

August 8, 2012

Supreme Court of California  
Earl Warren Building at  
Civic Center Plaza  
350 McAllister Street  
San Francisco, CA  
94102-4797  
Attention: Janell Hunter

RE: In Re: Sergio Garcia  
Case No: S202512

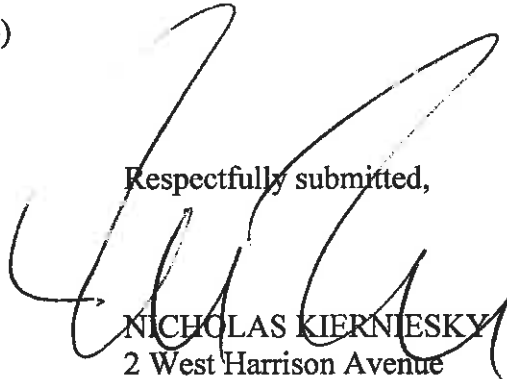
Dear Ms. Hunter:

Enclosed please find:

- Application for Leave to File An Amicus Brief (O+1)
- Certification In Support of Application (O+1)
- Proof of Service (O+1)
- Certification of Word Count (O+14)

Thank you.

Respectfully submitted,



NICHOLAS KIERNIESKY  
2 West Harrison Avenue  
Millville, NJ 08332  
Day: 856-414-6015

S202512

IN THE  
SUPREME COURT OF CALIFORNIA

In Re: Sergio Garcia,  
Petitioner

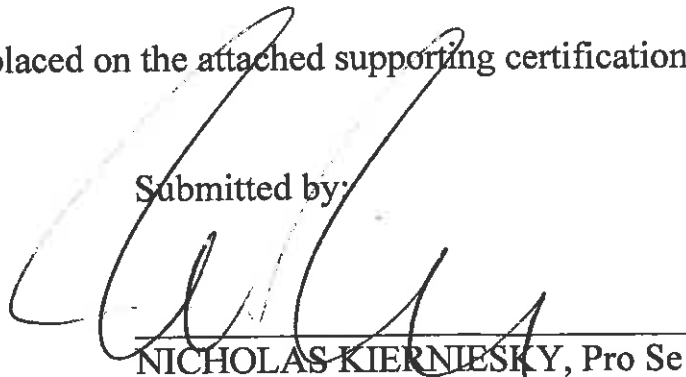
APPLICATION FOR LEAVE TO SUBMIT AN  
AMICUS CURIAE BRIEF  
IN OPPOSITION TO ADMISSION OF  
PETITIONER TO THE BAR

To All Counsel Listed on the Proof of Service:

*PLEASE TAKE NOTICE* that the undersigned is applying to  
the above-captioned court for leave to submit the attached amicus  
curiae brief, which is incorporated herein by reference thereto.

Reliance shall also be placed on the attached supporting certification.

Submitted by:



NICHOLAS KIERNIESKY, Pro Se  
2 West Harrison Avenue  
Millville, New Jersey 08332  
(856) 825-5045

S202512

**IN THE  
SUPREME COURT OF CALIFORNIA**

**In Re: Sergio Garcia,  
Petitioner**

**PROOF OF SERVICE IN SUPPORT OF APPLICATION FOR  
LEAVE TO SUBMIT AN  
AMICUS CURIAE BRIEF  
IN OPPOSITION TO ADMISSION OF  
PETITIONER TO THE BAR**

NICHOLAS KIERNIESKY, of full age, certifies as follows:

I certify that I have sent a copy of the Application for Leave to File an Amicus Curiae Brief, a copy of that Brief (4 pages appear on 1 page), and a copy of the supporting Certification, to the following attorneys via First Class Mail:

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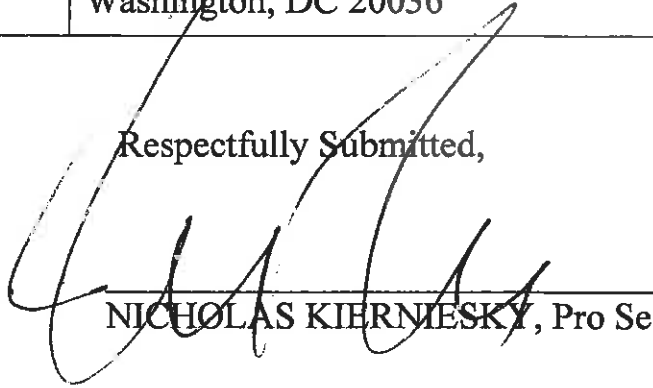
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Respectfully Submitted,



NICHOLAS KIERNESKY, Pro Se

Date: 8-8-12

S202512

IN THE  
SUPREME COURT OF CALIFORNIA

In Re: Sergio Garcia,  
Petitioner

CERTIFICATION IN SUPPORT OF APPLICATION FOR  
LEAVE TO SUBMIT AN  
AMICUS CURIAE BRIEF  
IN OPPOSITION TO ADMISSION OF  
PETITIONER TO THE BAR

NICHOLAS KIERNIESKY, of full age, certifies as follows:

1. I request leave to submit the attached amicus curiae brief in opposition to the admission of the petitioner, an alien not authorized to be present in this country, to practice law in the United States of America.

2. The brief is short. The computer count of all words is: 1,772. The argument is based upon references to federal law, New Jersey law and California law; those laws should be read harmoniously. They should assist the Court.

3. The U.S. Department of Justice has recently stated its opposition to the admission of the petitioner. However, it appears that

many of the other amicus briefs have been submitted on behalf of groups that favor the admission of the petitioner. This Court would be well-served by diverse points of view.

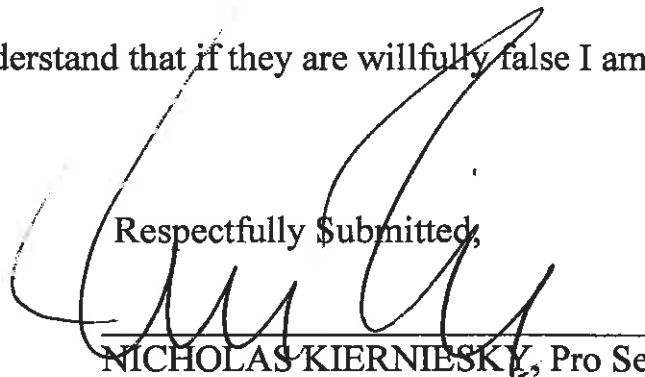
4. Moreover, were the petitioner to be admitted to practice law in California, he - or others who are similarly situated - could then petition to be admitted to practice law in other States, either via a pro hac vice application for a particular case or via some reciprocity agreement. The ruling of this Court could and probably would affect the other States, to include my home state, New Jersey.

5. Accordingly, for the foregoing reasons and for the interests of law and justice, as set forth in the attached brief, I respectfully request that the attached amicus curiae brief be accepted for filing and that it be considered by this Court.

6. This brief has not been authored or funded by any other party to this litigation.

7. I certify that the foregoing facts are true to the best of my knowledge and understand that if they are willfully false I am subject to punishment.

Respectfully Submitted,



NICHOLAS KIERNIESKY, Pro Se

Date: 8-8-12

IN THE  
SUPREME COURT OF CALIFORNIA

In Re: Sergio Garcia,  
Petitioner

AMICUS CURIAE BRIEF  
IN OPPOSITION TO ADMISSION OF  
PETITIONER TO THE BAR

Submitted by:  
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**PRELIMINARY STATEMENT**

The undersigned came from a family whose members *legally* immigrated to the United States of America. He was the first person in his family to attend college and, later, law school. He has served in the United States Armed Forces and has a clear understanding of matters of personal responsibility and the responsibility to uphold the Rule of Law. Although the undersigned lives in New Jersey, those responsibilities can and should transcend state borders.

**LEGAL ARGUMENT**

**PERSONS WHO ARE BREAKING THE LAW SHOULD NOT BE ENTRUSTED WITH UPHOLDING THE LAW.**

Thirty-two years ago, the New Jersey Supreme Court wrote:

If the rule of law is this nation's secular faith, then the members of the Bar are its ministers. (State v. Sugar, 84 N.J. 1, 12 (1980))

In State of New Jersey v. V.D., 401 N.J. Super. 527 (App. Div. 2008) the intermediate appeals court noted that "when a court becomes aware that the parties appearing before it are, or may be, involved in illegal conduct, it has an ethical obligation to act." Id. at 537 (citing Sheridan v. Sheridan, 247 N.J. Super. 552 (Ch. Div. 1990)<sup>1</sup>). What illegal conduct? That is discussed below.

<sup>1</sup> The Sheridan court held:

8 U.S.C. § 1325(a) provides that "[a]ny alien who...enters...the United States at any time or place other than as designated by immigration officers...shall, for the first commission of any such offense, be fined under title 18...or imprisoned not more than 6 months, or both, and, for a subsequent commission...be fined under title 18...or imprisoned not more than 2 years, or both."

Justice is the right of all men & the private property of none. The judge holds this common right in trust, to administer it with an even hand in accordance with law . . . Chief Justice Weintraub, In re Matters, 34 N.J. 259, 275-276 (1961). *It is every citizen's duty to uphold the law* and as part of that duty to report any knowledge she or he may have of a crime committed or to be committed. n4 In order to preserve public confidence in the integrity of the judiciary, a judge must be the ultimate exemplar of that good citizenship. \*\*\*

----- Footnotes -----

n4 Under certain, defined circumstances, failure to report may constitute a criminal offense. See N.J.S.A. 2C:29-1 & -3 [predecessor crime of obstructing justice -- i.e., to do any act which prevented, impeded or hindered due course of public justice -- was a common-law crime punishable as a misdemeanor N.J.S.A. 2A:85-1 since repealed. State v. Cassally, 93 N.J. Super. 111 (App.Div.1966).]

Notwithstanding the absence of a Supreme Court Rule or written administrative directive, it has been my experience that judges do report illegal or improper activities, or credible allegations thereof. Judges do so because it is the right thing to do and because it is repugnant to their oath that judges sit mute in the face of acknowledged, demonstrated or potential wrongdoing.

\*\*\*  
Accordingly, it is the holding of the court that where evidence establishes an intentional, underreporting of income -- in this case large sums from illegal enterprise -- it is a judge's duty to report such wrongdoing to the appropriate authorities. (Id. at 562-566) (*italics added*)

8 U.S.C. § 1324(a)(1)(A)(iii) provides that "[a]ny person who -  
...knowing or in reckless disregard of the fact that an alien has come  
to, entered, or remains in the United States in violation of law,

conceals,  
harbors, or  
*shields from detection*, such alien in any place...[or]

[8 U.S.C. § 1324(a)(1)(A)(iv)] encourages or induces an alien to come  
to, enter, or reside in the United States, knowing or in reckless  
disregard of the fact that such coming to, entry, or residence is or will  
be in violation of law... [or] [8 U.S.C. § 1324(a)(1)(A)(v)(II)] *aids or  
abets* the commission of any of the preceding acts...shall be punished  
as provided in subparagraph (B) [fined under title 18...imprisoned not  
more than 5 years, or both]." (*emphasis added*)

Federal law makes it illegal to "shield" an illegal alien from  
detection or to aid or abet such a shielding.

RPC 1.6(b)(2) provides that "[a] lawyer shall reveal such  
information to the proper authorities, as soon as, and to the extent the  
lawyer reasonably believes necessary, to prevent the client *or another  
person* ... from committing a criminal [or] illegal...act that the lawyer  
reasonably believes is likely to result in substantial injury to the  
property of another..." (*italics added*)

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door, to deny officers access, claiming there were feminine items  
inside. The officers became suspicious and then found a man trying  
to leave through a rear window. The defendant asserted that she  
merely "shared living quarters" with the men and denied knowledge  
of their illegal status. Nonetheless, her conviction was upheld. She  
made it "significantly 'easier or less difficult'" for the illegal aliens to  
be present in the United States. Ms. Ramirez failed to disclose the  
presence of illegal aliens.

In United States v. Hinojos-Mendez, 2008 U.S. App. LEXIS  
6178 (5<sup>th</sup> Cir. 2008) the defendant had been convicted of conspiring to  
conceal, harbor and shield illegal aliens. The appeals court affirmed  
the conviction because:

Taken in the light most favorable to the verdict, the  
evidence showed that Hinojos acted in concert with  
others involved in the offense by acting as a lookout at  
the apartment complex and by *providing food* to the  
illegal aliens, conduct which, by its nature, "tended to  
substantially facilitate the alien[s] remaining in the  
United States illegally." United States v. De Jesus-  
Batrea, 410 F.3d 154, 160 (5<sup>th</sup> Cir. 2005). See also  
United States v. Shum, 496 F.3d 390, 392 (5<sup>th</sup> Cir.  
2007). Because the evidence was sufficient to support  
the jury's verdict, we affirm the judgment of the  
district court. (*emphasis added*)

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Ethics Opinion 247 (December 7, 1972) (95 N.J.L.J. 1271)  
([http://lawlibrary.rutgers.edu/collections/ethics/acpe/acp247\\_1.html](http://lawlibrary.rutgers.edu/collections/ethics/acpe/acp247_1.html))  
considered whether an attorney must report to the proper authorities  
the reasonable suspicion that his client is an illegal alien. The  
decision held that an alien who is in this country illegally is "at least"  
committing a fraud upon the United States. The decision held that if  
an inquiry were to be made of the attorney, "he is not prevented from  
disclosing such facts by the attorney-client privilege."

RPC 8.4 provides that it is professional misconduct for a lawyer  
to "engage in conduct involving dishonesty, fraud, deceit or  
misrepresentation." It is clear that if a lawyer engages in conduct that  
involves fraud or deceit, that lawyer is engaged in professional  
misconduct. "Involves" has been held to mean "embrace, include or  
concern directly." In re Winton Shirt Corp., 104 F.2d 777, 779 (3<sup>rd</sup>  
Cir. 1939).

In United States v. Elizabeth Ramirez, 2007 U.S.App. LEXIS  
23398 (5<sup>th</sup> Cir. 2007), the defendant was prosecuted under 8 U.S.C.  
§1324(a)(1)(A)(iii). The defendant did not employ the illegal aliens  
in a business. The defendant apparently allowed some illegal aliens to  
sleep overnight at her home. The defendant had closed her bedroom

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In United States v. Batjargal, 302 Fed. Appx. 188, 2008 U.S.  
App. LEXIS 24764 (4<sup>th</sup> Cir. 2008) a defendant had been convicted of  
concealing, harboring or shielding an illegal alien. The appeals court  
affirmed the conviction:

...we find sufficient evidence shows that he knew [the  
alien] was no longer in the United States legally  
because she was no longer attending school as was  
required under her student visa. The evidence further  
shows [the defendant] encouraged her to stay in the  
United States despite her illegal status and that he  
harbored her by *providing her with a place to live, an  
automobile, a cell phone, auto insurance and gym  
membership*. (*Id.* at 191) (*emphasis added*)

If providing food, a cell phone or a "gym membership" to an  
illegal alien can constitute a violation of the foregoing federal statute,  
then – respectfully – allowing membership in a State Bar would also  
encourage the alien to remain in the United States.

The Court is also respectfully invited to Segretti v. State Bar of  
California, 15 Cal.3d 878 (1976). In that case the petitioner, an  
attorney, had been involved in a series of political pranks and  
mischief, intended to cause confusion amongst rival candidates. Even  
though some of the acts may have been intended to be humorous or  
harmless, they nonetheless violated *federal law* and this Court found

...he repeatedly committed *acts of deceit* designed to  
subvert the free electoral process. \*\*\* *A member of*

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*the bar should not under any circumstances attempt to deceive another. (See Cutler v. State Bar (1969) 71 Cal.2d 241, 252-253 [78 Cal.Rptr. 172, 455 P.2d 108]; McKinney v. State Bar (1964) 62 Cal.2d 194, 196 [41 Cal.Rptr. 665, 397 P.2d 425].) "An attorney's practice of deceit involves moral turpitude." (Cutler v. State Bar, supra; in accord, Lewis v. State Bar (1973) 9 Cal.3d 704, 713 [108 Cal.Rptr. 821, 511 P.2d 1173].) (Id. at 887-888) (emphasis added)*

"Good moral character" has also been defined to mean "qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, [observance] of the laws of the state and the nation and respect for the rights of others and for the judicial process." Pacheco v. State Bar, 43 Cal.3d 1041, 1046 (1987) (emphasis added).

It is the duty of every alien, who is 14 years of age or older, to register with the U.S. government. 8 U.S.C. § 1302(a). Alien registration statutes are essentially non-criminal regulatory provisions, and do not violate an alien's right against self-incrimination. United States v. Sacco, 428 F.2d 264 (9<sup>th</sup> Cir. 1970) cert den 400 U.S. 903, 27 L.Ed. 2d 140, 91 S.Ct. 141 (1970) reh den 401 U.S. 926, 27 L.Ed.2d 831, 91 S.Ct. 864 (1971).

"Deceit" has been defined to mean "[t]he suppression of a fact, by one who is bound to disclose it...." Cal. Civ. Code § 1710(3).

Foreign citizens who are in this country and have not registered themselves are engaged in deceit. An alien who is in this country illegally is "at least" committing a fraud upon the United States.

#### CONCLUSION

For the foregoing reasons, a person in the United States illegally should not be permitted to practice law as a member of an organized bar. The practice of law requires the practitioner to uphold the law. A person who is in this country illegally is deceitfully breaking federal law, not unlike how Mr. Segretti violated federal law, and should not be entrusted with upholding the law. Mr. Segretti ended his violation of federal law and sought to make amends. By contrast, Mr. Garcia's violation of federal law continues as long as he is in this country without proper authorization.

If the rule of law is this nation's secular faith, then the members of the Bar are its ministers. (State v. Sugar, 84 N.J. 1, 12 (1980))

Respectfully submitted,

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NICHOLAS KIERNIESKY, Pro Se

Date:  
06/26/2025.v1

S202512

IN THE  
SUPREME COURT OF CALIFORNIA

In Re: Sergio Garcia,  
Petitioner

CERTIFICATION OF WORD COUNT OF  
AMICUS CURIAE BRIEF  
IN OPPOSITION TO ADMISSION OF  
PETITIONER TO THE BAR

NICHOLAS KIERNIESKY, of full age, certifies as follows:

The word count of the amicus curiae brief, to include tables of contents and authorities is: 1, 772 words. This word count was accomplished by the word perfect computer system.



NICHOLAS KIERNIESKY

Date: 8-8-12