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***Plyler* Students at Work: The Case for Granting Law Licenses to Undocumented Immigrants**

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*Lindy Stevens**

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I. Introduction

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On January 2, 2014, Sergio Garcia became the first known undocumented immigrant in the United States with a license to practice law. He arrived in the United States as an infant in the late 1970's, after his father arranged for a couple with United States citizenship to pose as his parents and bring him across the United States-Mexico border.¹ Upon arrival, Mr. Garcia lived with his parents and five siblings in Chico, California until age nine, when he returned to Mexico with his mother.² At age seventeen, Mr. Garcia came back to the United States, entering the country illegally, lying on the floorboards of a pick-up truck.³ Now thirty-six years old, Mr. Garcia has since graduated from the California Northern School of Law, passed the California state bar exam, and was granted admission to the State Bar of California in 2009.⁴ Although his law license was rescinded two weeks later because of his immigration status,⁵ a California law enacted in October 2013 made it possible for Mr. Garcia to regain his license and become the first known undocumented immigrant admitted to any state bar in the country.⁶ Others like him, however, have not had similar success.⁷

On March 6, 2014, the Supreme Court of Florida determined that twenty-six-year-old Jose Godinez-Samperio was ineligible for admission to the Florida State Bar because of his status as an undocumented immigrant. Mr. Godinez-Samperio came to the United States with his parents at age

1. See Deborah Hastings, *Undocumented Immigrants May Practice Law Under New California Legislation Spurred by Sergio Garcia's Long, Tortured Quest*, N.Y. DAILY NEWS (Oct. 15, 2013), <http://www.nydailynews.com/news/national/spurred-man-tortured-journey-california-state-undocumented-immigrants-lawyers-article-1.1482225>.

2. *Id.*

3. *Id.*

4. See Robin Abcarian, *Sergio Garcia Will Practice Law, and He Will Make a Killing*, L.A. TIMES (Sept. 6, 2013), <http://articles.latimes.com/2013/sep/06/local/la-me-ln-sergio-garcia-law-20130906> (noting that Mr. Garcia had about fifteen Spanish-speaking clients during that two-week period before his law license was rescinded).

5. See Cindy Y. Rodriguez & Jacqueline Hurtado, *Undocumented Immigrant's Bid for California Law License Heads to Court*, CNN (Sept. 4, 2013, 7:56 PM), <http://www.cnn.com/2013/09/04/us/undocumented-lawyer-law-license/>.

6. See ASSOCIATED PRESS, *Court Grants Law License to Man in US Illegally* (Jan. 2, 2014, 6:50 PM), <http://bigstory.ap.org/article/calif-rule-law-license-immigrant> (reporting that the unanimous ruling of the California Supreme Court is one "advocates hope will open the door to millions of immigrants seeking to enter other professions such as medicine, accounting and teaching.").

7. See *id.* (reporting that "the court made clear the only reason it granted Garcia's request is that California recently approved a law that specifically authorizes the state to give law licenses to immigrants who are here illegally.").

nine, and has since remained in the country permanently.⁸ His family entered the United States with tourist visas, but never returned to their home country of Mexico.⁹ Growing up in Florida, Mr. Godinez-Samperio went on to become valedictorian of his high school class, earned a scholarship to the New College of Florida and graduated from the Florida State University School of Law with honors.¹⁰ Despite those accomplishments, the Florida Supreme Court determined that without a state law like the one that prompted Mr. Garcia's case, federal law prohibits Mr. Godinez-Samperio's admission to the Florida State Bar because of his status as an undocumented immigrant.¹¹

This Note will examine how inconsistencies in immigration policy on education, employment, and professional licensure impact undocumented immigrants who have been raised and educated in the United States, and chose to pursue a degree in law. Although the federal government and many states have taken steps to encourage education for children brought to this country illegally, a 1996 federal prohibition on "public benefits" for undocumented immigrants, which tangentially includes law licenses, creates a professional glass ceiling for United States-educated young people seeking to enter the legal profession. The discussion that follows will examine existing law governing education and employment for undocumented students, with an emphasis on those studying to practice law.¹² It will explain the disconnect between immigration policies that allow United States-educated undocumented students to attend college, earn a law degree, and gain employment, and a federal law that prohibits those same students from obtaining the license required for their chosen profession.¹³ Finally, this Note recommends that the Department of Homeland Security promulgate a regulation interpreting the federal prohibition on "public benefits" to permit state bar eligibility for young people who qualify for the Deferred Action for Childhood Arrivals

8. See Bill Kaczor, *Illegal Immigrant in Fla. Fights for Law License*, ASSOCIATED PRESS (Oct. 2, 2012, 6:23 PM), <http://bigstory.ap.org/article/fla-justices-question-law-license-immigrant>.

9. See *id.*

10. See Chelsea Silvia, *A Pathway to the Legal Profession*, 45 U. MIAMI INTER-AM. L. REV. 367, 368 (2014).

11. See Fla. Bd. Bar Exam'rs Re Question as to Whether Undocumented Immigrants are Eligible for Admission to the Fla. Bar, 134 So.3d 432, 437 (Fla. 2014) (holding that unauthorized immigrants are ineligible for admission to the Florida State Bar).

12. See *infra* Part IV.A.

13. See *infra* Part III.

(DACA) program.¹⁴ Currently, DACA provides temporary relief from the threat of deportation, and offers an opportunity for United States-educated undocumented immigrants to seek lawful employment in the United States. This Note will argue those employment opportunities should include a chance to enter the legal profession as well.¹⁵

II. Background

A. Classifying Immigrants in the United States

At the outset, it is important to consider the various classifications given to those living in the United States who were not born in this country. Under federal immigration law, those who are not natural-born citizens are considered “aliens.”¹⁶ The Immigration and Nationality Act (INA) classifies aliens as either “immigrants” or “nonimmigrants” depending on the purpose and length of their stay in the United States.¹⁷ “Nonimmigrants” enter the country on a temporary basis, usually for tourism, work or education, and must demonstrate an intention to leave the country at the end of their authorized stay.¹⁸ “Immigrants” are those who intend to live permanently in the United States.¹⁹ Immigrants with an immigrant visa, typically referred to as a “green card,” have legal permanent resident status in the United States.²⁰ Legal permanent residents are authorized to live and work in the United States permanently.²¹ “Undocumented” describes those living in the United States without any type of legal status. It includes those who entered the country illegally, like

14. See *infra* Part IV.B., note 158.

15. See *infra* Part IV.B.

16. See Immigration and Nationality Act, 8 U.S.C. §1101(a)(3) (2010).

17. See Immigration and Nationality Act, 8 U.S.C. §1101(a)(15) (2010).

18. See *Glossary of Terms*, IMMIGRATION EQUALITY, <http://immigrationequality.org/get-legal-help/our-legal-resources/immigration-101/glossary-of-terms/> (last visited Feb. 11, 2015) (“Many non-immigrant visas require applicants to prove that they do not intend to remain in the U.S. permanently by demonstrating strong economic and family ties to their home country.”).

19. See *id.* (“The term ‘immigrant’ is often used more broadly to mean any person who is not a U.S. citizen.”).

20. See *id.* (defining “green card” as “the informal term for ‘an alien registration card’ or Form I-551,” which is proof of legal permanent resident status).

21. See *id.*

Mr. Garcia, or stayed past the expiration date of their temporary visa, like Mr. Godinez-Samperio.²²

An immigrant visa for legal permanent resident status is normally obtained through family or employer sponsorship, but the INA limits the number issued annually.²³ As of 2010, for example, there were approximately four million pending applications in the family-sponsored preference category.²⁴ Mr. Garcia, who is awaiting the approval of an immigration petition filed by his father nineteen years ago, is just one example of the millions seeking a visa for legal permanent resident status in the United States.²⁵

In addition to the INA cap on family and employer sponsorship, there are also limits on the percentage of visas issued annually to applicants from particular countries.²⁶ High demand, coupled with a limited supply scheme, has caused the State Department to develop lengthy waiting lists, where individuals like Mr. Garcia and Mr. Godinez-Samperio are placed in a “visa queue” and must wait for their “priority date” to become available.²⁷ Once that priority date arrives, the individual is eligible to apply for an immigrant visa.²⁸ For those from Mexico, China, India, and the Philippines, who comprise the vast majority of green card applicants, this process can be particularly arduous.²⁹ An unmarried, adult child of legal permanent

22. *See id.* (noting that “undocumented” may also refer “to those who overstayed their allotted time here, or those who violated the terms of their legal status.”).

23. *See Visa Availability and Priority Dates*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates> (last updated June 15, 2011) (“Family sponsored preference categories are limited to 226,000 per year and employment based preference visas are limited to 140,000 per year.”).

24. *See* Stuart Anderson, *Family Immigration: The Long Wait to Immigrate*, THE NAT'L FOUND. FOR AM. POL'Y 1, 1 (2010), available at http://carnegie.org/fileadmin/Media/Publications/NFAP_Policy_Brief_Family_Immigration.pdf (according to data from the U.S. State Department and the Department of Homeland Security).

25. *See generally* Abcarian, *supra* note 4.

26. *See Visa Availability and Priority Dates*, *supra* note 23 (providing information on visa availability and priority dates).

27. *See id.* (noting that the length of time individuals must wait before receiving an immigrant visa depends upon, “[t]he demand for and supply of immigrant visa numbers,” “[t]he per country visa limitations,” and “[t]he number of visas allocated for your particular preference category”).

28. *See id.*

29. *See* Anderson, *supra* note 24, at 3 (“Enormous backlogs and waiting times plague the family preference categories. For example, the wait time for a U.S. citizen petitioning for a brother or sister from the Philippines exceeds 20 years.”).

residents from Mexico, for example, will wait an average of seventeen years to receive a green card as a family-sponsored immigrant.³⁰ Mr. Garcia—whose application was filed in 1994—expects to receive his green card sometime in 2019.³¹ Only after an applicant has obtained a green card and has lived as a legal permanent resident in the United States for five years, may the applicant begin the naturalization process to apply for United States citizenship.³²

These statistics demonstrate the lengthy and complicated route to becoming a legal permanent resident, and eventually, a United States citizen. And while it may be true that most undocumented immigrants made the conscious decision to enter this country illegally and involve themselves in that process, many of those who entered as children, like Mr. Garcia and Mr. Godinez-Samperio, did not voluntarily make that choice. Nevertheless, this same path to citizenship applies those children, and it provides a useful starting point for considering the educational opportunities available to this country's youngest undocumented immigrants.

B. Primary Education for Undocumented Immigrants

As of 2013, there were approximately 11.7 million undocumented immigrants living in the United States.³³ It is estimated that roughly 1.1 million of them are children under the age of eighteen.³⁴ These undocumented immigrant children have had the opportunity to access public education in primary and secondary schools nationwide, since the

30. See *id.* at 1 (noting that 26,266 visas are issued in this particular category every year, and that the average wait time for all other countries is eight years).

31. See Abcarian, *supra* note 4.

32. See *I Am a Permanent Resident: How Do I Apply for U.S. Citizenship?*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 2013), available at <http://www.uscis.gov/sites/default/files/USCIS/Resources/B3en.pdf> (explaining that applying for U.S. citizenship is also possible for those who have been a permanent resident for at least three years, and who are “married to and living in a marriage relationship with your U.S. citizen husband or wife; or [h]ave honorable service in the U.S. military.”).

33. See Jeffrey S. Passel et al., *Population Decline of Unauthorized Illegal Immigrants Stalls, May Have Reversed*, PEW RES. CTR. 1, 6 (Sept. 23, 2013), available at <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf> (“The estimated number of unauthorized immigrants peaked at 12.2 million in 2007 and fell to 11.3 million in 2009, breaking a rising trend that had held for decades.”).

34. See *Fact Sheet: An Overview of College-Bound Undocumented Students*, EDUCATORS FOR FAIR CONSIDERATION, http://www.e4fc.org/images/Fact_Sheet.pdf (last updated Jan. 2012).

United States Supreme Court ruling in *Plyler v. Doe*,³⁵ decided in 1982. In *Plyler*, the Court held that a Texas statute allowing local school districts to deny public education to children based on immigration status was a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.³⁶ Rejecting arguments about the “harsh economic effects” of undocumented immigrants entering public schools,³⁷ the Court determined that “education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.”³⁸ The Court also recognized the special circumstance of children brought to this country illegally, acknowledging that they “can affect neither their parents’ conduct nor their own status.”³⁹

Plyler is now recognized as the decision that “opened the schoolhouse doors to untold numbers of children who might otherwise be deprived of a basic education.”⁴⁰ Mr. Garcia and Mr. Godinez-Samperio are just two examples of those who benefitted from the Supreme Court’s decision. Not only has *Plyler* survived unsuccessful attacks to limit its holding, it has continued to expand the opportunities available to undocumented children today.⁴¹

35. *Plyler v. Doe*, 457 U.S. 202, 230 (1982) (holding that the Texas statute could not “deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest.”).

36. *See id.* at 202 (reasoning that although undocumented immigrant children are not U.S. citizens, they are still protected by the Equal Protection Clause of the Fourteenth Amendment, which guarantees that no state shall, “deny to any person within its jurisdiction the equal protection of the laws”) (quoting U.S. Const. amend. XIV, 0 1).

37. *See id.* at 228 (“There is no evidence in the record suggesting that illegal entrants impose any significant burden on the State’s economy. To the contrary, the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state fisc.”).

38. *See id.* at 221 (“We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”).

39. *Id.* at 220 (stating that unlike undocumented children, “[t]heir parents have the ability to conform their conduct to societal norms, and presumably the ability to remove themselves from the States’ jurisdiction”) (quoting *Trimble v. Gordon*, 430 U.S. 762, 770 (1977)).

40. *See* Ben Winograd, *After 30 Years, Plyler v. Doe Decision Survives but Remains Under Attack*, AM. IMMIGR. COUNCIL (June 15, 2012), <http://immigrationimpact.com/2012/06/15/after-30-years-plyler-v-doe-decision-survives-but-remains-under-attack/>.

41. *See id.* (describing a 1994 California ballot initiative known Proposition 187, which would have forbidden undocumented students from enrolling in public schools but was prohibited from taking effect, and a 2011 Alabama initiative that would have required school districts to report students’ citizenship or immigration status to state authorities).

C. Opportunities for Higher Education

Protected by the Court's decision in *Plyler*, approximately 65,000 undocumented students now graduate from United States' high schools every year.⁴² It is estimated that between 7,000 and 13,000 of those undocumented high school graduates are currently enrolled in colleges and universities across the country.⁴³ The growing number of undocumented high school graduates beginning to set their sights on college has also caused legislative focus to shift toward access to higher education for those who have come to be known as "*Plyler* students."⁴⁴

1. Federal Law

Currently, no state or federal law expressly prohibits the admission of undocumented immigrants to public or private colleges and universities in the United States.⁴⁵ In fact, at the federal level, there have been several legislative attempts to encourage higher education for United States-educated undocumented youth for more than a decade. These attempts have largely focused on passing the Development, Relief, and Education for Alien Minors (DREAM) Act,⁴⁶ first introduced in the Senate in 2001.⁴⁷ Originally proposed by Senators Dick Durbin and Orrin Hatch, the

42. See EDUCATORS FOR FAIR CONSIDERATION, *supra* note 34.

43. See *id.*

44. See Miriam Jordan, *Illegal Immigrants' New Lament: Have Degree, No Job*, WALL ST. J. (Apr. 26, 2005), <http://online.wsj.com/news/articles/SB111447898329816736> (reporting that, "[i]n 2001, Texas became the first state to pass a law allowing undocumented immigrant students who graduated from a state high school to pay resident tuition at public universities.").

45. See THE COLLEGE BOARD, *Advising Undocumented Students* (2012), <http://professionals.collegeboard.com/guidance/financial-aid/undocumented-students> (last visited Feb. 6, 2015) (noting, however, that institutional policies on admitting undocumented students vary, and that in Virginia, for example, some four-year colleges will refuse admission to applicants who are unable to verify their citizenship or legal residency status).

46. See S. 952, 112th Cong. (2011) (representing the most recent version of the DREAM Act introduced in the U.S. Senate on May 11, 2011); see also H.R. 1842, 112th Cong. (2011) (representing the most recent version of the DREAM Act introduced in the U.S. House of Representatives on May 11, 2011).

47. See Roberto G. Gonzales, *Young Lives on Hold: The College Dreams of Undocumented Students*, COLLEGE BOARD 22 (2009), available at <http://professionals.collegeboard.com/profdownload/young-lives-on-hold-college-board.pdf> (noting that the bill "has been repeatedly introduced and debated in Congress" and that "[a]lthough the DREAM Act has not yet been enacted into law, it has a large base of support both in and out of Congress").

DREAM Act seeks to extend conditional permanent resident status to young, undocumented immigrants who pursue higher education in the United States.⁴⁸ Specifically, the Act would allow those brought to this country illegally as children to remain in the United States without the threat of deportation for up to six years while they attend college or serve in the military.⁴⁹ Although the criteria to qualify for conditional permanent residency has been modified since 2001, the plan generally requires that the undocumented individual: (1) has been continuously present in the United States for five years prior to the bill's passage, (2) entered the United States before the age of fifteen, (3) has earned a high school diploma or GED and (4) is under the age of thirty-five.⁵⁰ Under the most recent version of the DREAM Act, the undocumented student would become a permanent legal resident at the end of this six-year period, provided they have earned an associate's degree, completed at least two years of military service, or worked for two years toward the completion of a bachelor's degree.⁵¹ Congress has not approved the DREAM Act, but in early 2012, President Obama used his executive power to promote a federal policy that effectively encourages higher education for young undocumented immigrants, with provisions similar to the DREAM Act.

Following that directive from the President, the Department of Homeland Security (DHS) began the Deferred Action for Childhood Arrivals (DACA) program in June 2012.⁵² This federal policy allows DHS

48. See THE DREAM ACT PORTAL, <http://dreamact.info> (last visited Feb. 6, 2015).

49. See Gonzalez, *supra* note 47, at 22 (noting that the "DREAM Act is designed to allow undocumented immigrant youth who were brought to the country years ago as children to obtain legal permanent resident status if they remain in school through high school graduation and go on to college or military service").

50. See S. 952, 112th Cong. § 3 (2011) (requiring additionally that "the alien has been of good moral character" and has not been convicted for any crime carrying more than a one year sentence under state or federal law).

51. See *id.* at § 5 (noting that legal permanent resident status will be revoked if the undocumented student fails to maintain "good moral character" or "abandon[s]" residence in the U.S. for more than 365 days during the conditional period); see also NAT'L IMMIGR. LAW CTR., *DREAM Act Summary 2* (2011), available at <https://nilc.org/dreamsummary.html> (noting that "[s]tudents with conditional permanent resident status would be able to work, drive, go to school, and otherwise participate normally in day-to-day activities on the same terms as other Americans").

52. See *Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* [hereinafter *DACA Memo*], from Janet Napolitano, Sec'y of the Dep't of Homeland Sec., to David V. Aguilar, Acting Comm'r, U.S. Customs and Border Prot., Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Servs., and John Morton, Dir., U.S. Immigration on Customs Enforcement 1 (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial->

officers to exercise prosecutorial discretion in the pursuit of deportation proceedings against individuals: (1) who arrived in the United States before age sixteen, (2) are under the age of thirty, (3) have lived in the United States for at least five years, and (4) either have a high school diploma or are currently enrolled in school.⁵³ In support of President Obama's directive to implement the policy, Secretary Napolitano's memorandum emphasized that immigration laws should not be "blindly enforced," as they are not intended to "remove productive young people to countries where they may not have lived or even speak the language."⁵⁴

2. State Law

Like DACA, policies designed to protect undocumented students and encourage the pursuit of higher education have been enacted at the state level as well. Currently, sixteen states have policies that allow undocumented students who completed their primary and secondary education in the state to pay the same tuition rates as in-state residents.⁵⁵ Three states—California, Texas, and Illinois—offer government-funded financial aid to undocumented college students as well.⁵⁶

Educational rights for undocumented immigrants also continue to be part of an ongoing debate at the state level. In 2012, for example, sixty-nine bills related to education for undocumented students were introduced in twenty-five state legislatures.⁵⁷ Many of these focused on improving

discretion-individuals-who-came-to-us-as-children.pdf (instructing that prosecutorial discretion is to be exercised on a case by case basis only if the individual satisfies a particular set of criteria).

53. *See id.* (noting that additional requirements include the individual have no prior felony or "significant misdemeanor" convictions and does not "pose a threat to national security or public safety").

54. *See id.* (adding that "[a]s a general matter, these individuals lacked the intent to violate the law").

55. *See* NAT'L CONF. OF STATE LEGISLATURES, *Undocumented Student Tuition: State Action* (May 2013), <http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-state-action.aspx> (reporting that the following states have equivalent in-state tuition rate laws for undocumented students: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, and Washington).

56. *See* NAT'L ASS'N OF STUDENT FIN. AID ADM'RS, *Inclusive State Policy Environments: Undocumented Students*, http://www.nasfaa.org/states/undocumented/Inclusive_State_Policy_Environments__Undocumented_Students.aspx (last visited Oct. 11, 2013).

57. *See* NAT'L CONF. OF STATE LEGISLATURES, *2012 Immigration-Related Laws, Bills,*

access to higher education, suggesting that more changes may be on the way.⁵⁸

D. Access to Employment and the Practice of Law

Although employment for undocumented immigrants is governed exclusively by federal law, and bar admission is regulated by the states, developments at both governmental levels support the provision of law licenses to qualified undocumented immigrants.

Under current federal law, the Immigration Reform and Control Act (IRCA) of 1986⁵⁹ makes it a crime for employers to hire or recruit undocumented immigrants not authorized to work in the United States.⁶⁰ Like its provisions encouraging higher education, however, DACA represents an acknowledgment of the unique circumstances facing those brought to this country as children.⁶¹ As of June 2012, those approved for deferred action under DACA are eligible for employment authorization to work in the United States, renewable every two years.⁶² For those approved for DACA, like Mr. Godinez-Samperio, this serves as an additional form of encouragement for young undocumented immigrants to pursue an education that will lead to their career of choice.⁶³ If that career requires a law license, legal developments within the past half-century provide additional support for the proposition that qualified undocumented immigrants may be admitted to state bar associations. Although foreign-born individuals were

and Resolutions in the States: Jan. 1-March 31, 2012, <http://www.ncsl.org/research/immigration/2012-immigration-laws-bills-and-resolutions.aspx#5> (last visited Feb. 6, 2015) (noting that in 2011, 140 bills related education and immigration were introduced in 37 states).

58. See NAT'L CONF. OF STATE LEGISLATURES, *In-State Tuition and Unauthorized Immigrant Students* (Feb. 2014), <http://www.ncsl.org/research/immigration/in-state-tuition-and-unauthorized-immigrants.aspx> (reporting that in 2013, four states—Colorado, Minnesota, New Jersey and Oregon—enacted new legislation permitting in-state tuition rates for undocumented immigrant students).

59. See Immigr. Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (1986).

60. See 8 U.S.C. § 1324(a)(1)(A) (adding that this restriction applies, “regardless of whether such alien has received prior official authorization to . . . reside in the United States and regardless of any future official action which may be taken with respect to such alien”).

61. See *DACA Memo*, *supra* note 52 (noting that “[o]ur 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.”).

62. See *id.*

63. See *Silvia*, *supra* note 10, at 368.

largely prohibited from practicing law in the United States for nearly two centuries,⁶⁴ a pair of state supreme court decisions in the early 1970's signaled a shift in the treatment of state bar applicants born abroad.⁶⁵

In 1971, the Alaska Supreme Court, in *In re Park*,⁶⁶ invalidated a citizenship requirement for admission to the Alaska State Bar, because it was unrelated to an attorney's fitness and competency to practice law.⁶⁷ The *Park* court also rejected concerns over loyalty and constitutional allegiance, disapproving of the argument that only natural-born citizens could demonstrate "an 'appreciation of the spirit of American institutions,'" required to practice law.⁶⁸

A year later, the California Supreme Court expanded upon the rationale in *Park*. In *Raffaelli v. Committee Of Bar Examiners*⁶⁹ the court ruled that citizenship, as a requirement for state bar admission, violated the Equal Protection Clause of the Fourteenth Amendment.⁷⁰ There, the court found that California's practice of excluding permanent resident aliens from admission to the State Bar had no rational basis.⁷¹ The *Rafaelli* court also rejected the argument that a lawyer, as an "officer of the court" must be a citizen—calling the conclusion a "non sequitur," with "no demonstrable

64. See, e.g., *Ex parte Thompson*, 10 N.C. 355, 364 (1824) (prohibiting two European immigrants from practicing law in North Carolina, citing fears of "foreign allegiance," "alien prejudices," and concerns over allowing the practice of law to "fall into such hands as would lower it in the national opinion").

65. See Kevin R. Johnson, *Bias in the Legal System? An Essay on the Eligibility of Undocumented Immigrants to Practice Law*, 46 U.C. DAVIS L. REV. 1655, 1660 (2013) ("The 1970s saw the beginning of a general expansion of the constitutional rights of immigrants.").

66. See *In re Park*, 484 P.2d 690 (Alaska 1971).

67. See *id.* at 692 ("The interests to be protected are the public's interest in having competent practitioners, [and] the bar's interest in ensuring that all attorneys in the state are qualified, thereby protecting its good name and reputation, and the courts' interest in having reliable and officers . . .").

68. See *id.* at 693 (noting petitioner had been in the U.S. fourteen years when the case was argued, receiving his undergraduate and legal education here, and leading the court to conclude, "it could be assumed petitioner would appreciate the spirit of American institutions as much as one born . . . [in] the United States").

69. See *Raffaelli v. Comm. of Bar Exam'rs*, 7 Cal. 3d 288 (Cal. 1972).

70. See *id.* at 294 ("A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.").

71. See *id.* ("We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner . . .") (quoting *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 238–39 (1957)).

nexus between that status and a requirement that every lawyer be a United States citizen.”⁷² On this point, the *Raffaelli* court noted that although states may create rigorous standards for issuing law licenses, any given qualification “must have a rational connection with the applicant’s fitness or capacity to practice law.”⁷³

By 1973, the issue of citizenship as a prerequisite for state bar admission reached the United States Supreme Court, in *In re Griffiths*.⁷⁴ As in *Raffaelli*, the Court found that while a state has an interest in regulating the character and fitness of its attorneys, a citizenship requirement for state bar admission violates the Equal Protection Clause of the Fourteenth Amendment.⁷⁵ In *Griffiths*, the Court rejected arguments by the state of Connecticut that “the special role of the lawyer justifies excluding aliens.”⁷⁶ Rather, the Court relied on *Park* and *Raffaelli*, emphasizing that depriving individuals of state bar admission because of citizenship is “inherently suspect and subject to close judicial scrutiny.”⁷⁷ It ruled that because non-citizens “pay taxes, support the economy . . . and contribute in myriad other ways to our society,” it is proper for states to “bear a heavy burden” when depriving these individuals of opportunities for employment.⁷⁸

In sum, these decisions provide a strong basis for allowing undocumented immigrants like Mr. Godinez-Samperio to become licensed attorneys.⁷⁹ Consideration of these decisions, coupled with the educational

72. *See id.* at 300–01 (“The traditional expression that a lawyer is an ‘officer of the court’ has not often been explicated. He clearly is not a public office-holder in the literal sense (citation omitted) but we need not here explore the broader, metaphorical meanings of the phrase.”).

73. *See id.* at 294 (quoting *Schwartz v. Bd. of Bar Exam’rs*, 353 U.S. 232, 238–39 (1957)).

74. *See In re Griffiths*, 413 U.S. 717 (1973).

75. *See id.* at 724 (“Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory.”) (quoting *Schwartz v. Bd. of Bar Exam’rs*, 353 U.S. 232, 239 (1957)).

76. *See id.* at 728–29 (rejecting the argument that exclusion from the practice of law is an extension of the prohibition on an alien’s right to vote in every state, and their disqualification from holding public office).

77. *See id.* at 721 (noting that “[c]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a ‘discrete and insular’ minority for whom such heightened judicial solicitude is appropriate,” (quoting *Graham v. Richardson*, 403 U.S. 365, 372 (1971)) (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 152–53 n.4 (1938))).

78. *See id.* at 722

79. *See ASSOCIATED PRESS*, *supra* note 6.

rights extended in *Plyler* and the protections afforded by DACA, are particularly in this regard, because federal law still makes state bar admission for undocumented immigrants a legal impossibility in any state other than California.⁸⁰ Thus far, this debate has focused primarily on the personal experiences of Mr. Garcia and Mr. Godinez-Samperio, but such controversies could become more common, particularly as *Plyler* students graduate from law school, sit for the bar exam, and enter the job market.⁸¹

III. The Debate Over Undocumented Immigrants' Right to Practice Law

A. Introduction

On September 4, 2013, nearly four years after his law license was rescinded, the California Supreme Court heard oral arguments in Mr. Garcia's case for admission to the California State Bar.⁸² On September 6, 2013, just two days after those oral arguments concluded, the California legislature passed Assembly Bill No. 1024⁸³—making California the first state ever to allow admittance to its Bar, “an applicant who is not lawfully present in the United States [who] has fulfilled the requirements for admission to practice law”⁸⁴ That law took effect January 1, 2014,⁸⁵ and on January 2, 2014, a unanimous California Supreme Court helped make Mr. Garcia the first known undocumented immigrant with a law license in the United States.⁸⁶

In contrast to Mr. Garcia's personal victory is the outcome of Mr. Godinez-Samperio's quest for a law license.⁸⁷ In the absence of a state law like

80. See 8 U.S.C. § 1621(a), Pub. L. No. 113-31 (2013) (making aliens who are not qualified aliens or nonimmigrants ineligible for state or local public benefits, including any “professional license,” as defined by §1621(c)(1)(A)).

81. See *supra* Part II.C.

82. See *In re Garcia*, 315 P.3d 117, 123 (Cal. 2014).

83. See A.B. No. 1024, Reg. Sess. (Cal. 2013); *id.* at 8 (reporting that the bill passed 29-5 in the California Senate and 62-4 in the California Assembly).

84. See CAL. BUS. & PROF. CODE § 6064(b) (2014) (providing further that “the Supreme Court may admit that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect”).

85. See *In re Garcia*, 315 P.3d at 124 (noting that “[a]fter the legislation enacting 6064(b) was signed into law, we vacated submission in this matter and indicated that the matter would be resubmitted on January 2, 2014, after the new statute took effect.”).

86. See ASSOCIATED PRESS, *supra* note 6.

87. See *infra* Part III.B. (discussing issues of character, fitness and employability with respect to undocumented immigrants and the practice of law).

California's, the Supreme Court of Florida relied on federal immigration law to determine that Mr. Godinez-Samperio was ineligible for admission to the Florida Bar.⁸⁸ In its March 6, 2014 opinion, the Court reasoned that, "a license issued by a state cannot permit an unauthorized alien to perform work if such conduct is prohibited by federal law," as, "[t]he federal power to determine immigration policy is well settled."⁸⁹ The 1996 federal restriction behind these decisions provides a useful starting point for examining the inconsistencies in federal immigration law and policy.

B. Application of Existing Federal Law to Bar Admissions

Currently, federal law renders undocumented immigrants ineligible for "any State or local public benefit."⁹⁰ Congress implemented this restriction in 1996, as part of the Professional Responsibility and Work Opportunity Act (PRWORA).⁹¹ PRWORA was intended to reform the way America's poor received federal cash assistance, and "end[] welfare as we know it."⁹² For undocumented immigrants, however, the law's effect reached beyond financial support.⁹³

Codified at 8 U.S.C. § 1621, the ban on "public benefit[s]" for undocumented immigrants includes any "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."⁹⁴ Whether this

88. See Fla. Bd. Bar Exam'rs Re Question as to Whether Undocumented Immigrants are Eligible for Admission to the Fla. Bar, 134 So.3d 432, 434 (Fla. 2014) ("[A] license issued by a state cannot permit an unauthorized alien to perform work if such conduct is prohibited by federal law.").

89. See *id.* at 4 (quoting *Arizona v. United States*, 132 S. Ct. 2492, 2498 (2012)).

90. See 8 U.S.C. §1621(a).

91. See The Professional Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734 § 401(a)(2), 104th Cong. (1996) (noting that one purpose of the bill was to "end the dependence of needy parents on government benefits by promoting job preparation, work and marriage.").

92. See BRENDON O'CONNOR, A POLITICAL HISTORY OF THE AMERICAN WELFARE SYSTEM: WHEN IDEAS HAVE CONSEQUENCES 228 (2004) (noting that "beyond Clinton's positive rhetoric, the PRWORA offered a much harsher world to the genuinely poor and needy.").

93. See *id.*

94. See Pub. L. No. 113-31 (2013). (codified at 8 U.S.C. §1621(c)(1)(A)).

language applies to law licenses is the first point of contention over admitting undocumented immigrants to state bar associations.⁹⁵

The first consideration is whether a state court should be considered a “state agency” when it functions as the body charged with issuing law licenses. The Attorney General of California, in her brief supporting Mr. Garcia, argued that § 1621 cannot be read to apply to the California Supreme Court in its capacity for determining state bar admissions. As head of the judicial branch, the Attorney General argued that the Court is “no more a ‘state agency’ than is the Legislature.”⁹⁶ As to the Court’s relationship with the state bar association, the Attorney General contended that the bar, “has consistently been articulated as that of an administrator or adjunct,” and that the final authority to admit, deny or discipline attorneys rests with the state supreme court.⁹⁷

The issue is further complicated by the fact that Congress did not define “agency of the state” when it approved PRWORA.⁹⁸ Accordingly, Mr. Garcia’s supporters argued the “usual and ordinary meaning” of the term should apply, noting that “agency” is generally understood to mean “an entity within the Executive Branch of government that acts as an ‘agent’ of the Executive to enforce and administer laws enacted through the legislative process.”⁹⁹ The California Attorney General also noted that when a state court uses its discretion to allow an individual to practice law, “it is exercising its inherent, constitutional authority as the head of the judicial branch,” and should not be considered an “agency” in that regard.¹⁰⁰

95. See Brief for Kamala D. Harris et al. as Amici Curiae Supporting Petitioner, *In re Garcia*, 315 P.3d 117 (Cal. 2014) (No. S202512) 2012 WL 3236333 [hereinafter *Harris Amici*] (explaining that because the language of §1621(c)(1)(A) “qualifies the class of professional licenses,” it should not be read to include all types of licenses).

96. See *id.* at 7 (finding that state courts should be treated as “a separate department in the scheme of our state government” (quoting *Brydonjack v. State Bar*, 208 Cal. 439, 442 (1929)).

97. See *id.* (quoting *Keller v. State Bar of Cal.* 47 Cal. 3d 1152, 1160 (1989), *rev’d on other grounds*, *Keller v. State Bar of Cal.*, 110 S. Ct. 2228 (1990)).

98. See *Harris Amici*, *supra* note 95, at 17 (arguing that like “Justice Scalia’s memorable admonition that Congress ‘does not . . . hide elephants in mouseholes,’” it is unlikely that Congress intended to regulate Bar Admissions in enacting PRWORA, as law licensure is an area traditionally left to the states (quoting *Whitman v. Am. Trucking Assn.*, 531 U.S. 457, 468 (2001)).

99. See *Harris Amici*, *supra* note 95, at 8 (quoting *Green v. State of California*, 42 Cal. 4th 254, 260 (2007)).

100. See *id.* at 9 (citing the U.S. Supreme Court decision in *Ex parte Garland*, 71 U.S. 333, 378–79 (1866), where the Court, in deciding the role of federal courts in the admitting

Another contested issue is whether a state court uses “appropriated funds of a state or local government” in administering law licenses.¹⁰¹ If so, federal law flatly prohibits bar admission under § 1621.¹⁰² In Mr. Garcia’s case, supporters contended that no “appropriated funds” are expended, because bar admission does not rely on “state revenues allocated by statute.”¹⁰³ This argument relies on the fact that state bar membership fees are the primary source of funding to review law license applications, making any use of state appropriated funds “de minimis.”¹⁰⁴ Because attorneys pay these fees out-of-pocket, and the cost is not subsidized by the state, the Attorney General of California argued that a state court’s role in issuing law licenses does not fall within the class of activities prohibited by § 1621.¹⁰⁵

As the primary voice of opposition in Mr. Garcia’s case, the Department of Justice (DOJ) argued that only a state law like that enacted in California can override PRWORA’s prohibition.¹⁰⁶ According to the DOJ, use of the word “professional license” in § 1621 is evidence that “Congress intended to act comprehensively in prohibiting the receipt of such benefits by undocumented aliens.”¹⁰⁷

attorneys to the federal bar, found that “admission or . . . exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power, and has been so held in numerous cases.”).

101. See Pub. L. No. 113-31 (2013) (codified at 8 U.S.C. § 1621(c)(1)(A)).

102. See *id.*

103. See *Harris Amici*, *supra* note 95 at 10 n.6 (defining “appropriation” as “[t]he exercise of control over property; a taking of possession . . .” or “[a] legislative body’s act of setting aside a sum of money for a public purpose.”) (quoting BLACK’S LAW DICTIONARY 110 (8th ed. 2004)).

104. See *In re Garcia*, 315 P.3d 117, 128 (Cal. 2014) (noting that Mr. Garcia’s supporters also that the “appropriated funds” language, “should be interpreted to refer only to public benefits that involve the payment of money or funds to undocumented immigrants . . .”).

105. See *Harris Amici*, *supra* note 95, at 10–11 (noting that “[a]pplicants for admission to practice shall pay such reasonable fees, fixed by the board, as may be necessary to defray the expense of administering the provisions of this chapter, relating to admission to practice.”) (quoting CAL. BUS. & PROF. CODE § 6063 (2013)).

106. See Brief for Stuart F. Delery, et al. at 3, as Amici Curiae for the United States of America Opposing Petitioner, *In re Garcia*, 315 P.3d 117 (Cal. 2014) (No. S202512) 2012 WL 3236333 [hereinafter *DOJ Amici*] (arguing “Title IV of [PRWORA] prohibits certain categories of aliens from obtaining certain public benefits, unless a state enactment directs otherwise.”).

107. See *id.* at 6–7 (determining that “[o]ther than the law license at issue here, Mr. Garcia and his supporters identify no other type of commercial or professional license which is not provide by an agency, provided by appropriated funds, or both.”).

With respect to the language of § 1621, the DOJ argued that the phrase “any professional license” conclusively excludes undocumented immigrants from the practice of law.¹⁰⁸ Accordingly, the DOJ argued that the Court should disregard arguments about the use and meaning of “agency” and “appropriated funds” in Mr. Garcia’s case.¹⁰⁹ Even if the Court chose to consider that issue, the DOJ contended that state courts have always received “appropriated funds,” meaning that § 1621’s ban on public benefits plainly applies.¹¹⁰ More specifically, the DOJ noted that because judges and court employees are paid out of state appropriated funds, § 1621 prohibits state bar admission for undocumented immigrants.¹¹¹

The DOJ also discarded arguments about the funding and responsibilities of the state bar association in issuing law licenses.¹¹² While it did not dispute that state bar associations bear a majority of the cost and responsibility for determining candidates’ eligibility, the DOJ contended that the actual amount of state funding is irrelevant. Specifically, the DOJ noted that “[t]he statute does not speak of funds appropriated for a particular purpose, or set a threshold amount of appropriated funds before the prohibition kicks in.”¹¹³ Accordingly, the DOJ argued that § 1621 plainly applied to Mr. Garcia’s case, in the absence of a state law like the one subsequently enacted in California.¹¹⁴

108. *See id.* at 9 (arguing “[t]here is no need to definitively determine the meaning of ‘agency’ . . . because Congress in any event covered the actions of this Court by making section 1621 applicable when a ‘professional license’ is ‘provided . . . by appropriated funds of a State or local government.’”) (citing 8 U.S.C. § 1621(c)).

109. *See id.*

110. *See id.* (“[I]t is similarly undisputed that this Court and its officers are funded through appropriations . . . [t]herefore, Mr. Garcia seeks a ‘professional license’ . . . provided . . . by appropriated funds of a State or local government.”) (citations omitted).

111. *See DOJ Amici, supra* note 106, at 11 (pointing out that this remains true, despite the fact that “no funds have been set aside specifically for the granting of licenses by the Court . . .”).

112. *See id.* at 10 (“The federal statute does not depend upon which entity performs the background analysis of the application, but rather depends upon the source of funding through which the license is ‘provided.’”).

113. *Id.* at 10–11 (arguing further that “the federal prohibition applies when appropriated funds are used whether or not the relevant benefit is directly conferred by the government . . .”).

114. *See id.*

*C. The Division of Federal and State Control over Immigration and
Licensure*

Although § 1621 represents the starting point in this debate, the topic of state bar admissions also raises a more fundamental question about the division of power between federal and state governments over undocumented immigrants—particularly when policies conflict on issues historically left to the states.

A substantial body of United States Supreme Court jurisprudence supports the proposition that issuing law licenses is a traditional state function.¹¹⁵ Accordingly, “Congress is well aware of the traditional primacy of the state courts in regulating attorneys, so when it means to use its power to regulate attorneys, it has done so in ways that leave no room for doubt about its intentions.”¹¹⁶ This premise, coupled with the ambiguous statement in § 1621, has led supporters to argue that Congress did *not* intend to restrict states’ ability to make decisions about bar admission based on immigration status.¹¹⁷ Rather, advocates note that Congress “understands how to clearly indicate when it intends to impinge on [state] authority,”¹¹⁸ and that “Congress could have simply made undocumented immigrants ineligible for *any* state-issued professional license, but it did not.”¹¹⁹

The counterpoint to this view, however, is that state action in the area of immigration must also be considered in light of the power of the federal government to “establish an uniform Rule of Naturalization” under Article I

115. See *Harris Amici*, *supra* note 95, at 12; see also *N.Y. State Bar Ass’n. v. Fed. Trade Comm’n*, 276 F. Supp. 2d 110, 128 (2003) (stating that “the regulation of lawyers and the practice of law have historically been recognized as the responsibility of the states, and not the federal government); see also *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (noting “[t]he interest of the States in regulating lawyers is especially greater since lawyers are essential to the primary governmental function of administering justice and have historically been ‘officers of the court’”).

116. See *Harris Amici*, *supra* note 95 at 11.

117. See *id.* at 19 (arguing that although Congress may legislate in areas traditionally reserved for the states, “[t]his is an extraordinary power in a federalist system. It is a power that we must assume Congress does not exercise lightly” (internal quotations omitted) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991))).

118. *Id.* at 13 (comparing § 1621 to earlier Congressional actions applying to all individuals, including the Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. § 1962, which states that is “unlawful for *any* person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . .”(emphasis added)).

119. *Id.* at 16.

of the Constitution.¹²⁰ This has been interpreted by the DOJ to mean there is “no doubt that Congress can enact a law rendering unauthorized aliens ineligible for state benefits.”¹²¹ The reach of this constitutionally conferred authority has also raised questions about the balance of power between states and the federal government to regulate issues of immigration and employment generally. The DOJ argues that because federal law has “comprehensively regulated the field of alien employment,” it should also govern any authorization or licensure required for that employment.¹²² In support of this point, the DOJ noted that in *Arizona v. United States*,¹²³ the United States Supreme Court found that “state laws are preempted when they conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and exclusion of the full purposes and objectives of Congress.’”¹²⁴ A law allowing undocumented individuals to obtain a law license creates such an obstacle, according to the DOJ.¹²⁵

In response to this Article I argument, advocates have raised a competing constitutional concern—the Tenth Amendment. Also citing the United States Supreme Court’s decision in *Arizona*, the California Attorney General noted that, “[i]n preemption analysis, courts should assume that the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress.”¹²⁶ Following that rationale, advocates in Mr. Garcia’s case argued that § 1621—and its failure to define operative terms such as “state agency” and “appropriated funds”—is an insufficient basis for concluding that Congress expressly intended to preempt the traditional and historical control that states have maintained over law licenses.¹²⁷

120. U.S. CONST. art. I, § 8, cl. 4.

121. See *DOJ Amici*, *supra* note 106, at 11 (adding further that Congress has power under the Constitution to “make the ineligibility provision applicable to all organs of state government, including the courts.”).

122. *Id.* at 2 (“[A]dmission to the bar has no bearing on the application of the federal statutes that govern an alien’s employment in the United States.”).

123. 132 S. Ct. 2492 (2012) (invalidating certain provisions of an Arizona immigration law enacted in 2010, including a provision that made it a crime for undocumented immigrants to work or apply for employment in the state).

124. *Id.* at 2495 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

125. See *DOJ Amici*, *supra* note 106, at 2 (reiterating that “[u]nder the governing federal statutes, an alien’s employment authorization is determined solely by reference to federal law.”).

126. See *Harris Amici*, *supra* note 95, at 20 (quoting *Arizona*, 132 S. Ct. at 2501).

127. See *id.* (noting that an “unambiguous statement is missing from section 1621” to suggest Congress meant to restrict the power of the state courts with respect to state bar admissions).

Despite these objections, the DOJ contends that § 1621 addresses any federalism concerns by providing for the “enactment of a state law . . . [that] affirmatively provides for such eligibility.”¹²⁸ This provision is what allowed for the California law prompted by Mr. Garcia’s case. Even absent this provision, the DOJ noted that an undocumented immigrant could not legally raise a claim challenging § 1621 as an infringement on traditional state power, because of their undocumented status in the United States.¹²⁹ On this point, the DOJ also noted that even if an undocumented immigrant were able to obtain a law license under state law, they are still prohibited from working anywhere in the United States, unless it is authorized by federal law.¹³⁰ The distinction between licensure and employment is considered further in the following section.

D. The Distinction Between Licensure and Employment

While law licenses raise questions of federalism and the ability of state courts to determine bar admission independent of federal policy, the issue of employment *after* licensure is a separate matter. The employment rights of undocumented immigrants are governed exclusively by federal law—and unlike limitations on law licenses, may not be overridden by the action of a state legislature.¹³¹

Under current federal law, it is unlawful “to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.”¹³² Congress adopted that provision in 1986 as part of the Immigration Reform and Control Act (IRCA).¹³³ That Act was part of larger effort to reduce and deter illegal immigration into the United States.¹³⁴ Under IRCA, employers are required to verify the immigration

128. See *DOJ Amici*, *supra* note 106, at 12 (referencing 8 U.S.C. § 1621(d) and noting that “Congress has accommodated state interests by allowing States to enact measures that would provide benefits to unlawfully present aliens.”).

129. See *id.* (arguing that this further supports the position that Mr. Garcia cannot challenge the § 1621 on Tenth Amendment grounds).

130. See *id.*

131. See The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3445; 8 U.S.C. § 1324 *et seq.* [hereinafter IRCA] (detailing the prohibition on employment of undocumented immigrants and providing criminal penalties for any employer found in violation).

132. 8 U.S.C. § 1324(a)(1)(A) (2013).

133. See IRCA.

134. See Immigration Reform and Control Act of 1986, U.S. CITIZENSHIP & IMMIGR. SERVS., *available at* <http://www.uscis.gov/tools/glossary/immigration-reform-and-control->

status of any prospective employee and ensure that the individual is legally authorized to work in the United States.¹³⁵ In addition to its prohibition on the employment of undocumented immigrants, IRCA also introduced civil and criminal penalties for employers found in violation of the law. These penalties include fines of up to \$3,000 per unverified employee and imprisonment of up to six months.¹³⁶

These federal restrictions on employment are an obvious hurdle for individuals like Mr. Garcia and Mr. Godinez-Samperio, but with respect to the practice of law, it is important to distinguish between licensure and employment.¹³⁷ Though federal law may prohibit undocumented immigrants from working for employers in settings like law firms, courts, and governmental agencies, proponents argue this is not the relevant inquiry—because the ability to gain future employment is never part of the calculation in state bar admissions.¹³⁸ Individuals with student visas, for example, are regularly granted law licenses, regardless of their ability to be employed in the practice of law. An act passed by the California legislature in 2005, for example, allows those who are ineligible for a social security number to apply for state bar admission.¹³⁹

It also true that obtaining a license to practice law does not necessarily mean an individual will seek employment in the United States. The amici for Mr. Garcia noted, for example, that undocumented immigrants could use a law license to provide pro bono legal services or advise clients outside the United States.¹⁴⁰ Perhaps most significantly, undocumented immigrants

act-1986-irca (last visited Feb. 6, 2015) (noting that IRCA was “passed in order to control and deter illegal immigration to the United States,” by instituting employment penalties and exercising increased border patrol).

135. 8 U.S.C. § 1324(a)(b)(1)(B)(i)–(ii) (providing that employment verification can be established with a valid United States passport or “resident alien card, alien registration card, or other document designated by the Attorney General . . .”).

136. 8 U.S.C. § 1324(a)(f)(1) (providing that these penalties will be applied to employers engaging “in a pattern or practice of violations”).

137. *See Harris Amici, supra* note 95, at 22–23 (defining licensure as “an acknowledgement by this Court that a candidate has met the requirement for entry into the profession regardless of whether the licensee ever practices law,” which is a distinct from whether the individual may be legally employed).

138. *See id.* at 23 (noting that “[t]he State Bar and this Court do not generally inquire about whether an individual intended to be employed as an attorney before granting a license to practice law . . .”).

139. *See id.* at 24 (citing CAL BUS. & PROF CODE § 6060.6 (2005) which, “establishes that foreign nationals may be admitted to practice law, even though they may not be able to be employed in the United States.”).

140. *See id.* (adding that “the ease with which individuals can communicate over the

could potentially be employed as solo practitioners or “independent contractors,” irrespective of federal work authorization.¹⁴¹

While there may be the potential for legal work as an “independent contractor,” opponents of admission have raised concerns about the ability of undocumented immigrants to effectively serve clients based on the threat of deportation.¹⁴² In response to this concern, however, Mr. Garcia’s supporters noted that state bar associations generally do not consider immigration status for character and fitness purposes.¹⁴³ Instead, supporters argue deportation should be treated like any other potential danger that could compromise the attorney-client relationship, noting that, “similar risks exist for all attorneys, any of whom could experience a life event—an illness, accident, disability, or other emergency—that interferes with their obligations to clients.”¹⁴⁴

Supporters in Mr. Garcia’s case also argued that current federal immigration policy does not affect the ability to advise clients as a solo practitioner or provide pro bono legal services.¹⁴⁵ An amicus brief submitted by the American Civil Liberties Union (ACLU) on behalf of Mr. Garcia, for example, argued, “these requirements do not generally apply to the work of persons who own their own businesses, such as bona fide independents contractors, or to non-remunerative work.”¹⁴⁶ This distinction is based on Department of Homeland Security (DHS) regulations, which provide that restrictions on “employers” and “employees,” like those found

internet and the global nature of the economy, it is possible to practice law from outside of the country, as do many other foreign nationals who receive a Bar licensure pursuant to section 6060.6.”).

141. See Brief for the American Civil Liberties Union et al. at 20 as Amici Curiae Supporting Petitioner, *In re Garcia*, 315 P.3d 117 (Cal. 2014) (No. S202512) 2012 WL 3236333 [hereinafter *ACLU Amici*] (arguing that independent contractors are distinguished from the term “employee” under federal law).

142. See *id.*

143. See *In re Garcia*, 315 P.3d 117, 134 (Cal. 2014) (determining that “[g]ood moral character’ has traditionally been defined as the absence of conduct imbued with elements of ‘moral turpitude’ . . . includ[ing] ‘qualities of honesty, fairness, candor, trustworthiness, [and] observance of fiduciary responsibility. . .’” (quoting *In re Menna*, 11 Cal. 4th 975, 983 (1995) (internal citations omitted))).

144. See *Harris Amici*, *supra* note 95, at 23 (noting that “[a]ll attorneys are ethically obligated to plan for such eventualities by securing adequate representation for their clients, and courts may also intervene to protect a client (citing CAL BUS. & PROF. CODE §§ 6180, 6190)).

145. See *ACLU Amici*, *supra* note 141, at 18 (arguing that this would not require work authorization from any employer subject to federal employment law related to immigration).

146. *Id.* at 20.

in IRCA, are only triggered when services or labor for wages are involved.¹⁴⁷ Significantly, those same regulations, as the ACLU notes, also create a specific exception for “independent contractors.”¹⁴⁸ Apart from the question of licensure, this led the ACLU to contend that Mr. Garcia’s employment as a solo practitioner would be proper based on the distinction in the DHS regulations.¹⁴⁹

There is also an argument that work as a solo practitioner could expose clients of undocumented immigrants to liability under federal law. According to the ACLU, however, “under the federal regulations, when a client retains a lawyer, the client is not an employer” of the undocumented attorney.¹⁵⁰ Because a client is not an “employer”, they are not be exposed to civil or criminal penalties contained in IRCA,¹⁵¹ and, “therefore ha[ve] no obligation to refrain from retaining an unauthorized alien or to verify the work authorization status of the attorney.”¹⁵²

In response, opponents note that the distinction between licensure and employment need not be addressed. According to the DOJ, because § 1621 works to preclude the possibility of licensure entirely, employment as a practicing attorney is not possible for any undocumented immigrant, regardless of the setting.¹⁵³ Reiterating that “authorization to work is determined exclusively by reference to federal law,” the DOJ noted that even if an undocumented immigrant did possess a state law license—as Mr. Garcia now does—any potential employer is subject to civil and criminal penalties if they “knowingly hire, recruit, refer, or continue to employ unauthorized workers”¹⁵⁴ The DOJ amicus brief also notes that, “the

147. *See id.* (citing 8 C.F.R. § 274a.1(f) which states “[t]he term employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors . . .”).

148. *ACLU Amici, supra* note 95, at 20.

149. *Id.*

150. *Id.*

151. *See ACLU Amici, supra* note 95, at 21 (citing 8 C.F.R. § 274a.1(g) which states, “[i]n the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and *not the person or entity using the contract labor[.]*” (emphasis added)).

152. *Id.*

153. *See DOJ Amici, supra* note 106, at 2 (concluding further that “the Court need not reach the question whether bar admission would imply that Mr. Garcia may lawfully work in the United States”).

154. *See id.* at 4 (citing 8 U.S.C. §1324a(a)(1)(A)); *see also* 8 U.S.C. §1324(B)(i) (noting that any employer who attempts to hire or knowingly employs an unauthorized alien “for the purpose of commercial advantage or private financial gain” is subject to a fine or imprisonment of not more than ten years or both).

United States does not endorse the assertion that any particular use of a law license would comply with relevant federal law.”¹⁵⁵ Absent government authorization, the DOJ affirmatively rejected the idea that federal law would authorize legal employment for a licensed, undocumented immigrant like Mr. Garcia or Mr. Godinez-Samperio.¹⁵⁶

IV. Recommendation

A. Introduction

While Mr. Garcia’s case suggests that law licenses for undocumented immigrants can be reduced to a question of statutory interpretation, Mr. Godinez-Samperio’s experience represents the bigger challenges facing first-generation *Plyler* students. Aside from the California law benefitting Mr. Garcia, highly educated young people living elsewhere in the United States, who were brought to this country illegally by their parents, continue to face challenges presented by inconsistencies in immigration policy. While members of the *Plyler* generation, like Mr. Godinez-Samperio, have pursued the education that policies like DACA seem to encourage, PRWORA’s nearly two-decade old prohibition on “public benefits,” places an obstacle between that education and its corresponding career opportunities.¹⁵⁷ Comprehensive legislation is the most direct route toward removing PRWORA’s barrier, but congressional inaction on immigration makes that an unlikely solution.

In the absence of legislation, a regulation promulgated by the Department of Homeland Security (DHS) clarifying PRWORA’s ban on “public benefits,” is an important first step toward fostering consistency in United States immigration policy. Just as DACA affords protection from deportation and an opportunity for lawful employment to qualified young

155. *Id.* at 14 (citing *Matter of Tong*, 16 I&N Dec. 593 (BIA 1978), which held that “self-employment qualifies as working without authorization”).

156. *See id.* at 14 (citing 8 C.F.R. § 274a.5 (2009) addressing the use of labor through contract, and stating, “individuals who obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services,” violates federal law).

157. *See* J. Austin Smithson, *Educate Then Exile: Creating A Double Standard in Education for Plyler Students Who Want to Sit for the Bar Exam*, 11 SCHOLAR 87, 103 (2008) (“The current system of laws in the United States allows a *Plyler* student to receive a primary and secondary education, attend college and even law school; but, at the same time the United States criminalizes their immigration status, thus preventing them from fully developing their education . . .”).

people, a DHS regulation could help ensure those same individuals are able to pursue *all* forms of employment—including jobs that require a law license.¹⁵⁸ It is important to note, however, that this proposal is intended to be a short-term solution. The fact remains that only comprehensive immigration reform from Congress will ensure highly educated young people are able to share the full range of their professional skills with society.

B. A DHS Regulation Clarifying PRWORA's Prohibitions

As the agency responsible for enforcing federal immigration law, the Department of Homeland Security (DHS) has the authority to promulgate a regulation interpreting PRWORA's prohibition on "public benefits."¹⁵⁹ Currently tasked with interpreting and implementing laws enacted by Congress in the form of regulations, an interpretation of PRWORA's ban on "public benefits" would properly come within the purview of DHS.¹⁶⁰ This addition would also be consistent with the body of DHS regulations found in Title 8 of the Code of Federal Regulations (C.F.R.), addressing "Aliens and Nationality."¹⁶¹

Under Title 8, DHS has previously issued several regulations clarifying federal law on benefits and employment for undocumented immigrants in other contexts.¹⁶² Under 8 C.F.R. § 274a.12, first promulgated in 2007, for example, DHS identified numerous classes of aliens authorized to accept employment in the United States.¹⁶³ Among those eligible are "alien[s] having extraordinary ability in the sciences, arts, education, business,"¹⁶⁴ and "alien[s] whose enforced departure from the United States has been deferred in accordance with a directive from the President of the United States to the Secretary [of Homeland

158. See *DACA Memo*, *supra* note 52, at 1 (explaining that one purpose of the program is "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.").

159. See U.S. CITIZENSHIP & IMMIGR. SERVS., *Title 8 Code of Federal Regulations*, available at <http://www.uscis.gov/laws/8-cfr/title-8-code-federal-regulations> (last visited Feb. 6, 2014).

160. *Id.*

161. *Id.*

162. 8 C.F.R. § 274a.12 (2014).

163. *Id.*

164. See 8 C.F.R. § 274a.12(b)(13) (requiring that the alien's employer acts as a sponsor).

Security]”¹⁶⁵ As to the latter category, which would include those approved for DACA, the regulations provide that those individuals are “authorized to be employed in the United States *without restrictions* as to location or *type* of employment.”¹⁶⁶ A regulation clarifying that PRWORA’s ban on “public benefits” does not prevent those approved for DACA from obtaining a license to enter the legal profession could be addressed in a similar fashion.

Until Congress is prepared to legislate on the issue of immigration, this type of regulation could serve as a temporary measure consistent with earlier executive action on federal immigration policy. Just as DACA and the regulations at 8 C.F.R. § 274a.12 reflect an effort to fully integrate the first generation of *Plyler* students into society, a regulation clarifying that PRWORA does not prevent those individuals from entering the practice of law strengthens that commitment. In her memorandum formally introducing DACA, for example, Secretary of Homeland Security, Janet Napolitano, noted that an exercise of prosecutorial discretion was appropriate for those brought to this country illegally as children, because “[a]s a general matter, these individuals lacked the intent violate the law.”¹⁶⁷ Extending that rationale to remove a federal barrier to law licensure is equally appropriate, because it reflects the general premise behind DACA. Specifically, it allows all young, qualified, individuals to realize the full range of educational and employment opportunities available to them, rather than suffer exclusion because of a status they did not choose, and a decision they did not make.¹⁶⁸

While it is true that law licenses are a state issue, an exercise of federal discretion to permit this “public benefit” would not conflict with that power.¹⁶⁹ A regulation approaching law licenses in the way that DACA approaches employment would only remove a federal barrier based on

165. 8 C.F.R. § 274a.12(a)(11).

166. 8 C.F.R. § 274a.12(a) (emphasis added).

167. See *DACA Memo*, *supra* note 52, at 2 (stating that “many of these young people have already contributed to our country in significant ways,” and that “[p]rosecutorial discretion, which is used in so many other areas, is especially justified here”).

168. See Smithson, *supra* note 157, at 103 (defending a similar argument that refusing to allow undocumented students to sit for the bar exam, “perpetuates an ‘underclass’ of individuals within America’s borders, which is the exact circumstance the Supreme Court sought to avoid,” with its ruling in *Plyler* (quoting *Plyler v. Doe*, 457 U.S. 202, 219 (1982)).

169. See *DACA Memo*, *supra* note 52, at 3 (“This memorandum confers no substantive right, immigration status or pathway to citizenship It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of existing law.”).

immigration status; it would not alter existing state authority over bar admissions.¹⁷⁰ Instead, a regulation that exempts law licenses from the PRWORA's prohibition on public benefits would protect states from violating federal law by admitting undocumented immigrants to the state bar, similar to the way that DACA protects employers from violating the federal prohibition on hiring undocumented immigrants under IRCA.¹⁷¹ Reforming federal law to allow for this eligibility, coupled with DACA's opportunity for employment authorization, could also allow employers to legally hire undocumented young professionals to work in more traditional legal settings, including law firms, courts, and governmental agencies.¹⁷²

C. Public Policy Rationale for this Standard

As states have begun to increase accessibility to higher education for undocumented immigrants, and federal policies like DACA have created opportunities to gain employment through legal means, a DHS regulation clarifying that PRWORA is not a barrier to law licenses would foster consistency in existing immigration policy at the state and federal levels.¹⁷³ Rather than continue with an approach that supports the availability of a legal education for young undocumented immigrants, but shuts them out of the legal profession because it requires a license, a logical development in federal immigration policy is to extend them the opportunity for licensure.¹⁷⁴ Allowing young, undocumented immigrants to receive work

170. See Michele Waslin, *Can Deferred Action Beneficiaries Get Driver's Licenses?*, AM. IMMIGR. COUNCIL (Aug. 14, 2012), <http://immigrationimpact.com/2012/08/14/can-deferred-action-beneficiaries-get-drivers-licenses/>

(considering the impact of DACA on state eligibility requirements for a driver's license, noting "[d]eferred action itself is not an immigration status" and those approved receive an employment authorization document and a Social Security number, which may or may not be enough for a driver's license in some states).

171. See *DACA and Workplace Rights*, NAT'L IMMIGR. LAW CTR., (Nov. 2012), <http://www.nilc.org/dacaworkplacerrights.html> (noting that individuals approved for DACA may receive an Employment Authorization Document (EAD), which is a type of work permit allowing legal employment in the U.S.).

172. *Id.*

173. *Id.*; see also NAT'L CONF. OF STATE LEGISLATURES, *supra* note 55.

174. See Smithson, *supra* note 157, at 104 (referencing undocumented students prohibited from state bar exams, noting they "are faced with a similar problem as the undocumented children in Plyler who wanted to receive a free public education; they are prevented from furthering their education in America because of their undocumented status.").

authorization for *some* forms of employment under DACA, but simultaneously prohibiting them from careers requiring a professional license, reflects a hesitance to fully integrate this group of individuals into society.¹⁷⁵ A DHS regulation providing a current interpretation of PRWORA's 1996 ban on "public benefits" is the most effective way to address current inconsistencies in immigration policy.

An examination of the timing and rationale behind PRWORA also makes clear that its "public benefit" restriction pre-dates, and did not contemplate the educational trajectory of *Plyler* students like Mr. Godinez-Samperio, who have earned a degree in law.¹⁷⁶ Although the 1996 federal law works to prohibit law licenses for undocumented immigrants, this prohibition is not consistent with the purpose of PRWORA itself. Specifically, the purpose of the Act was to increase accountability for the provision of welfare benefits to America's poor, and scale back governmental assistance to all recipients.¹⁷⁷ Reforming the current approach to professional licensure at the federal level would not hamper these goals.

In fact, a policy of *inclusion* for undocumented immigrants to the practice of law would likely further the overarching goals of PRWORA, despite its current preventative effects.¹⁷⁸ With respect to § 1621's ban on "public benefits" for example, one primary goal of PRWORA was to encourage self-sufficiency and lessen the burden on states to provide for those living in the United States without government authorization.¹⁷⁹ Another objective was promoting self-reliance and ensuring that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities."¹⁸⁰ Allowing a DACA-

175. *See id.* at 106 ("The current system encourages undocumented immigrant students to remain in the United States after graduating from high school, but sharply changes the landscape for those who continue to stay after high school graduation.").

176. *See* 8 U.S.C. § 1621(c)(1)(A) (2013) (making aliens who are not qualified aliens ineligible for state or local public benefits including, "professional license[s] . . . provided by an agency of a state or local government or by appropriated funds of a State or local government").

177. *See* O'CONNOR, *supra* note 92, at 227 ("Advocates of the PRWORA asserted that time limits and work requirements are the best way of 'rehabilitating' recipients and getting them on the road to self-sufficiency.").

178. *See id.* ("It legislated into action a system that attempts as much as possible to replace welfare with paid work, offering only temporary and limited government assistance.").

179. *See Harris Amici, supra* note 95, at 29 (citing 8 U.S.C. § 1601, Pub. L. 113-31 (2013) (outlining the purposes for enacting PRWORA with respect to national policy on immigration and welfare)).

180. *See id.* at 29 (citing 8 U.S.C. § 1601(2)(A), Pub. L. 113-31 (2013)).

approved individual—who has obtained an undergraduate and law degree in the United States, has passed a state bar exam, and has demonstrated the requisite character and fitness to enter the practice of law—seems to be well in line with the aforementioned goals of independence and economic self-reliance that Congress hoped to achieve with the passage of PRWORA.

This reform is also consistent with the right to public education for those brought to this country illegally as children. In the decades since the Supreme Court’s decision in *Plyler*,¹⁸¹ states have extended that precedent beyond the K-12 setting. State laws allowing undocumented immigrants to attend state universities and qualify for in-state tuition—effectively encouraging the possibility and pursuit of a professional degree—are just one example.¹⁸² As the California Attorney General noted in Mr. Garcia’s case, for example, “[a]dmitting qualified undocumented immigrants to practice law would be consistent with the legislature’s view that California is served by encouraging them to pursue an education.”¹⁸³ The move toward increased access to higher education for undocumented immigrants in California and states across the country lends additional support to the removal of PRWORA’s national barrier to state law licensure. To this end, a federal prohibition on “public benefits” should not stand in the way of allowing high-achieving students to share the benefits of their education with society.

Though opponents to such reform would be correct in pointing out that an undocumented immigrant’s presence in the United States violates federal immigration law, such conduct does not necessarily preclude eligibility for state bar admission.¹⁸⁴ In Mr. Garcia’s case, for example, the California Supreme Court ruled that, “every intentional violation of the law is not, ipso facto, grounds for excluding an individual from membership in the legal profession.”¹⁸⁵ The Court supported this conclusion with the United States

181. See *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that the Texas statute could not “deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest.”).

182. See NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 55.

183. See *Harris Amici*, *supra* note 95, at 3 (“It also would track state policies that acknowledge and encourage the positive contributions that undocumented immigrants make to society as a whole.”).

184. *Id.* at 21 (acknowledging that illegal entry into the United States can be charged as a misdemeanor under 8 U.S.C. § 1325, but that entry at a young age makes such an action unlikely, particularly since the five year statute of limitations has already passed in Mr. Garcia’s case).

185. See *Garcia on Admission*, *supra* note 82 at 22 (noting that when bar applicants

Supreme Court ruling in *In re Griffiths*, where it found that any attempt to condition state bar admission on United States citizenship violates the Equal Protection Clause.¹⁸⁶

As for character and fitness considerations after eligibility, the California Court found that immigration status should have no effect in this respect either. Specifically, it determined that “the fact that an undocumented immigrant is present in the United States without lawful authorization does not itself involve moral turpitude or demonstrate moral unfitness so as to justify exclusion from the State Bar, or prevent the individual from taking an oath promising faithfully to discharge the duty to support the Constitution and laws of the United States”¹⁸⁷ The Court went on to note that although illegal entry and unauthorized presence in the United States carry civil penalties and the threat of deportation, neither is a criminal offense or an act that automatically disqualifies an applicant from state bar admission.¹⁸⁸ Additionally, once an individual is approved for DACA, the federal government no longer considers that person an undocumented immigrant for the purpose of incurring civil liability.¹⁸⁹ This provides further support that a presumption in favor of eligibility for their admission to the practice of law would be proper.

Reforming the federal approach to state bar admissions for those approved for DACA would also have no impact on an individual’s current immigration status or federal laws regulating employment for those who are undocumented.¹⁹⁰ In fact, the California Supreme Court determined that “it would be inappropriate to deny a law license to such an individual on the basis of an assumption that he or she will not comply with the existing

have committed a past crime, “the circumstances surrounding the commission of the act must reveal some independent act beyond the bare fact of a criminal conviction to show that the act demonstrates moral unfitness” (quoting *Hallinan v. Comm. of Bar Examiners*, 65 Cal.2d 447, 459 (1966) (internal citations omitted)).

186. See *In re Griffiths*, *supra* note 74.

187. See *Garcia on Admission*, *supra* note 82, at 22.

188. *Id.* at 23 (determining the broad discretion of immigration officials make it unlikely they would pursue “an undocumented immigrant who has been living in this country for a substantial period of time, who has been educated here, and whose only unlawful conduct is unlawful presence in this country.”).

189. See *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process> (last updated Sept. 9, 2014) (“Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time.”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

190. See *id.* (“Deferred action does not provide lawful status.”).

restrictions on employment imposed by federal law.”¹⁹¹ According to the Court, even the inability to represent clients on account of citizenship does not make licensure improper or “necessarily preclude all possible uses of a law license.”¹⁹²

In conclusion, while states could formally enact laws like California’s, the most logical and efficient solution lies with federal reform. Rather than require states to explicitly override PRWORA’s ban on “public benefits,” federal recognition of eligibility for a law license would create greater uniformity with immigration policy on education and employment. It also furthers PRWORA’s goal of fostering self-sufficiency and economic independence.¹⁹³ Moreover, this reform is consistent with the expansion of higher education opportunities for undocumented immigrants at the state level as well. Most importantly, this reform would represent a significant step forward toward greater integration of *Plyler* students into society.

D. Economic Benefits of This Standard

In addition to being good social policy, there is also an important economic benefit associated with allowing undocumented immigrants to receive law licenses. Such a grant would allow for a larger, more educated, and more affluent tax base to support the country.¹⁹⁴ A shift toward expanded employment opportunities for undocumented immigrants, particularly those who are highly skilled, would provide this economic benefit at both the state and national level.¹⁹⁵ More specifically, as

191. See *Garcia on Admission*, *supra* note 82, at 28–29 (concluding that the court relies on a presumption that all licensed attorneys will “comply with their ethical obligations to act in accordance with all applicable legal constraints . . .”).

192. *Id.* at 25 (determining that Mr. Garcia would still be permitted to use his law license in ways that comply with existing federal employment law for undocumented immigrants); see also *Harris Amici*, *supra* note 95, at 24 (noting that Mr. Garcia could also teach courses in law or advise clients living outside the United States).

193. See NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 55; see also O’CONNOR, *supra* note 92.

194. See Raúl Hinojosa-Ojeda, *Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform* 1, IMMIGRATION POL’Y CTR. (Jan. 2010), available at http://www.ab540.ucla.edu/documents/immigrationeconreport_000.pdf (estimating that “comprehensive immigration reform would yield at least \$1.5 trillion in cumulative U.S. gross domestic product over 10 years”).

195. See *The Cost of Doing Nothing: Dollars, Lives and Opportunities Lost in the Wait for Immigration Reform*, IMMIGRATION POL’Y CTR. 5–6 (Sept. 23, 2013) (estimating benefits at the state level and noting in Virginia, for example, “[t]he wages of unauthorized workers would increase by \$1.2 billion, generating an additional \$371 million in tax revenue and

immigration scholars like Dr. Raúl Hinojosa-Ojeda have recognized, “removing the uncertainty of unauthorized status allows legalized immigrants to earn higher wages and move into higher-paying occupations, and also encourages them to invest more in their own education, open bank accounts, buy homes, and start businesses.”¹⁹⁶ PRWORA’s current limitations stand in the way of this potential economic progress.

Though still in its early stages, DACA has shown the potential benefits of such an approach. Since the policy was introduced in June 2012, approximately sixty-one percent of the 455,000 individuals approved for deferred action have obtained employment, fifty-four percent have opened their first bank account, and thirty-eight percent were approved for their first credit card.¹⁹⁷ These statistics demonstrate the additional benefits that would come from removing the federal barrier to state bar admission for undocumented individuals who have earned a degree in law.

Though opponents may contend that such an approach will lead to an influx of undocumented immigrants, that result is unlikely. The limited application of this reform—to those brought to this country as children, who have obtained a degree in law, and passed a state bar examination, make such an influx doubtful.¹⁹⁸ In fact, similar arguments were raised in opposition to the availability of in-state tuition rates for undocumented immigrants, but the effect of that reform has proved to be positive.¹⁹⁹

creating 27,000 new jobs”) (citing Raúl Hinojosa-Ojeda, *The Consequences of Legalization Versus Mass Deportation in Virginia*, CTR. FOR AM. PROGRESS (Aug. 2012)).

196. *Id.*; Hinojosa-Ojeda, *supra* note 194, at 9.

197. See Roberto G. Gonzales & Veronica Terriquez, *How DACA Is Impacting the Lives of Those Who Are Now DACAmented*, IMMIGRATION POL’Y CTR. 2 (2013), available at <http://www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamented> (analyzing a national survey of 1,402 individuals between ages 18 and 31 years old who were eligible for DACA prior to June 2013).

198. See *Basic Facts About In-State Tuition for Undocumented Immigrant Students*, NAT’L IMMIGRATION L. CTR. 3 (revised June 2014), available at <http://www.nilc.org/basic-facts-instate.html> (finding that only 5 to 10 percent of undocumented high school graduates in the United States go on to college, meaning “[i]n most states, we are talking about only a few dozen or a few hundred particularly talented students.”).

199. *Id.* at 2 (“Each person who attends college and obtains a professional job means one less drain on the social service (and possibly criminal justice) budgets of the state and an asset in terms of payment of taxes and the attraction to the state of high-wage employers seeking well-educated workers.”); see also *The Effects of In-State Tuition for Non-Citizens: A Systematic Review of the Evidence* 3, THE LATINO POL’Y INST. AT ROGER WILLIAMS UNIV. (2011), available at <http://www.rwu.edu/sites/default/files/lpi-report.pdf> (finding that “in-state tuition is correlated with a 31% increase in enrollment at institutes of higher education by non-citizens.”).

V. Conclusion

Although Mr. Garcia's fight for a law license was ultimately successful because of the California legislature,²⁰⁰ Mr. Godinez-Samperio's experience demonstrates the need for comprehensive reform. Current federal policy does not reflect the changing profile of undocumented immigrants living in the United States.²⁰¹ It is also inconsistent with the educational opportunities afforded to *Plyler* students,²⁰² and DACA's opportunity for employment authorization.²⁰³ For this country to reap the social and fiscal benefits of these protections, undocumented students who are prepared for the practice of law should not be shut out because a law license is deemed a "public benefit."²⁰⁴ Until Congress is prepared to provide comprehensive immigration reform, a DHS regulation removing PRWORA's barrier to law licensure for young undocumented immigrants is an important first step in this process.

200. See A.B. No. 1024, Reg. Sess. (Cal. 2013).

201. See Smithson, *supra* note 157.

202. See NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 55.

203. See *DACA and Workplace Rights*, *supra* note 171.

204. See 8 U.S.C. § 1621(c)(1)(A), *supra* note 176.