Assn*., 452 U.S. 264, 288 (1981)). *See also Printz v. United States*, 521 U.S. 898 (1997) (holding that Congress cannot "commandeer" state executive branch officials); *Murphy v. Nat'l Collegiate Athletic Assoc.*, 584 U.S. __ (2018) (holding that Congress cannot "commandeer" the state legislative process).

Nor may Congress offer the states incentives to adopt federal policies that are so powerful that they amount to coercion, because such incentives would compromise the integrity and independence of state decision-making processes. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578–79 (2012) (Roberts, C.J.) (The Court "scrutinize[s] the Spending Clause legislation to ensure that Congress is not using financial inducements to

exert a 'power akin to undue influence.'" (quoting *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937)). While Congress can offer states the choice of regulating according to federal standards or having state law pre-empted by federal regulation, it cannot unduly coerce the states into making that choice in a way that effectively undermines the independence of state decision-making processes. *See New York*, 505 U.S. at 174–78 (finding Congress violated state sovereignty by coercing the states into adopting Congress's preferred regulatory scheme or taking title to nuclear waste).

Similarly, the federal government cannot interfere with the processes of state government by specifying which state officials or which branch of state government may exercise the power of the state sovereign. Since "a State can only perform its functions through its officers, a restraint upon them is a restraint upon its sovereignty. . . ." *Alden,* 527 U.S. at 747 (quoting *General Oil Co. v. Crain*, 209 U.S. 211, 226 (1908)). Thus, in *Gregory v. Ashcroft*, 501 U.S. 452 (1991), the court interpreted a federal statute in a way that was contrary to its "plain language" to avoid interfering with structures of state government decision-making. *Id*. at 465–66. The Court declined to apply the federal Age Discrimination in Employment Act to Missouri's state constitutional requirement that its supreme-court judges retire at the age of seventy, even though the "plain language" of the federal statute made it applicable to all persons appointed "at the policymaking level." *Id*. at 465–66. The Court found it "essential to the independence of the States . . . that their power to prescribe the qualifications of their own officers" should be "exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States." *Id*. at 460 (quoting *Taylor v. Beckham*, 178 U.S. 548, 570–71 (1900)).

While *Gregory* dealt with the state's interest in determining *who* holds office, the state has a similarly essential interest in determining *which* of its officials or subdivisions is empowered to make a given decision, particularly where the state makes that choice in its constitution.

The federal government's broad power over immigration does not make it appropriate for federal law to displace the states' traditional authority over their own governmental processes. The Supreme Court made this clear in the context of equal-protection doctrine, where strict scrutiny generally applies to state laws affecting aliens, by making an exception for state rules on who can hold important state governmental office or serve in other positions performing functions that are important to state sovereignty. *See, e.g.*, *Sugarman v. Dougall*, 413 U.S. 634 (1973). These "sovereign-function" cases exempt from strict scrutiny a state's decisions about eligibility for such positions, because the decisions that officials in those positions make are "intimately related to the process of democratic self-government." *Bernal v. Fainter*, 467 U.S. 216, 220 (1984). Similarly, here, the fact that the state governmental decision at issue involves immigrants does not empower the federal government to take away from the states their decisions about which state governmental entity should exercise the power of the sovereign—in Utah's case, the Supreme Court.

III. ANY RULE THE UTAH SUPREME COURT PROMULGATES SHOULD ALLOW ADMISSION OF APPLICANTS TO THE BAR IRRESPECTIVE OF THEIR IMMIGRATION STATUS.

While *amicus* argue that sections 1621(a) and (c) do not prohibit admission of undocumented immigrants to the Utah bar, if this Court decides otherwise and exercises

its power to opt out under section 1621(d), it should do so through an order broader than the one Petitioners propose. This Court should enter an order authorizing the admission of otherwise eligible undocumented immigrants to the practice of law in Utah. Such an order would conserve judicial resources in a manner consistent with the purposes underlying section 1621.

Petitioners' proposed order largely tracks the language for Deferred Action Childhood Arrival ("DACA") eligibility and would, if entered by this Court, make eligible for bar admission only a very narrow category of noncitizens. State classifications based on alienage are subject to strict scrutiny because "aliens as a class 'are a prime example of a "discrete and insular" minority.'" *Sugarman*, 413 U.S. at 642 (internal citations omitted). Rather than distinguishing among classes of noncitizens eligible for admission to the Utah Bar, this Court's order and rule making should allow individuals to apply for admission to the Utah Bar irrespective of their immigration status. A narrower order is likely to result in this Court's future consideration of various classes of noncitizens that might be considered ineligible for a "State or local public benefit" under section 1621. The complexity and constantly-changing nature of immigration law results in an unpredictable and ever-changing spectrum of immigration status that is best addressed by a broader order.

The very text and structure of section 1621 evidences the difficulty of distinguishing between different categories of noncitizens. Section 1621(a) excludes a noncitizen from eligibility for a "State or local public benefit" if he or she is not a "qualified alien," a "nonimmigrant," or "an alien who is paroled into the United States . . . for less than one year." Section 1621(a) refers to other provisions to define these categories of aliens who

are eligible for the benefits. The opt-out provision of section 1621(d), however, refers to "illegal aliens" in the subheading and to an "alien who is not lawfully present in the United States." Neither "illegal aliens" nor "alien who is not lawfully present in the United States" are defined in section 1621, and section 1621 includes no reference to outside provisions that might shed light on the legal meaning of those provisions. A broad order that captures any immigrant made ineligible for benefits under section 1621(a) would avoid the need for this Court to engage in future parsing of the imprecise language of section 1621(d) in light of new and unprecedented immigration legislation and orders.

A broader order that includes all undocumented immigrants to apply for admission to the bar would not limit this Court's or the Utah State Bar's ability to consider immigration status as a factor. On the contrary, immigration status would remain highly relevant to an individual applicant's character and fitness but not act as a categorical prohibition. *In re Griffith*, 413 U.S. 717, 725 (1973) (finding a Fourteenth Amendment Equal Protection violation in a state's limitation of bar admission only to citizens); *Nyquist v. Mauclet*, 432 U.S. 1 (1977) (holding that distinguishing among aliens, rather than aliens versus citizens, also raises Fourteenth Amendment Equal Protection concerns). Under a rule that allows admission of noncitizens to the bar irrespective of immigration status, Utah would retain "wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law" to protect its "constitutionally permissible and substantial interest" in the character of those admitted to the bar. *In re Griffith*, 413 U.S. at 722, 725 (citations omitted).

As set forth in the statute itself, the legislative purpose of section 1621 was to reduce the incentives for illegal immigration by denying "aliens" not residing legally in the United States benefits financed by "appropriated funds." *See* 8 U.S.C. §§ 1601, 1621, 1641(b). Specifically, Congress stated that undocumented immigrants within the United States should "not depend on public resources to meet their needs, but rather rely on their own capabilities" to achieve "self-sufficiency." 8 U.S.C. § 1601.

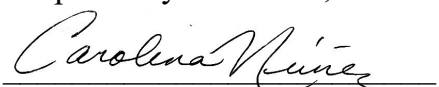
By successfully graduating from Utah law schools and now seeking admission to the Utah Bar, the Petitioners have demonstrated their own capabilities and self-sufficiency. Their goals are not in contravention of 8 U.S.C. § 1601 but in support of its underlying purposes of self-sufficiency. They do not seek public resources to meet their needs but rather seek a Utah law license to further that self-sufficiency. There are no "appropriated" funds required to grant the petitioners a Utah law license. As discussed above, the relevant funds come from applicant fees and attorney dues. Additionally, many of the benefits listed in sections 1601 and 1621, such as welfare and retirement payments, are either direct income support payments or services intended to meet the daily needs of disadvantaged individuals. The Petitioners and other similarly situated individuals—who have graduated from law school and are eager to sit for the Utah bar—are not seeking "public resources." Indeed, they are excellent examples of individuals who are relying on their "own capabilities" as opposed to "public resources." Thus, the "Statements of National Policy Concerning Welfare and Immigration" found in section 1601 further support the proposition that a Utah law license is not a "public benefit" provided by "appropriated funds of a State or local government."

CONCLUSION

For the foregoing reasons, *amicus* respectfully recommend that the Court allow Petitioners and other individuals to apply for admission to the Utah bar irrespective of their immigration status and—assuming all other admission criteria are met—be admitted thereto. In the alternative, *amicus* recommend that the Court adopt a rule that allows admission to the bar irrespective of immigration status.

DATED this 22nd day of March 2019.

Respectfully submitted,



D. Carolina Núñez (#10648)
Kif Augustine-Adams (DC Bar #434874 &
Utah Court Rule 14-803)

Attorneys for Amicus Curiae Ad Hoc Coalition of Utah Law Professors

Exhibit A

Certificate of Existence: Utah State Bar, Utah Department of Commerce

Utah Department of Commerce
Division of Corporations & Commercial Code
160 East 300 South, 2nd Floor, PO Box 146705
Salt Lake City, UT 84114-6705
Service Center: (801) 530-4849
Toll Free: (877) 526-3994 Utah Residents
Fax: (801) 530-6438
Web Site: http://www.commerce.utah.gov

02/11/2019
1125137-0140021120 19-306616

CERTIFICATE OF EXISTENCE

Registration Number:	1125137-0140
Business Name:	UTAH STATE BAR
Registered Date:	June 24, 1991
Entity Type:	Corporation - Domestic - Non-Profit
Status:	Current

The Division of Corporations and Commercial Code of the State of Utah, custodian of the records of business registrations, certifies that the business entity on this certificate is authorized to transact business and was duly registered under the laws of the State of Utah. The Division also certifies that this entity has paid all fees and penalties owed to this state; its most recent annual report has been filed by the Division (unless Delinquent); and, that Articles of Dissolution have not been filed.

Jason Sterzer
Director
Division of Corporations and Commercial Code

Exhibit B

Declaration of John C. Baldwin, Executive Director of the Utah Bar

DECLARATION OF JOHN C. BALDWIN

I, John C. Baldwin, declare as follows:

1. I have personal knowledge of all the information set forth in this declaration.

2. I am the Executive Director of the Utah State Bar and have held that position since 1990. In that capacity, I have knowledge of all Utah State Bar financial matters.

3. The Utah State Bar is a private, 501(c)(6) non-profit, professional organization.

4. The Utah State Bar operates from a private building it owns located at 645 South 200 East, Salt Lake City, Utah 84111 known as the Law and Justice Center.

5. The Utah State Bar does not receive any money or funding from the State of Utah, the Administrative Office of the Courts, or any other government entity. The Utah State Bar's primary source of funding is annual licensing fees paid by lawyers admitted to practice law in Utah. Applicants to the Utah State Bar pay application fees.

6. The Utah State Bar performs the administrative functions associated with accepting and processing applications for admission to the Utah State Bar, including the character and fitness evaluation. The Bar also administers the Utah Bar examination.

7. All costs associated with processing applications and testing applicants, including the salaries of the Utah State Bar's admissions personnel, are paid for by the Utah State Bar.

8. All costs associated with administering the Utah Bar exam are paid for by the Utah State Bar. Bar exam costs include rental of the Mountain America Exposition Center (previously known as the South Towne Expo Center) as a July testing location, costs associated with testing applicants at the Law and Justice Center in February, staff time, paid proctors, IT support for 200 or more laptop exam takers, and rental of sound system.

9. All costs associated with the admission swearing-in ceremony are paid for by the Utah State Bar.

10. In the past, the Utah State Bar has rented space at the Salt Palace or Abravanel Hall to conduct the swearing in ceremony for new admittees to the Utah State Bar.

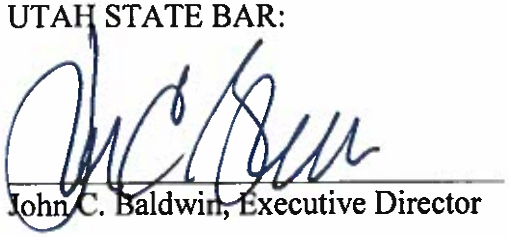
11. Since 2016, the Utah State Bar has held the swearing in ceremony at the Utah State Capitol rotunda with no charge for use of the space.

12. The Utah State Bar pays for all costs associated with the swearing in ceremony. Those costs include Utah State Bar staff time, rental of sound system, curtain and drapery rental, program printing, and catering.

I certify under criminal penalty of the State of Utah that the foregoing is true and correct.

DATED this 27th day of February, 2019.

UTAH STATE BAR:



John C. Baldwin, Executive Director

Exhibit C

County of Alameda v. Agustin, 2007 Cal.App. Unpub. Lexis 7665

County of Alameda v. Agustin

Court of Appeal of California, First Appellate District, Division One

September 24, 2007, Filed

A115092

Reporter
2007 Cal. App. Unpub. LEXIS 7665 *; 2007 WL 2759474

COUNTY OF ALAMEDA, Plaintiff and Respondent, v. BENJAMIN D. AGUSTIN, Defendant and Appellant.

Prior History: **[*1]** Alameda County Super. Ct. No. HF05217109.

Core Terms

child support, aliens, collection service, services, local government, benefits, residing, child support payment, public benefit, immigration, workers' compensation, trial court, purposes, local public, federal law, declaration, funds

Judges: Margulies, J.; Marchiano, P.J., Swager, J. concurred.

Opinion by: Margulies

Opinion

The trial court found that defendant Benjamin D. Agustin is the father of Caitlin Manuel and ordered him to make past and future payments for her support. Defendant contends that the state's provision of child collection support services to Caitlin's mother and the order requiring child support payments violated federal law, which bars the provision of any state or local public benefit to aliens not residing legally in the United States. We affirm.

I. BACKGROUND

The County of Alameda (County) apparently filed a complaint against defendant to determine his paternity of Caitlin and for an order of child support. Although the record does not contain a copy of the complaint, the docket sheet for the proceeding indicates that such a complaint was filed on June 10, 2005.

In January 2006, defendant sought dismissal of the County's action, arguing that a pending federal lawsuit deprived the trial court of jurisdiction and that the action violated federal law because Caitlin's mother, Joanne Manuel, is an alien who is not residing legally in the United States. In an order dated January 18, 2006, **[*2]** a commissioner denied the motion and directed defendant to undergo a paternity test. Based on the results of the paternity test, the commissioner found that defendant was the father of Caitlin and recommended that he pay $ 396 in past child support and continuing child support of $ 44 per month.

Defendant thereafter filed a "Motion for Judgment as a Matter of Law," repeating his arguments that the court lacked jurisdiction over the matter and that an award of child support was improper under federal law. At a hearing on May 15, 2006, the trial court denied the motion and adopted the findings and recommendations of the commissioner. On June 26, 2006, a judgment regarding parental obligations was entered requiring defendant to pay past and future child support in the amounts recommended by the commissioner.

The record contains none of the evidence presented below other than the paternity test report and a declaration submitted by defendant. In the declaration, defendant states that Manuel is not a " 'qualified alien' " for purposes of title *8 United States Code section 1641(b)*, but his declaration does not contain any explanation for the conclusion or evidence to support

the claim.

II. [*3] DISCUSSION

Defendant does not challenge the trial court's conclusion that he is Caitlin's father, nor does he contend that the trial court abused its discretion when setting the amount of child support. His sole contention on appeal is that the court's award violates his constitutional rights because federal law prohibits the grant of a "public benefit" to aliens who are not legal residents.

Even if defendant's contention were correct as a matter of law, we would be required to deny the appeal for lack of evidentiary support. Although the trial court held a hearing at which both defendant and Manuel presented sworn testimony, the transcript of this hearing was not included in the record. The only evidence in the record suggesting that Manuel is not a legal resident is defendant's statement in a declaration that Manuel is not a "qualified alien" for purposes of federal law. [1]

Defendant's declaration provides no foundation for his asserted [*4] knowledge of Manuel's residency status, nor does it explain the basis for his legal conclusion that she is not a qualified alien. In the absence of such a foundation and explanation, the mere statement of a legal conclusion is insufficient to establish the factual contentions that underlie that conclusion. (See *LeFlore v. Grass Harp Productions, Inc. (1997) 57 Cal.App.4th 824, 836-837*.) Because there is no evidentiary basis in the appellate record for the factual premise of defendant's legal argument, the argument must fail.

Defendant's contention also fails as a matter of law. Defendant argues that the County's provision of child support collection services to Manuel, as well as the child support payments themselves, constitute a type of "State or local public benefit" whose provision to aliens not residing legally in the United States is barred by title *8 United States Code section 1621* (hereafter *section 1621*). "Our task in interpreting these statutes is 'to ascertain and effectuate legislative intent.' [Citation.]" (*Bernard v. Foley (2006) 39 Cal.4th 794, 804*.) In so doing, "we look first to the statutes' words, as these ' "generally provide the most reliable indicator of legislative [*5] intent." ' [Citation.]" (*Ibid.*) "In interpreting that language, we strive to give effect and significance to every word and phrase." (*Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, 1284*.)

The statutory provision on which defendant relies, *section 1621*, states that "an alien who is not [P] . . . a qualified alien . . . [P] . . . [P] . . . is not eligible for any State or local public benefit (as defined in subsection (c))." [2] *Section 1621(c)* defines "State or local public benefit" to mean "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government" (*§ 1621(c)(1)(A)*) and "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government." (*§ 1621(c)(1)(B)*.) A list of the types of aliens who constitute "qualified aliens" is provided in *section 1641 of title 8 of the United States Code*. [*6] [3]

Neither child support payments nor child support collection services constitutes a "grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government," as required by *section 1621(c)(1)(A)*. Nor do they fall within the list of specific benefits in *section 1621(c)(1)(B)*, which includes "retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, [or] unemployment benefit[s]."

The issue is therefore whether child support payments or child support [*7] collection services constitute a "similar benefit for which payments or assistance are provided to an individual, household, or family eligibility

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[1] Although defendant contends in his reply brief that Manuel's immigration status was undisputed in the trial court, there is no confirmation of this in the record on appeal, which contains no indication of the parties' respective positions on this issue.

[2] Defendant also relies on a similar provision of California law, *Welfare and Institutions Code section 10001.5*. Because defendant's state law argument has already been rejected in *Campos v. Anderson (1997) 57 Cal.App.4th 784, 788*, we do not address it further. We note, however, that *section 10001.5* was declared preempted by *section 1621* in federal litigation. (*League of United Latin American Citizens v. Wilson (C.D.Cal. 1997) 997 F. Supp. 1244, 1255*.)

[3] Because, as noted above, we have no information about Manuel, there is no way to determine whether she fell within one of these categories (or even, for that matter, whether she is an alien).

unit by an agency of a State or local government or by appropriated funds of a State or local government." (§ 1621(c)(1)(B).) Child support payments clearly do not fall into this category. They are not "provided . . . by an agency of a State or local government or by appropriated funds of a State or local government." Rather, they are payments made by private individuals. The fact that the County might assist in their collection does not change the private source of the payments. (See Campos v. Anderson, supra, 57 Cal.App.4th at p. 788.) Accordingly, child support payments are not "public benefits" for purposes of section 1621(c)(1)(B). (See similarly City Plan Dev. v. State, Labor Comm'r (Nev. 2005) 117 P.3d 182, 190 [the payment of prevailing wage rates by a contractor to workers under a public contract is not a "local public benefit" for purposes of section 1621].)

Child support collection services present a closer question. Unlike child support payments, these services are a benefit "provided . . . by an agency of a State or local government," **[*8]** as required by the section 1621(c)(1)(B). Under the language of the statute, the provision of such services to a person not residing legally in the United States is therefore barred by section 1621 *if* such services are "similar" to the benefits expressly listed in section 1621(c)(1)(B). We therefore consider whether child support collection services constitute a "similar benefit."

The purpose of section 1621 is to reduce the incentives for illegal immigration by denying publicly financed social welfare benefits to aliens not residing legally in the United States. "The enactment of that federal legislation was fueled by concerns regarding a rising unauthorized immigrant population in the United States." (Doe v. Wilson (1997) 57 Cal.App.4th 296, 301.) "In enacting [section 1621], Congress declared national policy continued to be that aliens in the United States not depend on public resources to meet their needs; that the availability of public benefits not constitute an incentive for immigration to the United States; that compelling government interests required enactment of new rules to assure that aliens be self-reliant consistent with national immigration policy; and that the federal **[*9]** government has 'a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.' [Citation.]" (*Ibid.*)

The benefits specifically listed in section 1621--"retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, [or] unemployment benefit[s]"--are all either direct income support payments or services intended to meet the daily needs of disadvantaged persons. Significantly, such payments and services are continuing, or potentially continuing benefits, intended to provide ongoing public support for the recipients for as long as required. Child support collection services are quite different. Far from fostering dependence on public support, these services are intended to help recipients support themselves by ensuring that all parents bear their fair share of the burden of supporting their children. Indeed, when properly provided, child support collection services return to the local agency considerably more funds than they cost. (See Blessing v. Freestone (1997) 520 U.S. 329, 334-335.) Further, such services are ongoing only if it is necessary continually to compel payments **[*10]** from a resolutely deadbeat parent; ideally, the services terminate with the award of child support. Accordingly, because they provide no continuing public assistance to recipients, child support collection services create little or no incentive for illegal immigration. For this reason, child support collection services are not "similar" to the benefits expressly listed in section 1621(c)(1)(B), and their provision is not prohibited by that statute.

A case employing similar reasoning is Rajeh v. Steel City Corp. (2004) 813 N.E.2d 697, in which the court concluded that benefits from the state workers' compensation fund did not constitute a "State public benefit" for purposes of section 1621. In reaching this conclusion, the court reasoned, "Workers' compensation is not a similar benefit to those listed. The listed benefits are either means for the government to assist people with economic hardships until they are able to financially manage on their own, such as welfare and food assistance, or they are an earned benefit, such as retirement. On the other hand, workers' compensation is a substitutionary remedy for a negligence lawsuit. . . . [P] . . . [P] . . . Additionally, as stated previously, **[*11]** the other main purpose of the workers' compensation system is to promote a safe and injury-free workplace. [Citation.] Since employers are ultimately responsible for paying workers' compensation claims, through insurance premiums or self-insuring payments, they are more likely to keep their workplaces safe for all employees. To refuse to allow illegal aliens injured on the job to recover from the Workers' Compensation Fund, would be to encourage the hiring of illegal aliens and downgrade workplace safety. None of the State public benefits listed in [section] 1621(c)(1)(B) share these unique characteristics." (Rajeh, at p. 707.)

Defendant relies in part on *Blessing v. Freestone, supra, 520 U.S. 329*, in which the Supreme Court considered whether a group of mothers had standing to compel the state to provide effective child support collection services. In the process of considering this issue, the court discussed at length the child support collection services that federal law requires each state to provide before it can participate in the federal Aid to Families with Dependent Children program. (*Id. at pp. 333-334.*) While *Blessing* makes clear that such child support collection services **[*12]** are indeed social services provided pursuant to a "cooperative federal-state welfare program[]" (*id. at 333*), *Blessing* does not even consider, let alone decide, their status as "public benefits" for purposes of *section 1621*. As discussed above, *section 1621* does not bar the provision of *all* social services to aliens who are not residing legally, but only the provision of services or benefits "similar" to those expressly listed in *section 1621(c)(1)(B)*. As discussed above, we conclude that child support collection services are not similar benefits, and their provision to aliens who are not residing legally is not precluded by *section 1621*.

III. DISPOSITION

The trial court's judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Swager, J.

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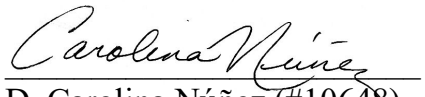
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 24(a)(11), I certify that this brief complies with the word count limitations of Rule 24(g) because, excluding parts of the document exempted by Rule 24(g)(2), this document contains 7,743 words. I further certify that this brief complies with the requirement of Rule 21 governing public and private records.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of March 2019, I caused two true and correct copies of the foregoing **BRIEF OF AMICUS CURIAE BRIEF OF THE AD HOC COALITION OF UTAH LAW PROFESSORS IN SUPPORT OF PETITIONERS** to be served via U.S. Mail on the following:

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and also via electronic mail with eight hard copies to follow by U.S. mail to:

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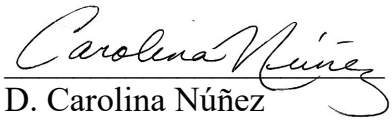

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