2018

In Re: Mary Doe AND Jane Doe, Petitioners. : Apellant Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

IN RE: **MARY DOE and JANE DOE,** **Petitioners.**	**PETITION TO ALLOW BAR ADMISSION FOR UNDOCUMENTED IMMIGRANTS** 20180806-SC

Pursuant to Supreme Court Rule of Professional Practice 11-104(1), Petitioners Mary Doe and Jane Doe[1] ("Petitioners"), by and through their attorneys, petition the Court to adopt a new rule governing admission to the Utah State Bar to allow Bar admission for undocumented immigrants who otherwise meet the Utah standards for admission. A copy of the proposed Rule 14-721 is attached as Exhibit A.

[1] Petitioners submit this petition using pseudonyms to preserve their privacy. Petitioners are willing to identify themselves in supplemental pleadings filed with the Court under seal if doing so would assist the Court in ruling on the Petition.

INTRODUCTION

Federal law prohibits states from issuing professional licenses to undocumented immigrants unless the state enacts a law opting out of the federal restriction. The Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. § 1621 (1996). As the branch of government with the constitutional authority to regulate the practice of law in Utah, this Court is the state entity empowered to opt out of the federal restriction to the extent the restriction applies to the admission of attorneys to the practice of law.

Petitioners seek a rule change allowing Bar admission for undocumented immigrants who were brought to this country as children and know this country as home. These individuals, including Petitioners, lacked the intent to violate the immigration laws, have become productive members of our society and attended United States schools, colleges and law schools. Undocumented immigrants brought to the United States as children should be allowed admission to the Utah Bar if they pass the Bar exam and meet the other admission requirements.

Like many such individuals, both Petitioners are otherwise eligible for admission to the Utah Bar. Petitioners graduated from Utah law schools, are admitted to practice law in good standing in the State of California, reside in Utah, and, purely because of their status as undocumented immigrants, work in Utah in jobs that do not require Utah bar admission.

The Utah State Bar previously petitioned this Court for a rule change allowing Bar admission for undocumented immigrants who otherwise meet the Utah standards for

admission. *In re Utah State Bar*, Case No. 20160318-SC.[2] In that matter, the Court deferred action on the request until it received a petition from one or more individuals who would qualify for admission. *Id.* Following this ruling, Petitioners determined to petition this Court to allow the admission of undocumented immigrants who otherwise meet the standards for admission to the Utah Bar.

BACKGROUND

A. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) prohibits the states from conferring certain state or local public benefits, including professional licenses, upon defined "aliens" with the exception of aliens who are exempt. 8 U.S.C. § 1621(a), (c)(1)(A). Exempt aliens include aliens who are admitted for permanent residence, granted asylum, refugees, paroled into the United States for a medical emergency or family reunion, or whose deportation is being withheld because of fear of persecution or bodily harm if returned to country of origin. 8 U.S.C. § 1621(a).

The prohibition against conferring state or local public benefits, including professional licenses, has an important exception. Under § 1621(d), a state can give benefits to non-exempt aliens who are not lawfully present if it does so by "the enactment of a State law" which affirmatively provides for such eligibility and which is enacted

[2] Petitioners thank the Utah State Bar for providing Petitioners with copies of the Bar's prior petition, proposed rule, and other materials which assisted Petitioners in preparing this petition.

after August 22, 1996. 8 U.S.C. § 1621(d). This petition will refer to this exception as "the opt out" provision.

B. Deferred Action for Childhood Arrivals (DACA) Recipients

Under the federal executive policy known as Deferred Action for Childhood Arrivals, or DACA, the United States Department of Homeland Security (DHS) has elected to exercise discretion not to take action to deport or remove from the country certain young people who were brought to this country as children and know only this country as home. *See* DHS, Memorandum from Janet Napolitano (June 15, 2012), *available at* http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf and attached as Exhibit B. DACA is one of several forms of "deferred action" that federal executive authorities have offered to individual aliens, or groups of aliens, for humanitarian or other reasons.[3]

To be eligible for DACA relief, an applicant must be an alien without lawful status who arrived in the United States before the age of sixteen and who is now less than thirty-one years old. Applicants must also have no significant criminal record. *See id.* Applicants must also either have a high school education or service in the U.S. armed forces, or be enrolled in high school. *Id.*

Like other forms of deferred action, DACA confers no formal immigration status upon its recipients. Nevertheless, DACA recipients are permitted by DHS to remain in

[3] For a review of federal use of deferred action before the DACA policy was announced, *see* Shoba Sivaprasad Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 Conn. Pub. Intl. L. J. 243 (2010).

the United States for a renewable two-year period. DHS considers DACA recipients to be lawfully present in the United States because their deferred action is a period of stay authorized by the Attorney General. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1059 (9th Cir. 2014) (citing 8 U.S.C. § 1182(a)(9)(B)(ii); 8 C.F.R. 214.14(d)(3)); U.S. Immigration and Naturalization Services Adjudicator's Field Manual Ch. 40.9.2(b)(3)(J). For example, if present-day DACA recipients eventually leave the country and seek re-admission to the United States, their time as DACA recipients will not count as time in "unlawful presence"—something that otherwise might have counted against their future admissibility. *See* 8 C.F.R. § 214.14(d)(3) (providing that deferred action does not count as "unlawful presence"); 8 U.S.C. § 1182(a)(9)(B)(ii) (an alien is deemed "unlawfully present" for purposes of ineligibility for future admission if the alien is present beyond a "period of stay authorized by the Attorney General" or without being admitted or paroled).

Similarly, a federal statute known as the REAL ID Act, under which states are permitted to issue driver's licenses only to aliens whose status is an "authorized stay in the United States," expressly identifies deferred action as a "period of authorized stay." REAL ID Act § 202(c)(2)(B)(viii), (C)(i)-(ii) (2005); *accord Ariz. Dream Act Coal*, 757 F.3d at 1074 n.9 (Christen, J., concurring) (explaining that the REAL ID Act allows states to issues driver's licenses or identification cards to persons with approved deferred action status).

DHS has stated that DACA does not confer "lawful status" on an individual because only Congress can create or define an immigration status. *See* DHS,

Memorandum from Janet Napolitano, page 3. DACA recipients, like other aliens who receive deferred action, are eligible to receive Employment Authorization Documents which allow them to work in the United States. 8 C.F.R. § 274a.12(c)(14).

C. Petitioners Are DACA Recipients, Alumnae of Utah Universities and Law Schools, and Members in Good Standing of the State Bar of California

Petitioners have both been granted DACA status by the United States Department of Homeland Security. Both Petitioners came to the United States as minors, and know this country their as home. Petitioners have built their lives in Utah.

Petitioner Mary Doe received her undergraduate degree from the University of Utah and then graduated from the S.J. Quinney College of Law. Petitioner Mary Doe is a member in good standing of the State Bar of California, having been admitted to practice law in California in December of 2017. Petitioner Mary Doe currently lives and works in Utah where her employment does not involve the practice of law.

Petitioner Jane Doe received her undergraduate degree from Brigham Young University and graduated from the J. Reuben Clark Law School. Like Petitioner Mary Doe, Petitioner Jane Doe is a member in good standing of the State Bar of California, having been admitted to practice law in California in June of 2015. Petitioner Jane Doe lives and works in Utah where she practices immigration law as permitted by 8 C.F.R. § 1292.[4]

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[4] 8 C.F.R. § 1292.1 authorizes attorneys to practice immigration law and represent clients in immigration matters. An attorney is authorized to practice immigration law if otherwise eligible to practice law and if he is "a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia." 8 C.F.R. § 1001.1(f); *see also* American Bar

D. Other States That Allow Admission of Undocumented Immigrants

1. California and Florida

California and Florida were the first two bars to consider the issue of admission for undocumented immigrants. The California and Florida courts construed 1621(d)'s requirement of "the enactment of a State law" in order to opt out of PRWORA's restriction to mean a passage of an act by a state legislature and signed into law by the state's governor. *In re Garcia*, 315 P.3d 117 (Cal. 2014); *Florida 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). The courts in both states held that federal law prohibited those courts from admitting lawfully present undocumented immigrants without state legislation allowing for issuance of a bar license to those individuals. 315 P.3d at 120, 134 So. 3d at 435.

In California, following oral argument, but prior to the issuance of the Court's determination of an undocumented immigrant's application, the California legislature enacted an opt out provision that allowed undocumented immigrants admission to the practice of law as long as they otherwise fulfilled admission requirements. *See* Cal. Bus. & Prof. Code, § 6064(b) (allowing bar admission for *any* applicant who is not lawfully present in the United States). In granting the applicant admission based on the newly

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Association Commission on Immigration, *Avoiding the Unauthorized Practice of Immigration Law*, (last updated June 13, 2017), available at https://www.americanbar.org/content/dam/aba/administrative/immigration/fightnotariofraud/uplmemojune2017.authcheckdam.pdf.

enacted legislation, the Court held that that newly enacted legislation removed any potential statutory obstacle to admission imposed by PRWORA. 315 P. 3d at 128.

In Florida, in the absence of such a statute, the Florida Supreme Court held that PRWORA § 1621 precludes bar admission for DACA recipients. *Fla. Bd. of Bar Exam'rs*, 134 So. 3d at 435. The Supreme Court of Florida held that the phrase "enactment of a State law" requires a state legislature to address the issue and pass legislation, which the governor must either approve or permit to become the law of the State. *Id.* After the decision issued, the Florida legislature enacted a statute that authorizes bar admission for unauthorized immigrants with work authorization who were brought to the United States as minors. *See* Fla. Stat. § 454.021(3) (as amended May 21, 2014).

2. New York

In contrast to California and Florida, in New York courts have allowed DACA recipients to be admitted to the state bar without legislative action. In June of 2015, the Appellate Division of the New York Supreme Court granted the application of Mr. Vargas, a DACA recipient, to the New York State Bar.[5] *In re Vargas*, 131 A.D.3d 4, 6, 10 N.Y.S.3d 579 (N.Y. App. Div. 2015). The *Vargas* court held that a narrow reading

[5] Under New York Judiciary Law, the New York Supreme Court's Appellate Division is vested with rule-making authority to regulate the admission to practice law. 131 A.D.3d at 9; *see* 22 N.Y.C.R.R. § 520.1. The Florida Supreme Court governs the practice of law in Florida pursuant to Article V of the Florida Constitution. Fla. Const. art. V § 15. In California, both the legislature and the California Supreme Court have authority to establish rules governing admission to the State Bar, but the Court has the ultimate authority to admit and discipline attorneys. 315 P.3d at 124.

of 8 U.S.C. § 1621(d) requiring a state legislative enactment as the sole mechanism by which the State of New York could exercise the opt-out authority granted by 8 U.S.C. § 1621(d) would unconstitutionally infringe on the sovereign authority of the state to divide power among its three coequal branches of government. *Vargas*, 131 A.D.3d at 6. The *Vargas* Court further held that the judiciary may exercise its authority as the state sovereign to opt out of the restrictions imposed by 8 U.S.C. § 1621 to the extent those restrictions apply to the practice of law in the State of New York.[6] *Id.*

Mr. Vargas was brought to the United States by his mother when he was five years old without lawful documentation to enter or remain in the United States. *Id.* at 6-7. Mr. Vargas enrolled in and graduated from public school in New York City. *Id.* at 7. Mr. Vargas went on to graduate from college in Brooklyn and attend and graduate from the City University of New York School of Law. *Id.* He sought and obtained DACA relief, passed the New York bar exam,[7] and submitted an application in which he disclosed his immigration status. *Id.*

New York's Character and Fitness Committee conducted a hearing on Mr. Vargas' bar application and found Mr. Vargas to be of "stellar character," but recommended

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[6] Neither the California nor the Florida Supreme Court was asked to address whether § 1621(d) violates the Tenth Amendment, which reserves to the individual states all powers not expressly delegated to the federal government. *See Vargas*, 131 A.D.3d at 25.

[7] In New York, applicants must take and pass the bar examination before applying to the state bar. *See* 22 N.Y.C.R.R. § 520 *et seq.*

against admission solely on the ground that it should be left to the Court to determine whether his application was barred by his immigration status. 131 A.D.3d at 8-9.

At the request of the *Vargas* Court, amicus curiae briefs were submitted by the United States of America and the State of New York. *Id.* at 17. The State of New York asked the Court to consider whether 8 U.S.C. § 1621 violates the Tenth Amendment. *Id.* at 24 & n.13. The Court first determined that the undocumented status of an individual alone does not adversely reflect on the character and fitness of a person for admission to the practice of law. 131 A.D.3d at 18. The Court next determined that applicable New York judiciary laws allow for admission of an undocumented individual. *Id.*at 20.

The Court then found that the New York judiciary is vested with the sole authority to govern the admission of attorneys in the state and is therefore the appropriate branch of government to make a rule "opting out" of the federal restriction. The Court stated:

> The Tenth Amendment is implicated here because although Congress has left the ultimate determination whether to expend public benefits, including professional licensure, to the states, it has, at the same time, prescribed the mechanism by which states may exercise that authority. Where, as here, New York, by its own legislative enactment, has determined that the state judiciary is the sovereign authority vested with the responsibility for formulating the eligibility qualifications and processes governing the admission of attorneys and counselors to the practice of law, that limitation cannot withstand scrutiny under the Tenth Amendment.

Id. at 25.

The Court admitted Mr. Vargas on the grounds that the opt out restrictions in 8 U.S.C. § 1621, to the limited extent that they govern the admission of attorneys as professional licensees, may be lawfully exercised by the judiciary in order to be

consistent with the Judiciary Law of the State of New York and the sovereignty guaranteed by the Tenth Amendment.

3. Illinois, Pennsylvania, Nebraska, New Jersey, and Wyoming

Illinois, Nebraska, and Wyoming have followed California and Florida's lead, and all three states now have statutes allowing DACA recipients to practice law. The Illinois legislature amended the Illinois Attorney Act in August of 2015 to allow DACA recipients to practice law. 705 Ill. Comp. Stat. 205/2 (enacted in Illinois Public Act 099-0419, effective January 1, 2016). The Nebraska legislature found that it was in the best interests of the state to make full use of the skills and talents of individuals in the state by allowing professional or commercial licensure for individuals with work authorization. Thus Nebraska's legislature passed Legislative Bill 947 in 2016 to allow aliens with qualifying work authorization, including DACA status, to obtain professional or commercial licenses such as admission to the Nebraska State Bar. Neb. Rev. Stat. § 4-111.

Wyoming is slightly different in that its statutes previously prohibited noncitizens from practicing law. The Wyoming legislature repealed this prohibition in 2015 and allowed, among others, DACA recipients to practice law. Wyo. Stat. Ann. § 33-5-105 (as amended by 2015 Wyo. Sess. Laws 162, 2015 Wy. HB 0214).

Pennsylvania and New Jersey recently admitted Parthiv Patel to practice law. Mr. Patel was brought to the United States from India at the age of 5 and obtained DACA status in 2012. After graduating from the Drexel University Thomas R. Kline School of Law, he passed the bar examinations of both New Jersey and Pennsylvania in 2016. His

application to the Pennsylvania Bar was initially denied by the Pennsylvania Board of law Examiners due to his immigration status. With help from the American Civil Liberties Union of Pennsylvania, he appealed. Mr. Patel was admitted to the Pennsylvania Bar on December 18, 2017. ACLU Pennsylvania, *Bar Admission for Undocumented Law School Graduates*, https://www.aclupa.org/our-work/legal/legaldocket/bar-admission-undocumented-law-school-graduates. Mr. Patel was admitted to practice law in New Jersey shortly thereafter, on January 24, 2018. ACLU New Jersey, *'Dreamer' represented by ACLU-NJ & ACLU-PA among first in NJ to take oath of bar admission*, January 24, 2018, https://www.aclu-nj.org/news/2018/01/24/daca-recipient-sworn-lawyer-nj-attorney-general.

DISCUSSION

A. This Court Is the Constitutional Sovereign with Authority to Enact a State Law Opting Out of the Federal Restriction Against Bar Admission for Undocumented Immigrants.

The Utah Supreme Court is the constitutionally mandated branch of government with sole responsibility for determining who can practice law in Utah and is therefore the entity to adopt a rule opting out of the federal restriction against bar admission for undocumented immigrants. The Utah Constitution states that "[T]he Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law." Utah Const. art. VIII, § 4; *see also Injured Workers Assoc. of Utah v. State of Utah,* 2016 UT 21, ¶ 26, 374 P.3d 14. This distribution of responsibility ensures that decisions about candidates' competence and moral character will be made with the benefit of this Court's unique expertise on matters

related to the practice of law. The United States Supreme Court has also acknowledged that "the courts have historically regulated admission to the practice of law before them." *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1066 (1991).

Pursuant to the authority granted in Article VIII of the Utah Constitution, this Court has promulgated rules governing the practice of law in Utah including rules governing the qualifications of applicants, rules governing uniform educational requirements and rules requiring the type of bar examination.[8] Sup. Ct. Rules of Prof'l Practice, Article 7. Admissions.

As the New York Court of Appeals held, "to construe 'enactment of a State law' to empower only state legislatures, rather than other branches of state government, runs afoul of the Tenth Amendment prohibition against the federal government requiring states to govern according to Congress' instructions or by directly compelling a state to enact or enforce a federal program." 131 A.D.3d at 31-38 (internal citations omitted). "[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).

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

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[8] Utah does not limit Bar admission to United States citizens. *See* Sup. Ct. Rules of Prof'I Practice, 14-703, 14-704, 14-705, 14-718. The Bar's current practice is to require non-citizens to provide verification of legal presence in the United States.

(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).

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* affirmed that "Congress may not simply commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program." 505 U.S. 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" executive-branch officials).

Nor may Congress offer the states incentives to adopt federal policy 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,* 132 S. Ct. 2566, 2602-2603 (2012) (Roberts, C.J.) (explaining the Supreme Court will "scrutinize Spending Clause legislation to ensure that Congress is not using financial inducements to exert a power akin to undue influence." (internal quotation marks omitted)). And 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 174-178

(holding Congress violated state sovereignty by coercing the states into adopting Congress's preferred regulatory scheme for 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 v. Maine*, 527 U.S. 706, 747 (1999). 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 state governmental decision-makers. *Id.* at 465-66. The Court declined to apply the federal Age Discrimination in Employment Act to a state's requirement that its supreme-court judges retire at the age of seventy, even though the "plain language" of the 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. 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.

The state sovereignty recognized by the Tenth Amendment protects the integrity and independence of state governmental decision-making—and the officials who are responsible for it—against federal incursion. But § 1621(d), if construed to impose a legislative-enactment requirement, would violate that state sovereignty by dictating to a

state that it may act only through its legislature, and not through its courts, to decide whether the relevant noncitizens may be licensed as attorneys. *Vargas*, 131 A.D.3d at 27.

Consistent with the Utah Constitution and the sovereignty guaranteed by the Tenth Amendment, this Court may exercise the authority to opt out of the restriction imposed by 8 U.S.C. § 1621(d) and allow for the Bar admission of undocumented applicants who otherwise meet the qualifications for admission. Accordingly, Petitioners request this Court adopt Proposed Rule 14-721, which would allow Bar admission for undocumented applicants who otherwise meet the qualifications for admission to the Bar and have documented employment authorization from the United States Citizenship and Immigration Services (USCIS).

B. Undocumented Status Does Not, Per Se, Adversely Reflect on an Individual's Character and Fitness to Practice Law.

Undocumented status alone does not suggest that an applicant does not possess the character and fitness qualities necessary to be a licensed lawyer. It is not a crime for a removable alien to remain in the United States. *Arizona v. United States,* 132 S. Ct. 2492, 2505 (2012). Moreover, California, Florida, Illinois, Pennsylvania, Nebraska, New Jersey, New York, and Wyoming have all determined that undocumented immigration status, in and of itself, does not reflect adversely upon an individual's fitness to practice law. 131 A.D.3d at 15, 315 P.3d at 130, Fla. Stat. § 454.021(3); 705 Ill. Comp. Stat. 205/2; Neb. Rev. Stat § 4-111; Wyo. Stat. Ann. § 33-5-105. In considering the weight to be accorded to unlawful presence in the United States, the New York Court of Appeals cited the United States Supreme Court's long-standing recognition that "[v]isiting . . .

condemnation on the head of an infant is illogical and unjust." *Vargas*, 131 A.D.3d at 18-19 (*citing Plyer v. Doe,* 457 U.S. 202, 220 (1982) (holding the undocumented status of the children does not establish sufficient rational basis for denying the education benefits the state affords other residents)).

DACA recipients do not enter or remain in the United States illegally under their own volition.[9] They are brought as children at the hands of their parents. It is unrealistic to expect children brought to the United States by their parents to leave the only country they have known. Indeed, the heart of the DACA policy is the notion that United States immigration laws are not designed "to remove productive young people to countries they may not have lived or even speak the language," particularly when "many of these young people have already contributed to our country in significant ways." DHS, Memorandum from Janet Napolitano (June 15, 2012) attached as Exhibit B.

An applicant to the Utah State Bar must be "one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them." Sup. Ct. R. Prof'l Practice 14-708. A candidate for admission to the bar should generally possess those qualities of truth-speaking, honor, and strict observance of the fiduciary responsibility "that have, throughout the centuries, been compendiously described as moral character." *Schware v. Bd. of Bar Examiners of N.M.,* 353 U.S. 232, 247 (1957) (Frankfurter, J. concurring). Utah attorneys take the following oath:

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[9] Many DACA recipients do not enter the United States illegally at all, but instead are brought to the United States by their parents under lawful visas and remain here with their families after the end of their authorized stay.

> I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts of this State with honesty, fidelity, professionalism, and civility; and that I will faithfully observe the Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Supreme Court of the State of Utah.

Preamble to the Rules of Professional Conduct.

Undocumented status does not conflict with an individual's ability to take and uphold Utah's oath of honesty, fidelity, professionalism and civility or promise to uphold the Utah and United States Constitutions. Furthermore, as California, Florida, Illinois, Pennsylvania, Nebraska, New Jersey, New York, and Wyoming have all held, undocumented immigrants can meet the character and fitness requirements for admission to the practice of law.

CONCLUSION

For the foregoing reasons, this Court should exercise its constitutional authority to opt out of the federal restriction against allowing Bar admission for undocumented immigrants who otherwise meet the requirements for admission by adopting proposed Rule 14-721. Petitioners, like so many other undocumented immigrants, are productive members of Utah society, have attended United States law schools, and should be allowed to become members of the Utah State Bar.

DATED this 4th day of October, 2018.

/s/ Anthony C. Kaye
Anthony C. Kaye
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Attorneys for Petitioners

EXHIBIT A

Rule 14-721. Unauthorized immigrants.

(a) An Applicant who is not lawfully present in the United States may be admitted to the Bar if she or he:

(a)(1) is otherwise qualified for admission under these rules;

(a)(2) was brought to the United States as a minor and has continuously resided in the United States since that time; and

(a)(3) has received documented employment authorization from the United States Citizenship and Immigration Services (USCIS);

(b) Unauthorized immigrants who do not meet all of the above conditions are ineligible for admission in accordance with federal law.

EXHIBIT B

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

June 15, 2012

MEMORANDUM FOR: David V. Aguilar
Acting Commissioner, U.S. Customs and Border Protection

Alejandro Mayorkas
Director, U.S. Citizenship and Immigration Services

John Morton
Director, U.S. Immigration and Customs Enforcement

FROM: Janet Napolitano
Secretary of Homeland Security

SUBJECT: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children

By this memorandum, I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. As a general matter, these individuals lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States:
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.

Our Nation's immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. Prosecutorial discretion, which is used in so many other areas, is especially justified here.

As part of this exercise of prosecutorial discretion, the above criteria are to be considered whether or not an individual is already in removal proceedings or subject to a final order of removal. No individual should receive deferred action under this memorandum unless they first pass a background check and requests for relief pursuant to this memorandum are to be decided on a case by case basis. DHS cannot provide any assurance that relief will be granted in all cases.

1. With respect to individuals who are encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or U.S. Citizenship and Immigration Services (USCIS):

- With respect to individuals who meet the above criteria, ICE and CBP should immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.
- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear.

2. With respect to individuals who are **in** removal proceedings but not yet subject to a final order of removal, and who meet the above criteria:

- ICE should exercise prosecutorial discretion, on an individual basis, for individuals who meet the above criteria by deferring action for a period of two years, subject to renewal, in order to prevent low priority individuals from being removed from the United States.
- ICE is instructed to use its Office of the Public Advocate to permit individuals who believe they meet the above criteria to identify themselves through a clear and efficient process.
- ICE is directed to begin implementing this process within 60 days of the date of this memorandum.
- ICE is also instructed to immediately begin the process of deferring action against individuals who meet the above criteria whose cases have already been identified through the ongoing review of pending cases before the Executive Office for Immigration Review.

3. With respect to the individuals who are **not** currently in removal proceedings and meet the above criteria, and pass a background check:

- USCIS should establish a clear and efficient process for exercising prosecutorial discretion, on an individual basis, by deferring action against individuals who meet the

above criteria and are at least 15 years old, for a period of two years, subject to renewal, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.

- The USCIS process shall also be available to individuals subject to a final order of removal regardless of their age.
- USCIS is directed to begin implementing this process within 60 days of the date of this memorandum.

For individuals who are granted deferred action by either ICE or USCIS, USCIS shall accept applications to determine whether these individuals qualify for work authorization during this period of deferred action.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here.

Janet Napolitano