

IN THE SUPREME COURT OF FLORIDA

Case No. SC 11-2568

Florida Board of Bar Examiners)
Re: Question as to Whether Undocumented)
Immigrants Are Eligible for Admission to)
The Florida Bar)

BY _____

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FSU CENTER FOR THE ADVANCEMENT OF HUMAN RIGHTS
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
APPLICANT AND AMICUS CURIAE BRIEF

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MOTION FOR LEAVE TO FILE ATTACHED AMICUS BRIEF

Wendi Adelson, member of The Florida Bar and affiliate attorney with the Florida State University Center for the Advancement of Human Rights, moves the Court for leave to file the attached brief. Counsel for the Florida Board of Bar Examiners has no position on the filing of an amicus brief and respectfully defers to the Court as to whether the Court wishes to receive this amicus brief. Counsel for the Florida Board of Bar Examiners has indicated that the Florida Board of Bar Examiners will neither oppose nor support the filing of this amicus brief.

STATEMENT OF INTEREST BY FLORIDA STATE UNIVERSITY

CENTER FOR THE ADVANCEMENT OF HUMAN RIGHTS

Attorney Wendi Adelson, member of The Florida Bar and affiliate of the Florida State University Center for the Advancement of Human Rights (“CAHR”), submits this brief as amicus curiae on behalf of CAHR in support of the Applicant, José Manuel Godínez-Samperio. CAHR has for over a decade provided federal immigration law expertise to the Florida Legislature, to Florida state courts, and to a host of Florida state agencies. CAHR lawyers litigate pro bono immigration cases nationwide, and teach courses at the FSU College of Law on Immigration Law, Asylum & Refugee Law, Human Trafficking Law, and on the Legal Rights of Immigrant Children.

The CAHR legal staff furthermore research and publish on a variety of federal immigration law topics nationwide. Their immigration law scholarship has been featured in the *Georgetown Immigration Law Journal*, the *Georgetown Journal of International Affairs*, the *St. Thomas University Law Review*, the *Intercultural Human Rights Law Review*, the *Texas Tech Law Review*, and the *Florida State University Law Review*. At the request of the Florida Legislature and Governor’s Office, CAHR undertook a two year study of human trafficking and immigration issues in Florida. This research culminated in the 2011 publication of the *Florida Strategic Plan on Human Trafficking*, which was funded and

sponsored by the Florida Bar Foundation. CAHR conducts ongoing trainings on federal immigration law & human rights for the Florida Bar, the National College of Judges, the Florida Office of the Attorney General, the Florida Prosecuting Attorneys Association, and the U.S. Department of Justice. Attorneys from CAHR have also testified as subject matter experts on immigration related topics before the Florida Legislature.

INTRODUCTION

The Florida Board of Bar Examiners petitions the Court for an advisory opinion as to whether undocumented immigrants are eligible for admission to the Florida Bar. The petition of the Board relies heavily on federal immigration law for the Board's apparent reluctance to approve the applicant and others similarly situated to him for admission, even after such applicants have unquestionably met the education and technical competence requirements established by the Court. The Board appears to suggest to the Court that such admission is yet barred on grounds of character and fitness. Notwithstanding repeated references by the Board to federal immigration law, neither federal immigration statutes nor federal case law support such a finding in the Applicant's situation.

SUMMARY OF THE ARGUMENT

Federal immigration law prohibits the employment of immigrants in the United States who have not been issued valid work authorization. Admission to a

state bar and authorization to work are, however, two entirely different issues.

Admission to a state bar attests to the professional legal competence demonstrated by an applicant. It does not confer any kind of work authorization whatsoever on one who has been admitted to the bar. Admission to a state bar, therefore, raises no conflicts with federal immigration law. Conversely, federal immigration law regulates the employment of foreign nationals in the United States, but has never been a basis to assess the competence of a foreign national—either documented or undocumented—to practice law.

In its Petition for an Advisory Opinion, the Florida Board of Bar Examiners insinuates that the applicant in this case somehow lacks good moral character. Nothing in federal immigration law would support this suggestion. The Florida Board of Bar Examiners further urges that the Court rely on *Florida Board of Bar Examiners re J.E.G.R.* to guide the Court's decision making in this instance. In doing so they urge the Court to equate desertion by an adult member of the military during a time of war with the situation of a child who is brought legally to the United States by his parents and who along with them overstays a tourist visa. There is no support in federal immigration statutes or case law for this suggestion.

ARGUMENT

- I. Federal immigration law regulates the employment of foreign nationals in the United States but is completely silent regarding their professional licensing**

Petitioner Florida Board of Bar Examiners correctly notes that federal law—the Immigration and Nationality Act—governs the status of foreign nationals in the United States. *See* 8 U.S.C. §§ 1101 *et seq.* The Board cites to several sections of the INA, asserting that such sections “could impact an undocumented immigrant.” (Board’s Pet. at 8). Provisions that the Board mentions in this respect include 8 U.S.C. § 1227 (establishing classes of deportable aliens); 8 U.S.C. § 1324a (making employment of unauthorized aliens unlawful); 8 U.S.C. § 1324d (providing civil penalties for aliens who fail to depart after receiving a final removal order); 8 U.S.C. § 1325 (allowing for a fine or term of imprisonment of up to six months for a first offense illegal entry). In citing to these federal immigration statutes, however, the Board never explains why such provisions of the INA arguably constitute grounds for denying a law license to an immigrant whose visa may have expired.

There is ample reason for the Board’s reticence on this point: nothing at all in federal immigration law precludes an immigrant with an expired visa from being issued a law license. Federal immigration law instead governs when foreign nationals may be *employed* in the United States. *See* 8 U.S.C. § 1324A (establishing when aliens are deemed to be unlawfully employed). Nowhere in this statute governing the employment of foreign nationals is professional licensing either precluded or even mentioned.

The Board has confused applicant Jose Godinez's request for admission to the Florida Bar with an application for employment authorization. Applicant Godinez asks only for the former, and not for the latter. Moreover, his request is not at all prohibited under federal immigration law. Neither would granting such a request raise any federal immigration law issues. It is also important to note that only one of the immigration statutes cited by the Board is actually apposite in this applicant's case: 8 U.S.C. § 1227 establishes that he is indeed undocumented as a result of overstaying a tourist visa as a child. But distinguishable from 8 U.S.C. § 1324A, this applicant is not seeking unlawful employment. Because he and his family legally entered the United States on tourist visas, neither he nor his family are in violation of 8 U.S.C. 1325. And because 8 U.S.C. § 1324D refers only to aliens who have failed to depart the United States after receiving a final order of removal—which the applicant never has—this provision of the INA is likewise inapplicable to him. Only one of the INA provisions cited to by the Board “impacts” the applicant in this case, and while it describes his immigration status it does not at all preclude him from receiving a professional license.

II. Because the Board acknowledges that the Applicant in this case has met the Florida Bar requirements regarding education and technical competence, it appears to be questioning his character and fitness as “an undocumented alien.” There is no support in federal immigration law for this suggestion.

In its Petition for an Advisory Opinion, the Florida Board of Bar Examiners insinuates that the applicant in this case somehow lacks the character and fitness requisite for the practice of the law. Nothing in federal immigration law would support this suggestion. Under federal immigration law, character and fitness are referred to as “good moral character,” a legal term of art. The Immigration and Nationality Act establishes that “good moral character” must be demonstrated in order for a foreign national to qualify for a number of immigration benefits and remedies. Good moral character is required of aliens seeking to qualify for the remedy of voluntary departure after they have been placed in removal proceedings. *See* 8 U.S.C. § 1101(f). Aliens seeking U.S. citizenship must also demonstrate good moral character. *See* 8 U.S.C. § 1427(d), (e).

Under federal immigration law, statutory ineligibility for a finding of good moral character is found at 8 U.S.C. § 1101(f). It includes a broad set of offenses that are considered *per se* bars to a determination of good moral character. Such offenses include being a habitual drunkard, practicing polygamy, engaging in prostitution, drug smuggling, commission of crimes of moral turpitude (typically offenses that involve theft or fraud) or convictions for aggravated felonies. The applicant in this instance is subject to none of these bars. And whereas determinations of good moral character are also a matter of discretion (*see Matter of Turcotte*, 12 I&N Dec. 206 (BIA, 1967)), the applicant in this case has multiple

equities that would impel a finding of good moral character in the discretionary realm of federal immigration law. An Eagle Scout, a valedictorian of his high school class, an honors graduate of his university and his law school, and a law student who has completed hundreds of hours of unpaid pro bono legal service, this applicant can only be described as the case *par excellence* for a discretionary finding of good moral character under the criteria established by federal immigration law.

The Board furthermore appears to question the moral fitness of the applicant in this case by asking that Court adjudicate the legal question of whether an undocumented immigrant can be licensed to practice law in the context of *Florida Board of Bar Examiners re J.E.G.R.*, 725 So.2d 358 (Fla. 1998) (regarding an applicant for the Florida Bar who had deserted his Marine Corp unit prior to deployment in Operation Desert Storm). In so doing, the Board asks the Court to somehow equate desertion by an adult member of the military during a time of war, with the situation of other applicants for the Bar who have been convicted of a felony, with this applicant's situation of being a child brought legally by his parents to United States and who along with them overstayed a tourist visa. *See* Board's Pet. at 6-7. The legal and factual dissimilarity of such cases is striking. The applicant in this case has never deserted the U.S. Armed Forces, never been convicted of a felony, and in fact, never been charged or convicted of any kind of

crime or wrongdoing whatsoever. No provision of federal immigration law could be construed to support the Board's suggestion here.

Lastly, the Board appears to imply that the applicant's announcement of his undocumented status before a House Committee of the Florida Legislature in 2011 (*see* Board's Pet. at 9) somehow calls into question his moral fitness to practice law. The Board does not explain either the logic or the legal basis for this assertion. Quite contrary to the suggestion of the Board, this occurrence at the Legislature instead is yet another indicator of the forthrightness that this applicant has always demonstrated regarding his immigration status. Unlike other situations in which the Board might question the candor of bar applicants, this applicant has never sought to hide or obscure his immigration status. He announced it in his application for law school, announced it when he applied to sit for the Florida Bar Examination, and received a waiver from the Board of Bar Examiners that allowed him to take the Examination notwithstanding his undocumented status. He has been completely candid about his situation—displaying the very honesty and adherence to the truth to which all applicants and members of the Florida Bar should adhere.

CONCLUSION

Nothing in federal immigration statutes or case law precludes the applicant in this case from being admitted to the Florida Bar. To do so is not to grant him illicit work authorization or to violate federal law in any way.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Brief of Amicus Curiae, Florida State University Center for the Advancement of Human Rights, in Support of Bar Applicant's Response to the Petition, was mailed to the following parties on the 6th day of April, 2012:

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Certificate of Font Compliance

I certify that this brief has been produced with Times New Roman 14 point font.



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