



February 21, 2017

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**Re: Memorandum of Law in Support of Application of Parthiv Patel**

Dear Mr. Cohen and Board Members:

On behalf of Mr. Patel, the undersigned attorneys hereby submit this memorandum of law.

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## I. FACTS

### A. Parthiv Patel's Early History

Parthiv Patel was born in India on [REDACTED] [REDACTED].<sup>1</sup> He was brought to the United States in 1996 when he was five years old and has lived in the U.S. continuously since then.<sup>2</sup> Mr. Patel grew up in [REDACTED] and graduated from [REDACTED] in 2009.<sup>3</sup> After high school, he attended Rutgers College, Camden Division, graduating in 2013 with a B.A. in political science and a minor in economics.<sup>4</sup>

### B. Mr. Patel Is Granted DACA Status and Employment Authorization

Mr. Patel is a beneficiary of the Deferred Action for Childhood Arrivals policy (“DACA”). On June 15, 2012, the Secretary of Homeland Security announced DACA, a policy under which people like Mr. Patel—who came to the United States as children and who meet several requirements—can request consideration of deferred action for a period of two years, subject to renewal.<sup>5</sup> DACA recipients are also eligible for work authorization. Mr. Patel applied

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<sup>1</sup> See Testimony of Parthiv Patel (Feb. 6, 2017) (designated as Exhibit A5 at the hearing).

<sup>2</sup> Mr. Patel does not remember the details of this childhood trip but he has been told that he entered the United States without inspection.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Memorandum from Janet Napolitano, Sec’y of Homeland Sec., on Exercising Prosecutorial Discretion with Respect of Individuals Who Came to the United States as Children (June 15, 2012). The memo states that a person can request DACA if he or she: (1) was under the age of 31 as of June 15, 2012; (2) came to the United States before age 16; (3) has continuously resided in the United States since June 15, 2007; (4) was physically present in the United States on June 15, 2012, and at the time of requesting DACA status; (5) had no lawful status on June 15, 2012; (6) is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran, (7) has not been convicted of a felony, significant misdemeanor, or three or more other

for DACA and work authorization in September, 2012. In October, 2012, the United States Department of Homeland Security Citizenship and Immigration Services granted DACA status to Mr. Patel and issued him an Employment Authorization Card. Since then, Mr. Patel has renewed his deferred action and work authorization every two years. His current Employment Authorization Card is valid until August 9, 2018.<sup>6</sup>

C. Mr. Patel Attends Law School and Passes the Bar Exam

Mr. Patel applied to Drexel University's Thomas R. Kline School of Law, disclosing his DACA status and valid work authorization, and was admitted to the class of 2016. Roger Dennis, the Dean of Drexel Law while Mr. Patel was in law school, has stated that "in our view, Mr. Patel's experiences and worldview as an undocumented immigrant growing up in the United States enhanced, rather than undermined, his ability to contribute to the legal profession."<sup>7</sup>

Mr. Patel excelled at Drexel Law. He was an active member of the student body. He was selected to serve in the Dean's Scholars Program, where he provided supplemental

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misdemeanors, and (8) does not otherwise pose a threat to national security of public safety. *Id.* The memo also states that DACA "confers no...pathway to citizenship" under current U.S. immigration law. *Id.*

<sup>6</sup> Mr. Patel married a U.S. citizen in December, 2016, but for individuals like Mr. Patel who entered the United States without inspection, marriage does not provide a clear or quick path to citizenship under current law.

<sup>7</sup> See Exh. A1, Letter from Roger J. Dennis, Dean of Drexel University Thomas R. Kline School of Law, *Admission of Undocumented Bar Applicants, and Application of Parthiv Patel* (Feb. 2, 2017). Other Pennsylvania law schools have expressed their support for the admission of DACA recipients to U.S. law schools and to the Pennsylvania Bar. See Exh. A3, Letter from University of Pennsylvania School of Law (Feb. 6, 2017); Exh. A8, Letter from University of Pittsburgh School of Law, Dickinson Law, Penn State Law, and Temple Law School (Feb. 14, 2017).

instruction to first-year students on civil procedure.<sup>8</sup> He volunteered with the Marshall-Brennan Constitutional Literacy Project, tutoring local high school students.<sup>9</sup> He also served as the Public Interest Liaison for the Student Bar Association, helping to organize a large fundraiser to support students working in the public-interest sector.<sup>10</sup> In addition to these extracurricular activities, during law school Mr. Patel also worked for various law firms, including Swartz Campbell LLC, Zarwin Baum DeVito Schaer & Toddy PC, Friedman Mathis & Gary LLP, and Stradley Ronon Stevens & Young LLP.<sup>11</sup> Mr. Patel graduated from Drexel Law in May, 2016.

Mr. Patel took the Pennsylvania and New Jersey bar exams in July, 2016, and passed both. He was denied admission to practice law in the Commonwealth of Pennsylvania, however, by an October 7, 2016 letter that stated that 8 U.S.C. § 1621 prohibited the Pennsylvania Supreme Court from granting a license to an applicant who was an undocumented immigrant and did not fit within the statutory exceptions. Mr. Patel timely filed an appeal to the Pennsylvania Board of Law Examiners. (His application in New Jersey is currently pending.)

D. Mr. Patel's Character is Exemplary

Mr. Patel's character is exemplary: the record reflects that, despite the obstacles Mr. Patel's immigration status has created, he has persevered in pursuing his education while remaining honest, respectful, and charitable.

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<sup>8</sup> See Exh. A1, Letter from Roger J. Dennis, Dean of Drexel University Thomas R. Kline School of Law (Feb. 2, 2017).

<sup>9</sup> See Testimony of Jesse Proctor (Feb. 6, 2017) (designated as Exhibit A6 at the hearing).

<sup>10</sup> See Testimony of Parthiv Patel (Feb. 6, 2017) (designated as Exhibit A7 at the hearing).

<sup>11</sup> *Id.*

A hearing was held on February 6, 2017, before Attorney Stewart Cohen and Attorney Jessica Holst of the Pennsylvania Board of Law Examiners.<sup>12</sup> At this hearing, two of Mr. Patel’s classmates from Drexel Law—Jesse Proctor<sup>13</sup> and Stanford Ponson<sup>14</sup>—testified to Mr. Patel’s exceptional reputation in the community. Each noted Mr. Patel’s reputation for truthfulness and honesty, as well as his general reputation as a peaceful and law-abiding individual. Both Mr. Proctor and Mr. Ponson had no hesitation in recommending Mr. Patel’s admission to practice law in Pennsylvania. In addition, Dean Dennis of Drexel Law provided a letter in support of Mr. Patel’s admission to the Pennsylvania bar,<sup>15</sup> affirming that Mr. Patel was an “excellent, committed student” and was well respected by his colleagues.

As noted in Section III(C), *supra*, Mr. Patel was a productive member of Drexel Law, not only doing well in his classes but also finding time to volunteer and support legal public interest work. Additionally, Mr. Patel volunteers his time to support his local community. He currently serves as the regional coordinator for a national Hindu organization that provides mentoring to local youth leaders, as well as social and religious services.<sup>16</sup>

Mr. Patel clearly possesses the necessary character and fitness to become a lawyer in Pennsylvania.

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<sup>12</sup> Present at the hearing representing Mr. Patel were attorneys Samuel C. Stretton, Molly Tack-Hooper, Fred Magaziner, and Rhiannon DiClemente.

<sup>13</sup> *See* Testimony of Jesse Proctor (Feb. 6, 2017) (designated at Exh. A6). Jesse Proctor, Esquire, is a licensed attorney in Pennsylvania and New Jersey. He is currently clerking for the intermediate appellate court in New Jersey.

<sup>14</sup> *See* Testimony of Stanford Ponson (Feb. 6, 2017) (designated as Exh. A7). Stanford Ponson, Esquire, is a licensed attorney recently admitted to Pennsylvania and is practicing in Philadelphia, Pennsylvania.

<sup>15</sup> *See* Exh. A1, Letter from Roger J. Dennis, Dean of Drexel University Thomas R. Kline School of Law (Feb. 2, 2017).

<sup>16</sup> *See* Testimony of Parthiv Patel (Feb. 6, 2017) (designated as Exh. A5).

## II. THE ISSUES THAT THIS BOARD MUST DECIDE

There can be no question that but for his being an undocumented immigrant, Mr. Patel would by now be a licensed lawyer. Hence, the questions that this Board must decide are (1) whether it is altogether appropriate for a person like Mr. Patel to be admitted to the bar, even though he was brought here illegally as a child, and (2) whether this Board has the power under 8 U.S.C. § 1621 to admit undocumented immigrants like Mr. Patel to the bar. The Board should answer both questions in the affirmative.

## III. ARGUMENT

### A. Undocumented Immigrants Like Mr. Patel Should Be Allowed to Practice Law in Pennsylvania

As the many letters of support in the appendix explain, there is no good reason to deny a license to practice law to undocumented immigrants like Mr. Patel. U.S. citizenship is not a requirement to practice law in Pennsylvania,<sup>17</sup> and it is not, in fact, a crime to be here without legal status. *See Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012). Nothing about Mr. Patel's history or experience raises any doubt about his ability to represent clients with skill and integrity. Mr. Patel can hardly be blamed for what happened to him when he was five years old. *See Plyler v. Doe*, 457 U.S. 202, 220 (1982) (“visiting . . . condemnation on the head of an infant is illogical and unjust”). Indeed, in consideration of these strong equities, the federal government has granted Mr. Patel permission both to remain and work in the United States.<sup>18</sup>

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<sup>17</sup> *See, e.g.*, Pa. B.A.R. 205 (regarding admission of foreign attorneys); Exh. A4, Philadelphia Bar Association Resolution Urging the Pennsylvania Supreme Court and Board of Law Examiners to Welcome Qualified Candidates to the Pennsylvania Bar Regardless of Immigration Status.

<sup>18</sup> If the federal government were to revoke the DACA policy, this would not change the essential truth that Mr. Parthiv possesses the character and fitness necessary to practice

The requirements of character and fitness provide no justification for a blanket rule precluding undocumented immigrants like Mr. Patel from practicing law in Pennsylvania.<sup>19</sup> Each candidate should be evaluated on an individualized basis, without regard to immigration status.

B. 8 U.S.C. § 1621 Allows This Board To License Mr. Patel to Practice Law

1. *Overview of 8 U.S.C. § 1621*

Because there is no policy reason to deny law licenses to undocumented immigrants like Mr. Patel and no question about Mr. Patel's character and fitness, the only question that remains is whether, under 8 U.S.C. § 1621, this Board has authority to admit Mr. Patel to the bar.

The Board does have such authority.

Section 1621 *allows* a state to issue a professional license to an undocumented immigrant if that is what the state wishes to do. Specifically, 8 U.S.C. §1621 prohibits states from conferring benefits, including professional licenses, on noncitizens who do not have certain kinds of immigration status *unless* the state has “affirmatively provide[d] for such eligibility” “through the enactment of a State law after August 22, 1996[.]” 8 U.S.C. § 1621(d) (emphasis added). Thus, the plain language of Section 1621 expressly provides that a state *can* grant certain benefits, including professional licenses, to undocumented immigrants if the state affirmatively

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law, nor would it strip this Board of its power under 8 U.S.C. § 1621 to confer law licenses on undocumented immigrants. *See infra*, Section III(B).

<sup>19</sup> A number of Pennsylvania-based legal and immigrant-rights organizations have written letters of support agreeing with this basic proposition. *See* Exh. A9, Letter from Sozi Pedro Tulante, City Solicitor, City of Philadelphia Law Department (Feb. 10, 2017); Exh. A2, Letter from Philadelphia Bar Association (Feb. 6, 2017); Exh. A10, Letter from Asian Pacific Bar Association of Pennsylvania (Feb. 10, 2017); Exh. A11, Letter from Pennsylvania Immigration and Citizenship Coalition (Feb. 20, 2017).

decides to do so “through the enactment of a State law after August 22, 1996[.]” 8 U.S.C. § 1621(d).

2. *This Board, As an Arm of the Supreme Court, Is Empowered to Regulate Who Is Admitted To Practice Law In Pennsylvania*

Article V, Section 10(c) of the Pennsylvania Constitution<sup>20</sup> gives the Pennsylvania Supreme Court exclusive authority over the regulation of lawyers, including the admission of attorneys to practice.<sup>21</sup> Moreover, the Pennsylvania Constitution prohibits the General Assembly from enacting statutes regulating lawyers.<sup>22</sup>

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<sup>20</sup> Article V, Section 10(c) of the Pennsylvania Constitution states, in relevant part: “The Supreme Court shall have the power to prescribe general rules . . . for admission to the bar and to practice law[.]. . . All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.”

<sup>21</sup> See *Commonwealth v. Stern*, 549 Pa. 505, 510 (1997) (Article V, Section 10 embodies the Supreme Court’s authority to regulate attorneys); *Appeal of Murphy*, 482 Pa. 43, 47–48 (1978) (“The admission of a person to practice law in this state is and always has been a judicial function, exercised now exclusively by the Supreme Court, with the aid of the State Board of Law Examiners.”); *Maunus v. Commonwealth, State Ethics Comm’n*, 518 Pa. 592, 597 (1988) (observing that no other branch of state government may admit an attorney to practice because this power is “within this Court’s exclusive jurisdiction.”); Pa. B.A.R. 103 (“The Supreme Court declares that it has inherent and exclusive power to regulate the admission to the bar[.]”).

<sup>22</sup> Pa. Const. art V, § 10(c); see also *Maunus*, 581 Pa. at 594 (“It is clear that the legislature is precluded from exercising powers entrusted to the judiciary.”); *Application of Clarke*, 357 Pa. 603, 606 (1947) (referring to “the admission of attorneys” as “a judicial function with which the Legislature may not interfere”); *id.* at 607 (referring to the Court’s “inherent power” to make rules “independently of the legislative branch of the government”). The Pennsylvania Supreme Court has applied this separation-of-powers doctrine to strike down as unconstitutional enactments by the General Assembly that attempted to regulate the conduct of lawyers. *E.g.*, *Commonwealth v. Stern*, 549 Pa. 505, 514 (1997) (striking down criminal law that prohibited attorneys from compensating nonlawyer clients as violation of Article V, § 10(c)).

The Board of Law Examiners is an arm of the Pennsylvania Supreme Court.<sup>23</sup> The Supreme Court has vested this Board with the authority “[t]o adopt rules pertaining to the admission to the bar”, Pa. B.A.R. 104(c)(2), and “[t]o recommend the admission of persons to the bar and the practice of law”, Pa. B.A.R. 104(c)(3).<sup>24</sup>

The Board of Law Examiners thus possesses the necessary authority, which it shares only with the Pennsylvania Supreme Court, to opt out of the prohibitions contained in 8 U.S.C. § 1621 by affirmatively authorizing the provision of law licenses to undocumented immigrants like Mr. Patel.

3. *Pennsylvania Can Only Authorize the Provision of Law Licenses to Undocumented Immigrants Through the Action of the Courts, the Branch of State Government Entrusted With Lawmaking Authority Over This Benefit.*

Nothing in 8 U.S.C. § 1621 limits “the enactment of a State Law” to statutes passed by the legislature. In both the federal and state systems, each of the three branches of government possesses its own type of lawmaking authority; statutes passed by the legislature are plainly not the sole source of “enactments of state law.” *See* Black’s Law Dictionary (8th ed.) (defining “enact” as “make into law by authoritative act” and defining “state law” as the “body of law in a particular state consisting of the state’s constitution, statutes, regulations, and common law.”). Thus, the natural reading of Section 1621(d) is that a state law can be enacted by whichever

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<sup>23</sup> *Appeal of Murphy*, 482 Pa. 43, 44–45 (1978) (referring to the Pennsylvania State Board of Law Examiners as “an arm of this Court”); *In re Shigon*, 462 Pa. 1, 17 n.18 (1974) (same).

<sup>24</sup> *See also* Board of Law Examiners, <https://www.pabarexam.org/> (the Board is “empowered by the Supreme Court to recommend for admission . . . those individuals who have demonstrated the minimum competency and requisite character necessary to become a member of the bar of this Commonwealth.”).

branch of state government is entrusted with lawmaking authority over the particular benefit at issue.

In Pennsylvania, as explained above, the courts are the only branch of government entrusted with lawmaking authority regarding professional licensing of attorneys. The Supreme Court is thus the only branch of Pennsylvania government that is capable of enacting a law opting out of the prohibitions contained in 8 U.S.C. § 1621. As the arm of the Supreme Court vested with authority over attorney admissions, the Board of Law Examiners may thus adopt a rule authorizing the issuance of law licenses to undocumented immigrants like Mr. Patel.

Pennsylvania is not alone in vesting its courts with exclusive lawmaking authority with respect to the regulation of attorneys. The U.S. Supreme Court has recognized that, in such states, the state courts are enacting state law when they adopt rules regulating the legal profession. More than three decades ago, the U.S. Supreme Court observed that the Supreme Court of Virginia acted as a legislature when it promulgated the Virginia Code of Professional Responsibility regulating the bar, and was thus entitled to legislative immunity, rather than judicial immunity, for lawsuits arising out of that act of rulemaking. *Sup. Ct. of Va. v. Consumers Union of U.S.*, 446 U.S. 719 (1980). In other words, court pronouncements concerning attorney qualifications are enactments of law just as much as statutes passed by the legislature. *See id.* (“[T]he Virginia Court is exercising the State’s entire legislative power with respect to regulating the Bar, and its members are the State’s legislators for the purpose of issuing the Bar Code.”).

4. *If 8 U.S.C. § 1621 Were Construed to Mean That Neither This Board Nor the Supreme Court Had the Authority to Decide Whether To Admit Undocumented Immigrants Like Mr. Patel to the Bar, It Would Raise Serious Constitutional Issues.*

If the phrase “enactment of a State law” in 8 U.S.C. § 1621(d) were construed to require the passage of a statute by the Pennsylvania General Assembly, rather than a law adopted by this Board or by the Supreme Court, then the statute would raise significant Tenth Amendment federalism concerns as applied to attorney licensing. The Tenth Amendment to the U.S. Constitution stands for the proposition that the federal government is a government of limited powers, and all other powers are reserved to the states. U.S. Const. art. X; *New York v. United States*, 505 U.S. 144, 157 (1992). The authority to distribute powers between the branches of state government is not one of the enumerated powers conferred on Congress by the U.S. Constitution; it belongs to the states. *See New York v. United States*, 505 U.S. 144, 157–59 (1992) (reviewing Congress’s limited powers under the Spending Clause, Commerce Clause, and Necessary and Proper Clause).

In *Matter of Application of Cesar Adrian Vargas for Admission to the Bar of the State of New York*, 131 A.D. 3d 4, 24 (N.Y. App. Div. 2015), the New York Supreme Court, Appellate Division, concluded that 8 U.S.C. § 1621 would indeed violate the Tenth Amendment if it were construed to require enactment of a statute by the state legislature on an issue—licensing of lawyers—over which the courts had been vested with exclusive authority.<sup>25</sup>

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<sup>25</sup> Cesar Vargas was a law school graduate who, like Mr. Patel, had received DACA status and work authorization. *Id.* at 7–8. A subcommittee of the Committee on Character and Fitness for the Second Judicial Department conducted a hearing on Mr. Vargas’s character and fitness—a hearing required for every bar applicant under New York law. *See* 22 NYCRR 690.6. The subcommittee concluded that Mr. Vargas appeared to be of stellar character, but recommended against his admission on the basis of his immigration status, believing that the decision should be left to the appellate court as to whether his immigration status precluded his admission to the bar. *Vargas*, 131 A.D. 3d at 8. The Full Committee on Character and Fitness for the Second, Tenth, Eleventh, and Thirteenth Judicial Districts adopted the subcommittee’s report recommending against his admission by a vote of 28 to 8, with two abstentions. *Id.* at 8–9. Mr. Vargas then appealed to the intermediate New York appellate court, which declared that it was exercising its opt-out

This Board should construe 8 U.S. § 1621(d) to avoid the Tenth Amendment issues identified by the New York court. It is a well-established canon of statutory interpretation that courts should read a statute in order to avoid a constitutional question whenever possible.<sup>26</sup> Federal statutes must be construed narrowly if a more expansive reading would “radically readjust the balance of state and national authority” unless the statute contains an explicit statement that Congress intended to effect such a readjustment. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994) (internal quotation omitted). Here, there is no evidence that Congress intended 8 U.S.C. § 1621 to shift power over attorney licensing from the judicial to the legislative branch of Pennsylvania’s state government. Accordingly, Section 1621 “must be read consistent with principles of federalism inherent in our constitutional structure.” *Bond v. United*

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power under 8 U.S.C. § 1621(d) and would admit to the bar all qualified candidates—including Mr. Vargas—regardless of immigration status. *Vargas*, 131 A.D. 3d at 27–28.

We note that, in 2014, the Supreme Court of Florida interpreted U.S.C. § 1621(d) to require that the state legislature adopt a law authorizing the admission of attorneys to practice regardless of immigration status. *Fla. Bd. of Bar Exam’rs*, 134 So. 3d 432 (2014). The Florida court did not discuss whether this interpretation would interfere with the state’s allocation of power between its branches of government, or consider the Tenth Amendment implications of this interpretation. *See Vargas*, 131 A.D.3d 4, 23 (N.Y. App. Div. 2015) (observing that the Florida Supreme Court was not asked to consider whether 8 USC § 1621(d) violates the Tenth Amendment). This decision was quickly abrogated by statute when the Florida legislature passed a statute authorizing bar admission for certain undocumented immigrants who were brought to the United States illegally as children. Fla. Stat. § 454.021(3).

<sup>26</sup> *See U.S. ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 407–08 (1909) (“[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.”); *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“[I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.”). The Supreme Court applied the avoidance doctrine more recently in *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193, 205 (2009) (applying the doctrine to avoid addressing the constitutional question raised by section 5 of the Voting Rights Act of 1965).

*States*, 134 S. Ct. 2077, 2088 (2014). Hence, in Pennsylvania, it is this Board and the Supreme Court—not the General Assembly—that have the authority to decide whether to admit Mr. Patel and others like him to the Bar.

#### IV. CONCLUSION

The Board should exercise its authority to admit Parthiv Patel to the Bar of the Supreme Court of Pennsylvania.

Respectfully submitted,



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