

>> PLEASE RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION AND
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
OUR FIRST CASE FOR THE DAY IS
FLORIDA BOARD OF BAR EXAMINERS.
YOU MAY PROCEED.
>> MAY IT PLEASE THE COURT.
MY NAME IS BOB BLYTHE.
I'M REPRESENT THE BOARD OF BAR
EXAMINERS THIS MORNING.
IN 2008 THE BOARD OF EXAMINERS
DECIDED TO START REQUIRING BAR
APPLICANTS TO PROVIDE THE BOARD
DOCUMENTATION AS TO THEIR
U.S. CITIZENSHIP OR THEIR
IMMIGRATION STATUS.
IT IS THAT REQUIREMENT HAS BROUGHT
US HERE TODAY WITH A QUESTION
THAT THE BOARD HAS PRESENTED TO
THE COURT AND THAT IS, WHETHER
UNDOCUMENTED IMMIGRANTS ARE
ELIGIBLE FOR ADMISSION TO THE
FLORIDA BAR?
>> LET ME ASK YOU THIS QUESTION
JUST AS A PRELIMINARY MATTER.
UNDER WHAT AUTHORITY DOES THE
FLORIDA BOARD OF BAR EXAMINERS
HAVE TO DETERMINE WHAT ARE THE
KINDS OF QUESTIONS AND ISSUES
THAT ONE HAS TO ADHERE TO?
YOU KNOW, UNDER WHAT AUTHORITY
DID YOU MAKE THIS CHANGE TO THE
EXAMINATION PROCESS?
>> WELL, RULE 1-13 BROADLY
GIVES THE BOARD THE AUTHORITY
TO CONDUCT AN INVESTIGATION, TO
LOOK INTO THE QUALIFICATIONS OF
APPLICANTS.
RULE 2-22 SPECIFICALLY
ADDRESSES CHARACTER AND FITNESS
INVESTIGATIONS AND TALKS ABOUT
THE FACT THAT THE BOARD IS
AUTHORIZED TO REQUIRE BAR
APPLICATION, REQUIRE CERTAIN
INFORMATION AND SO ON.

AND THEN THERE'S 3-14.1 WHICH TALKS ABOUT THE SORTS OF THINGS THAT APPLICANTS TO BE REQUIRED TO PROVIDE TO THE BOARD IN THE CONTEXT OF THAT INVESTIGATION. AND SUBSECTION G OF THAT RULE SPECIFICALLY SAYS THAT THE BOARD CAN REQUIRE OTHER DOCUMENTATION AS NECESSARY IN THE, IN CONDUCTING THEIR BACKGROUND INVESTIGATION TO DETERMINE WHETHER SOMEONE MIGHT BE QUALIFIED FOR ADMISSION. AND THERE ARE A LOT OF EXAMPLES WITHIN THE BAR ADMISSION PROCESS OF QUESTIONS THAT THE BOARD ASKS THAT AREN'T SPECIFICALLY ADDRESSED WITHIN THE COURT'S RULES ON THE BAR APPLICATION.

AND THERE ARE EXAMPLES OF FOLLOW-UP INVESTIGATION THAT THE BOARD DOES THAT CAN REQUIRE ADDITIONAL DOCUMENTATION OTHER THAN.

>> ON HIS ORIGINAL APPLICATION HE INDICATED THAT HE WAS AN UNDOCUMENTED ALIEN?

>> ACTUALLY, THE WAY IT HAPPENED WAS HE FILED A PETITION WITH THE BOARD ASKING FOR A WAIVER OF THE REQUIREMENTS TO PROVIDE DOCUMENTATION OF HIS IMMIGRATION STATUS.

>> BASED ON WHAT?

WHY WOULD YOU GIVE SOMEONE A WAIVER OF THAT REQUIREMENT?

>> THE BOARD, THE BOARD DECIDED TO WAIVE THE REQUIREMENT TO ALLOW THIS APPLICANT TO GO AHEAD AND FILE AN APPLICATION, EVEN THOUGH HE DID NOT HAVE THE DOCUMENTATION THAT, THAT THE BOARD'S POLICY REQUIRES.

>> SO THE BOARD WAIVING IT WITH THE ASSUMPTION IT WOULD PROVIDE IT AT SOME LATER DATE?

>> NO, MA'AM, I DON'T BELIEVE THAT NECESSARILY WAS THE PRESUMPTION.

THE IDEA WAS HE WANTED A WAIVER OF THE POLICY. THE BOARD DECIDED TO WAIVE IT TO ALLOW HIM TO PROCEED WITH THE PROCESS AND THEN --

>> LET ME ASK ABOUT THAT

BECAUSE IT SEEMS THAT'S WHAT'S BROUGHT US HERE TODAY, THAT ACTION OF THE BOARD IN WAIVING SOMETHING.

I MEAN JUST SEEMS VERY STRANGE THAT WE WOULD HAVE TAKEN ALL THESE STEPS AND YOU BRING A PERSON RIGHT TO THE EDGE AND THEN YOU PUSH THEM OFF THE CLIFF KIND OF THING.

DOES THE BOARD THINK IT HAS THE POWER TO WAIVE, FOR EXAMPLE, IF WE HAVE A CONVICTED FELON WHOSE CIVIL RIGHTS HAVE NOT BEEN RESTORED, WAIVE ALL THAT?

>> NO, SIR.

THE BOARD DOESN'T HAVE THE AUTHORITY TO WAIVE THAT.

>> NOW THE ARGUMENT'S BEING OR AT LEAST THE POSITION BEING ADVANCED WE HAVE AN INDIVIDUAL, I MEAN HIGHLY QUALIFIED INDIVIDUAL.

VERY GOOD CHARACTER PERSON BUT THAT IT WOULD BE A CRIME IF SOMEBODY EMPLOYS THE PERSON. SO I MEAN HOW, I'M JUST, I'M AT A LOSS TO UNDERSTAND HOW THE BOARD GOT THE STATE IN THIS KIND OF POSITION?

>> CERTAINLY WITH HINDSIGHT PERHAPS IT WOULD HAVE BEEN A BETTER COURSE TO TRY TO ADDRESS THIS ISSUE AT THAT TIME BUT THAT IS NOT WHAT HAPPENED. I WILL SAY THAT THERE ARE OTHER SITUATIONS WHERE DOCUMENTATION THAT IS REQUIRED UNDER THE BOARD'S POLICY, NOT THE COURT'S RULES, BUT THE POLICY, THROUGH THE BAR APPLICATION, OR SOME OTHER REQUIREMENT, SOMETIMES THOSE DOCUMENTATION REQUIREMENTS ARE WAIVED.

>> WE'RE NOT TALKING ABOUT SOMETHING HERE THAT IS JUST A MERE POLICY, ARE WE?

ARE WE REALLY TALK, WE'RE NOT TALKING ABOUT SOMETHING HERE THAT, I MEAN THE RESPONSE IS IT'S NOT A POLICY WE'RE TALKING ABOUT THE QUESTION OF FEDERAL LAW AND STATE LAW.

THAT'S, TO SPEAK OF THIS BEING A POLICY, I MEAN I JUST DON'T UNDERSTAND HOW WE CAN EVEN TALK ABOUT THE LEGAL ISSUE BEFORE US

AS A MATTER OF POLICY.
I MEAN, NOT A MEMBER OF THIS
COURT HAS THE POWER,
INDIVIDUALLY OR COLLECTIVELY,
TO ENACT SOME KIND OF POLICY
THAT IMPACTS SOMETHING UPON
WHICH THERE IS FEDERAL LAW, DO
WE?
>> NO, SIR.
AND THE BOARD'S, THE BOARD DID
NOT ADOPT A POLICY THAT
UNDOCUMENTED IMMIGRANTS CAN NOT
BE ADMITTED TO THE BAR.
THE POLICY WAS, IS THE BOARD
GOING TO REQUIRE DOCUMENTATION
AS TO THAT PARTICULAR ISSUE?
>> WHAT WAS THE PURPOSE OF THE
DOCUMENTATION?
>> THE PURPOSE WAS TO DETERMINE
WHETHER SOMEONE, FIRST OF ALL
IS A CITIZEN.
>> OKAY.
WHEN YOU WAIVED IT, WHAT ARE
YOU REALLY SAYING?
YOU DON'T REALLY NEED THAT
QUALIFICATION?
WOULD THAT BE A REASONABLE
INTERPRETATION FOR A PERSON TO
TAKE WHO ASKS FOR A WAIVER AND
IT IS GRANTED?
>> THE BOARD'S WAIVER OF THE
REQUIREMENT WAS NOT INTENDED TO
BE A WAIVER OF THE ISSUE, IF
YOU WILL.
IT WAS TO ALLOW THE APPLICANT
AT HIS REQUEST TO GO AHEAD WITH
THE BAR ADMISSION PROCESS.
>> I THOUGHT YOU ACTUALLY IN
THE WAIVER SAID THAT YOU AREN'T
WAIVING CHARACTER AND FITNESS
ISSUES?
WAS THAT MADE CLEAR TO THE
APPLICANT?
I THOUGHT I SAW SOMETHING IN
THIS RECORD?
>> I HONESTLY DON'T RECALL
EXACTLY WHAT WAS COMMUNICATED
AT THE TIME.
I CAN TELL YOU, I'M VERY
COMFORTABLE IN SAYING THE BOARD
DID NOT INTEND TO WAIVE
CHARACTER ISSUES.
>> HERE IS MY QUESTION WHAT IS
REQUIRED BEFORE AND AFTER.
JUSTICE LEWIS MENTIONED
SOMEBODY WHO IS A CONVICTED
FELON, WHO DOESN'T HAVE THEIR

CIVIL RIGHTS RESTORED.
WE KNOW THAT THE BOARD ASKS
ROUTINELY FOR EVIDENCE THAT
INCOME TAXES ARE PAID.
ANYONE THAT HAS GONE THROUGH
THE CHARACTER AND FITNESS
SCREENING AND ANY MEMBER OF THE
PUBLIC WOULD BE PROBABLY
ASTONISHED TO SEE THE BROAD
RANGE OF ISSUES THAT ARE ASKED
OF APPLICANTS, INCLUDING
WHETHER THEY, THEY BOUNCE
CHECKS.

AND SO THE QUESTION I HAVE IS, DOES
THAT NORMALLY TAKE PLACE -- THERE
ARE CERTAIN THINGS THAT YOU
NEED BEFORE YOU CAN TAKE THE
BAR EXAM BUT I ALWAYS ASSUMED
THE CHARACTER AND FITNESS,
DEPENDING ON WHEN IT WAS ASKED
FOR, OCCURS EITHER
SIMULTANEOUSLY, BEFORE OR AFTER
THE BAR EXAM.

THAT THERE IS TWO ASPECTS.
ONE IS, YOU GRADUATE FROM A
ACCREDITED LAW SCHOOL, OR THREE.
GRADUATE FROM A ACCREDITED LAW
SCHOOL.

DID YOU PASS THE FLORIDA BAR
EXAM, AND DO YOU PASS A
CHARACTER AND FITNESS.
ARE THOSE THE THREE PARTS?

>> YES, MA'AM.

>> OKAY.

SO WHERE DOES, WHETHER YOU ARE
A CITIZEN OF THIS COUNTRY AND
AND EITHER ABLE OR NOT ABLE TO
BE EMPLOYED IN THE STATE OF
FLORIDA LEGALLY, WHERE DOES
THAT FIT IN, INTO THE, TO THE
INQUIRY THAT THE BOARD OF BAR
EXAMINERS MAKES?

>> WELL THE, THERE ARE --

>> DO YOU UNDERSTAND MY
QUESTION?

>> YES, MA'AM. I DO.

AND AS JUSTICE LEWIS POINTED
OUT THERE ARE CERTAIN, THERE
ARE CERTAIN STATUS QUESTIONS.
FOR EXAMPLE, SOMEONE THAT'S A
CONVICTED FELON.

SOMEONE WHO IS A DISBARRED
LAWYER.

SOMEONE WHO IS A SUSPENDED
LAWYER IN ANOTHER STATE.

>> ARE THEY THEN NOT ABLE TO
TAKE THE FLORIDA BAR EXAM?

>> THEY ARE NOT ABLE TO APPLY,
UNLESS THEY MEET CERTAIN
CRITERIA.

>> SO THIS WAS DETERMINED TO BE
ONE OF THE CRITERIA IN WHICH,
IF YOU DIDN'T PROVIDE IT, YOU
COULDN'T EVEN GET TO THE NEXT
STEP OF PASSING, TAKING THE BAR
EXAM?

>> WELL, AGAIN, I DON'T THINK
THE BOARD FELT THAT IT HAD THE
AUTHORITY TO SAY, YOU CAN'T DO
THIS, IF YOU CAN'T PROVIDE THIS
DOCUMENTATION.

>> LET'S NOW GO, MAYBE THERE'S
A WAIVER OF ESTOPPEL BUT THIS
COURT ISN'T IN THE POSITION OF
WAIVING AN ESTOPPEL.

>> RIGHT.

>> WHAT IS THE BAR EXAMINERS
POSITION, WHETHER SOMEBODY,
WHAT DOES THE LICENSE TO
PRACTICE LAW, WHICH IS WHAT
WOULD BE GRANTED OR NOT, MEAN
WHEN THIS COURT AUTHORIZES THAT
SOMEBODY IS LICENSED TO
PRACTICE LAW IN THE STATE OF
FLORIDA?

>> IT MEANS THAT YOU ARE
DESIGNATING THAT PERSON AS AN
OFFICER OF THE COURT.

>> AND TO DO WHAT?
ARE THEY ABLE TO PRACTICE LAW?
WHAT DOES THAT MEAN?

>> THAT MEANS TO BE ABLE TO
APPEAR IN FLORIDA COURTS.
IT MEANS TO PROVIDE LEGAL
ADVICE WITHIN THE STATE OF
FLORIDA.

>> AND THIS, CAN THIS
INDIVIDUAL UNDER THE LAWS OF
THE UNITED STATES DO THAT?

>> MY UNDERSTANDING IS AS
THINGS STAND RIGHT NOW, THERE
ARE LIMITATIONS ON WHAT HE
COULD DO.
CERTAINLY HE IS, MY
UNDERSTANDING IS THAT HE HAS
APPLIED FOR THE WORK PERMIT
THAT HAS RECENTLY BEEN PROVIDED
FOR BY THE DEPARTMENT OF
HOMELAND SECURITY.
IF THAT'S GRANTED, THEN HE
CERTAINLY WOULD BE ABLE TO
PERFORM THOSE FUNCTIONS.

>> BUT AT THIS STAGE, HE CAN
NOT BE LEGALLY EMPLOYED IN THIS

STATE.

BUT YET IF WE GAVE HIM A
LICENSE AND HE CHOSE TO PAY NO
ATTENTION TO THE FEDERAL RULES,
HE COULD OPEN UP AN OFFICE AND
ACTUALLY HAVE PEOPLE COME IN,
YOU KNOW, GIVE THEM ADVICE,
TAKE MONEY FROM THEM, ET
CETERA?

IF WE GIVE HIM A LICENSE, IS
THAT CORRECT?

>> YES, MA'AM.

I DON'T WANT MY ANSWER TO BE
SUGGESTING THAT I THINK HE
WOULD FLAUNT THE LAW LIKE THAT
BUT --

>> I'M NOT SAYING THAT HE
WOULD.

I'M SIMPLY SAYING THAT IS A
POSSIBILITY?

>> YES, MA'AM.

>> I DON'T UNDERSTAND.

I GUESS WHAT I DON'T UNDERSTAND
IS IT SEEMS TO ME IN CALIFORNIA
THE BAR EXAMINERS DECIDED THAT
THE PERSON WHO WAS IN A SIMILAR
SITUATION PASSED EVERYTHING,
CHARACTER AND FITNESS AND THEY
ADMITTED THAT PERSON AND THEN
THE PROBLEMS OCCURRED.

>> THEY RECOMMENDED HIM.

>> RECOMMENDED TO THE COURT AND
THEN THE PROBLEMS OCCUR.

HERE THE BOARD IS, WHAT ADVICE
ARE YOU ASKING US FOR?

THIS IS MY PROBLEM.

SEEMS TO ME IF SOMEBODY, IS AT
THIS POINT, ILLEGALLY IN THIS
COUNTRY, JUST LIKE SOMEBODY WHO
IS NOT PAYING THEIR FEDERAL
INCOME TAX, IF THEY WERE
REQUIRED TO DO SO, THE BOARD
WOULD NEVER RECOMMEND THAT
PERSON FOR ADMISSION TO THE
PRACTICE OF LAW.

SO I'M, WHAT IS THE BOARD'S
POSITION ON THIS?

YOU'RE ASKING US FOR ADVICE BUT
YOU'RE THE EXPERTS WITH LOOKING
AT THOUSANDS OF PEOPLE EVERY
YEAR.

WHAT IS THE APPROPRIATE
CHARACTER AND FITNESS ANALYSIS
FOR THIS PARTICULAR INDIVIDUAL?

>> THE BOARD HAS NOT MADE A
RECOMMENDATION ONE WAY OR THE
OTHER ON THIS ISSUE.

AND IT'S A CONTENTIOUS ISSUE IN OUR SOCIETY AS YOU ALL KNOW. THE BOARD WAS NOT ABLE TO REACH CONSENSUS.

>> I FEEL THAT'S LIKE WHAT IS HAPPENING HERE.

IT IS A CONTENTIOUS ISSUE BUT WE'RE HERE ON A VERY NARROW QUESTION.

IT PUTS US IN A POSITION, THERE IS LOTS OF VIEWS IN THE PUBLIC BUT THIS IS REALLY, ISN'T THIS A NARROW ISSUE AS TO WHETHER THIS PERSON WOULD MEET THE CHARACTER AND FITNESS REQUIREMENTS THAT THE RIGOROUS REQUIREMENT THAT IS THE BOARD DEMANDS OF EVERY APPLICANT THAT COMES BEFORE THE COURT?

>> WELL, ACTUALLY, THE WAY THE QUESTION HAS BEEN PRESENTED TO THE COURT, BY THE BOARD, IT IS NOT REALLY ABOUT THIS APPLICANT.

IT IS A BROADER QUESTION. AND I GUESS TO REPHRASE THE QUESTION, THE QUESTION IS, DOES THE COURT WANT TO ADOPT A BRIGHT-LINE RULE THAT IF YOU ARE IN THE COUNTRY WITHOUT PROPER DOCUMENTATION, YOU CAN NOT BE ADMITTED TO THE BAR.

>> LET ME ASK YOU THIS. HAS THE BOARD CONSIDERED THE IMPLICATIONS OF TITLE 8, SECTION 1621 FOR THAT QUESTION? >> IT WAS NOT REALLY BROUGHT TO THE BOARD'S ATTENTION FOR ANALYSIS.

>> CAN I ASK WHY? DO YOU THINK, DO YOU THINK THAT THAT LAW ISN'T, DOESN'T HAVE SOME POSSIBLE RELEVANCE TO THIS QUESTION?

>> YES, SIR. >> AND THE RESPONSIBILITY OF THE BOARD AND OF THIS COURT? DOESN'T THIS COURT HAVE AN OBLIGATION TO FOLLOW THE FEDERAL LAW TO THE EXTENT THAT IT'S APPLICABLE?

>> OH, YES, SIR, WITHOUT A DOUBT.

>> HASN'T THE DEPARTMENT OF JUSTICE TAKEN THE POSITION THAT THAT FEDERAL LAW WOULD PRECLUDE THE ISSUANCE OF A LICENSE TO

PRACTICE LAW IN CIRCUMSTANCES
SUCH AS ARE BEFORE US?
>> YES, SIR.
IN THE CALIFORNIA CASE
FEDERAL --
>> IS THERE ANY MATERIAL
DISTINCTION?
>> THE WAY YOU GET TO THE
COURT'S AUTHORITY IN CALIFORNIA
IS A LITTLE DIFFERENT FROM THE
WAY WE GET TO IT IN FLORIDA BUT
THE BOTTOM LINE --
>> WE'RE SITTING RIGHT HERE.
I THINK WE'RE USING
APPROPRIATED FUND AS WE SIT
HERE THIS MORNING, WOULDN'T YOU
AGREE?
>> I AGREE.
ACCORDING TO THE DEPARTMENT
JUSTICE BRIEF IN THE CALIFORNIA
CASE, THEY SAID BECAUSE THIS
COURT USES APPROPRIATED FUNDS
TO OPERATE, AND THE LICENSE TO
PRACTICE LAW IS ISSUED BY THIS
COURT, THEN THEREFORE THAT
FEDERAL STATUTE --
>> DOES THE BOARD DISAGREE WITH
THE ANALYSIS OF THE DEPARTMENT
OF JUSTICE?
>> THE BOARD HAS NOT TAKEN A
POSITION ON THAT.
>> WHY NOT?
ISN'T THAT YOUR RESPONSIBILITY?
I'M NOT TALKING YOUR INDIVIDUAL
RESPONSIBILITY BUT THE BOARD'S
RESPONSIBILITY?
>> I --
>> THEY PUNTED?
>> WELL, FOR ONE THING I'M NOT
SURE THAT AT THE TIME THAT THIS
WAS BEING DISCUSSED AND THE
DECISION WAS MADE TO REFER THIS
QUESTION TO THE COURT, THAT THE
BOARD WAS AWARE OF THAT
STATUTE.
ONCE THEY BECAME AWARE OF IT,
WE DID FILE THE SUPPLEMENTAL
AUTHORITY TO PROVIDE YOU WITH
THE DEPARTMENT OF JUSTICE BRIEF
SO THAT INFORMATION WOULD BE
AVAILABLE TO THE COURT.
>> HAVE YOU, I NOTICED, WE'VE
GOTTEN A LOT OF FILINGS FROM
THE CALIFORNIA CASE BUT, THE
DEPARTMENT OF JUSTICE HAS NOT
FILED ANYTHING IN THIS CASE.
>> YES, MA'AM.

>> HAS, AND I, AGAIN UNDER
THANIER ONLY, I MEAN YOU'RE NOT
ONLY BUT YOU'RE ADVOCATING A
POSITION AND YOU ARE
REPRESENTING THE BOARD BUT
THESE ARE DIFFICULT QUESTIONS.
HAS THE DEPARTMENT OF JUSTICE
BEEN CONSULTED BY THE BOARD
SUBSEQUENT TO THE FILING OF THE
BRIEF IN CALIFORNIA?

>> NO, MA'AM.

MY UNDERSTANDING IS THEY'RE
FILING OF THE BRIEF IN
CALIFORNIA WAS THE INVITATION
OF THE CALIFORNIA SUPREME
COURT.

>> THAT IS SOMETHING WE COULD
DO HERE?

>> YES, MA'AM.

YOU COULD CERTAINLY SOLICIT, IN
FACT I BELIEVE IN THE BOARD'S
REPLY BRIEF WE EVEN MENTIONED
THE POSSIBILITY OF APPROACHING
CERTAIN ORGANIZATIONS WITH
REGARD TO WHETHER YOU WOULD
REQUIRE OR REQUEST THAT.

>> HAVE THEY DONE THAT IN THE
NEW YORK CASE?

OR HAS THE NEW YORK CASE
REGRESSED TO THE POINT OF
BRIEFS BEING FILED?

>> MY UNDERSTANDING OF THE NEW
YORK CASES IT ACTUALLY HASN'T
BEEN FILED IN COURT YET.

THERE WAS SOME PUBLICITY THAT
THERE WAS AN UNDOCUMENTED
IMMIGRANT THAT WAS WORKING
THROUGH THE PROCESS IN NEW
YORK.

BUT I'M NOT AWARE OF AN ACTUAL
COURT CASE THERE.

>> NOW YOU HAVE ASKED FOR THIS
ADVISORY OPINION.

SO YOU'RE IN REBUTTAL.

IT HAS BEEN IN EFFECT SINCE
2008.

THE RULE THAT REQUIRES LAWYERS,
PERSPECTIVE LAWYERS TO SUBMIT
EVIDENCE OF WHETHER THEY ARE
CITIZENS OF THIS COUNTRY OR
LAWFULLY IN THIS COUNTRY.

SINCE 2008, UNTIL THE PRESENT,
IS THIS ONLY PERSON THAT FITS
INTO THIS CATEGORY, OR HAS
THERE BEEN REJECTIONS OF OTHER
PEOPLE?

WHAT'S THE STATUS?

>> NO, MA'AM.

THIS IS THE ONLY PERSON WHO
APPROACHED THE BOARD PROPOSING
TO APPLY FOR ADMISSION TO THE
BAR THAT WAS NOT ABLE TO
PROVIDE THE DOCUMENTATION.

>> SO ALTHOUGH THIS IS
OBVIOUSLY FOR MANY REASONS
HIGH-PROFILE, IT REALLY AFFECTS
ONLY THIS ONE PERSON?

>> YEAH.

I COULD SPECULATE AS TO IF
THERE WERE PEOPLE THAT MIGHT
HAVE THOUGHT ABOUT APPLYING,
DIDN'T HAVE DOCUMENTATION, SAW
THE REQUIREMENT AND DECIDED NOT
TO BUT OBVIOUSLY I DON'T KNOW
IF THERE IS ANYONE THAT FITS
THAT, FITS THAT CATEGORY.

>> YOU'RE IN YOUR REBUTTAL.

>> YES, SIR.

THANK YOU.

>> MAY IT PLEASE THE COURT.

I'M TALBOT D'ALEMBERTE.

HERE WITH MY PARTNER.

BETSY PALMER, REPRESENTING THE
APPLICANT, JOSE GODINEZ.

WHO HAS DONE EVERYTHING THE
RULES OF BOARD OF BAR EXAMINERS
REQUIRE OF HIM.

HE CAME TO THIS COUNTRY WHEN HE
WAS NINE YEARS OLD.

HE LEARNED ENGLISH.

HE WENT TO SCHOOL.

HE GRADUATED AS VALEDICTORIAN
OF HIS HIGH SCHOOL CLASS IN
TAMPA.

BECAME AN EAGLE SCOUT.

WENT TO NEW COLLEGE.

HE DID NOT HAVE ACCESS TO
BRIGHT FUTURES OR FEDERAL
STUDENT LOANS.

HE MADE HIS WAY THROUGH NEW
COLLEGE.

APPLIED TO FLORIDA STATE
UNIVERSITY COLLEGE OF LAW.

REVEALED THE FACT OF HIS
UNDOCUMENTED STATUS.

DID VERY WELL IN LAW SCHOOL.

AS HE HAD DONE IN, HIGH SCHOOL
AND COLLEGE.

>> LET ME JUST STOP YOU THERE.

WHEN HE APPLIED TO FSU, THE LAW
SCHOOL, YOU SAID HE REVEALED

HIS UNDOCUMENTED STATUS TO THE,
TO THE FLORIDA STATE

UNIVERSITY?

>> YES.
>> AND AT THAT POINT WAS THERE ANY DISCUSSION ABOUT, WELL, YOU CAN GET INTO THE LAW SCHOOL BUT THERE REALLY HASN'T BEEN A CASE OF AN UNDOCUMENTED ALIEN BEING ADMITTED TO PRACTICE LAW IN THE STATE OF FLORIDA?
AND AGAIN WE DON'T REALLY HAVE THE RECORD IN THIS CASE BUT IT SEEMS TO ME THAT THERE IS SOME, THE QUESTION REALLY IS, WAS THERE SOME ESTOPPEL ALONG THE WAY?
YOU'RE NOT SUGGESTING WHEN FSU ADMITTED HIM THEY WERE MAKING ANY REPRESENTATIONS AS TO WHETHER HE WOULD BE ADMITTED TO PRACTICE LAW.
>> NO, YOUR HONOR.
WE'RE NOT OUR POSITION IS HE ATTENDED AN ABA LAW SCHOOL.
WROTE EXTENSIVE ESSAY THAT IS PART OF THE RECORD IN OUR APPENDIX.
>> AT THE POINT THE EXECUTIVE ORDER WAS ISSUED RECENTLY, COULD THIS APPLICANT HAVE BEEN DEPORTED?
>> IN THEORY, YOUR HONOR, BUT, IF WE GO BACK --
>> NOT IN THEORY.
UNDER THE LAW?
UNDER THE LAW WAS HE ILLEGALLY -- WAS HE ILLEGALLY IN THIS COUNTRY?
>> HE IS UNDOCUMENTED, YOUR HONOR.
HE ENTERED THIS COUNTRY LEGALLY.
THAT BECOMES VERY IMPORTANT.
>> I'M ASKING YOU DID HE REMAIN HERE AFTER HE BECAME 18 ILLEGALLY?
>> HE REMAINED HERE WITHOUT DOCUMENTATION.
>> WAS THAT UNDER THE LAWS OF THE UNITED STATES WAS THAT ILLEGAL?
>> IT, YOUR HONOR, IT WASN'T ILLEGAL IN THE SENSE OF BEING ANYTHING CRIMINAL BUT IT IS NOT IN COMPLIANCE OF THE LAW.
HE DID NOT HAVE THE DOCUMENTATION.
NOW --

>> IS THERE ANY REASON, POSITED
IN THIS RECORD, WHY FROM THE
TIME HE WAS 18 UNTIL NOW, WHICH
IS SOME SIX OR SEVEN YEARS
LATER, THAT HE HAS NEVER
ATTEMPTED TO GAIN LEGAL STATUS?

>> YES, YOUR HONOR.

IT WAS NOT AVAILABLE TO HIM.

>> SO HE COULD NOT BECOME A
LEGAL RESIDENT BECAUSE?

>> THAT'S CORRECT.

>> WHY?

>> BECAUSE THE LAW DID NOT
ALLOW HIM.

HE COULD LEAVE THIS COUNTRY,
STAY OUT OF THE COUNTRY I
BELIEVE FOR 10 YEARS.

AND THEN APPLY TO REENTER THE
COUNTRY.

BUT ONCE HE IS OVERSTAYED A
VISA, AN ACT HE TOOK WHEN HE
WAS NINE YEARS OLD, HE NOW,
SUBJECT TO FEDERAL LAW THAT
SAYS HE MAY NOT SEEK
CITIZENSHIP WITHOUT LEAVING THE
COUNTRY AND LATER RETURNING
AFTER A LONG PERIOD OF TIME.

>> WOULD YOU AGREE THAT WE CAN
NOT DECIDE THIS ADVISORY
OPINION BASED ON A WAIVER OF
ESTOPPEL?

YOU'RE NOT ASCERTIFICATING
BECAUSE THE FLORIDA BOARD OF
BAR EXAMINERS WAIVED THE
REQUIREMENT OF PRODUCING
DOCUMENTATION, THAT SOMEHOW THE
COURT IS BOUND TO ACCEPT HIM
INTO THE PRACTICE OF LAW?

>> NO, YOUR HONOR.

>> OKAY.

>> LET ME MAKE A LARGER
CONCESSION OF THAT.

WE BELIEVE THE FLORIDA BOARD OF
BAR EXAMINERS DID HAVE THE
AUTHORITY TO ASK THE QUESTION
ABOUT WHAT HIS STATUS WAS.

>> THEY DID HAVE THAT
AUTHORITY?

>> WE THINK THEY DID.

AND WE THINK THEY HAD THE
AUTHORITY AS PART OF THEIR
INQUIRY INTO CHARACTER AND
FITNESS BUT WE DO NOT THINK
THAT THE BOARD HAS AUTHORITY TO
HAVE A BRIGHT LINE TEST SAYING
THAT HE CAN NOT BE ADMITTED

TO --

>> LET ME ASK YOU ABOUT THE SAME THING I ASKED COUNSEL ON THE OTHER SIDE ABOUT AND THAT IS THE OPINION OF THE DEPARTMENT OF JUSTICE ON TITLE 8, SECTION 1621 AND ITS APPLICATION, CIRCUMSTANCES LIKE THIS.

DO YOU DISAGREE WITH THE OPINION OF THE DEPARTMENT OF JUSTICE?

>> YOUR HONOR, I AGREE WITH PARTS OF IT AND DISAGREE WITH OTHER PARTS.

>> TELL ME WHAT YOU THINK IS WRONG ABOUT IT.

>> YOUR HONOR, FIRST OF ALL, LET ME POINT OUT THE SITUATION PERTAINING TO THE APPLICANT IN CALIFORNIA AND THIS APPLICANT ARE ENTIRELY DIFFERENT.

THIS APPLICANT IS NOW BY THE TERMS OF THE JUNE 15th, 2012, EXECUTIVE, NOT EXECUTIVE ORDER BUT DECLARATION OF POLICY BY THE FEDERAL GOVERNMENT, NOW HAS A PATHWAY TO CITIZENSHIP, NOT TO CITIZENSHIP BUT TO RESIDENCE WITHOUT CHALLENGE.

HAS A PATHWAY TO A WORK PERMIT AND A PATHWAY --

>> IF I UNDERSTAND CORRECTLY, WHAT THAT POLICY IS, IS JUST AN EXPRESSION BY THE EXECUTIVE.

>> IT IS.

>> THAT THEY'RE GOING TO EXERCISE PROSECUTORIAL DISCRETION ESSENTIALLY AND NOT GO AFTER THE PEOPLE AND TO DEPORT THEM WHO FALL IN THAT CATEGORY OR OTHERWISE ENFORCE THE LAWS AGAINST THEM, IS THAT CORRECT?

>> YOUR HONOR, THAT PATHWAY IS LAID DOWN IN THAT DETERMINATION.

>> BUT THAT IS NOT A LAW.

>> IT IS --

>> IT IS --

>> IT IS FEDERAL POLICY, YOUR HONOR, THAT ALLOWS HIM TO BE IN THIS COUNTRY WITHOUT CHALLENGE AND WITHOUT THREAT OF DEPORTATION AND ALLOWS HIM TO GET A SOCIAL SECURITY NUMBER, ALLOWS HIM TO GET A WORK PERMIT.

SO POLICY LAID DOWN ON JUNE
15th, 2012, WE THINK IS AN
IMPORTANT POLICY THAT APPLIES
TO THIS APPLICANT.

DOES NOT APPLY TO CALIFORNIA
APPLICANT.

YOUR HONOR, I'M NOT TRYING, TO
FILIBUSTER YOUR OPPOSITION.

I THINK WE NEED TO HONESTLY
LOOK AT 1621 AND ASK OURSELVES
THE QUESTIONS.

>> IS THERE A LIMITATION
ON 1621, A TIME LIMITATION?

>> I'M SORRY, YOUR HONOR?

>> IS THERE A TIME LIMITATION
ON THAT?

HOW LONG --

>> NO, I'M SORRY, YOUR HONOR,
THERE IS NOT.

>> EXCUSE ME?

>> NO, IT WOULD STILL APPLY.

1621 I THINK JUSTICE CANADY IS
QUITE CORRECT, THAT 1621 WOULD
APPLY TODAY AND, SO WE NEED TO
LOOK AT 1621.

LOOK AT ITS TERMS.

WHAT'S, 1621 SAYS, AS IT, YOU
MAY NOT GIVE, THAT A AGENCY OF
THE STATE MAY NOT GIVE A
PROFESSIONAL LICENSE, IS THIS
COURT AN AGENCY?

>> WELL THE OTHER PART ABOUT
USE OF APPROPRIATED FUNDS.

I MADE THE POINT EARLIER, I
THINK, WE ARE USING
APPROPRIATED FUND HERE AND IT
IS ULTIMATELY, THIS COURT IS
UNDER IFED BY APPROPRIATED FUND
AND IT IS ULTIMATELY OUR
RESPONSIBILITY TO ISSUE THE
LICENSE TO PRACTICE LAW.
THAT IS COMMITTED TO US BY THE
CONSTITUTION OF FLORIDA, WOULD
YOU AGREE?

>> I AGREE, YOUR HONOR.

WE RELY ON IT BECAUSE THAT IS
THE SECOND, AND I DON'T WANT TO
LEAVE THIS FIRST POINT.

LET'S ASK OURSELVES IS 1621 AN
EXERCISE OF FEDERAL AUTHORITY
THAT IS PERMITTED UNDER OUR
PRINCIPLES OF FEDERALISM?

MAY THE FEDERAL GOVERNMENT SAY
TO THIS COURT, YOU MAY NOT
ADMIT SOMEONE TO THE PRACTICE
OF LAW?

I HAVE SEVERE DOUBTS ABOUT

THAT.

>> BUT THAT IS AN EXERCISE OF THEIR AUTHORITY WITH RESPECT TO IMMIGRATION AND I THINK YOU WOULD HAVE TO ADMIT THERE IS TEXTUAL COMMITMENT TO THE CONGRESS OF RESPONSIBILITY WITH RESPECT TO THE CONTROL OF IMMIGRATION.

>> YOUR HONOR, BUT NOT TO THE EXTENT OF HAVING CONGRESS DIRECT THIS COURT TO ENFORCE FEDERAL POLICY.

WE THINK THE PRINCIPLES BEEN LAID DOWN IN A NUMBER OF CASES, PRINCE VERSUS U.S.

>> YOUR POSITION IS THAT TITLE 8, SECTION 1621 IS UNCONSTITUTIONAL?

>> OUR FIRST POSITION IT DOESN'T APPLY THIS COURT BECAUSE THIS COURT IS NOT AN AGENCY.

OUR SECOND POSITION WE HAVE SEVERE DOUBTS ABOUT ITS CONSTITUTIONALITY.

AND THEN FINALLY, WE WANT TO POINT OUT THAT IF IT DID APPLY, TO THIS APPLICANT, THIS APPLICANT NOW HAS A ROUTE BY VIRTUE OF THE 15 JUNE STATEMENT OF FEDERAL POLICY, HAS A ROUTE TO GET A FULL WORK PERMIT.

>> ISN'T THE FEDERAL POLICY, THE LAST THING YOU MENTIONED A DEFERMENT OF TYPE, NOT A CHANGE IN THE ACTUAL STATUS OF THIS APPLICANT.

>> YOU'RE ACTUALLY CORRECT, YOUR HONOR.

IF I SAID STATUS, I APOLOGIZE. IT IS DEFERRED ACTION.

>> SO THE STATUS OF THIS APPLICANT WHO IT SEEMS TO ME MAY BE A POSTER, AN EXAMPLE OF WHY PERHAPS FEDERAL LAW SHOULD BE CHANGED BUT NEVERTHELESS THE STATUS OF THIS APPLICANT IS STILL ILLEGAL?

>> YOUR HONOR, I WOULD NOT USE THE WORD ILLEGAL.

AND I DON'T MEAN TO PARRY WITH THE COURT BUT HE ENTERED THIS COUNTRY LEGALLY.

HE IS NOT SUBJECT TO CRIMINAL ACTION.

HE DOES NOT HAVE DOCUMENTATION.

BUT LOOK AT THE POLICY OF JUNE
15th.
IF HE NOW FILES AN APPLICATION,
WHICH HE HAS, IT HAS BEEN
ACKNOWLEDGED AND HE HAS,
SUCCEEDS UNDER THAT POLICY OF A
NUMBER AND ULTIMATELY A SOCIAL
SECURITY NUMBER AND A WORK
PERMIT, WHAT ARE WE TALKING
ABOUT IS STATUS.

>> WELL, MR. D'ALEMBERTE,
WE'RE, WE'RE ABOUT A MONTH
BEFORE AN ELECTION AND ANOTHER
PERSON WHO, THE PERSON THAT IS
OPPOSING THE CURRENT PRESIDENT
BECOMES PRESIDENT, HASN'T HE
SAID HE IS GOING TO ANNOUNCE
THAT POLICY?

IN OTHER WORDS, WHAT MY PROBLEM
WITH IT IS, WE'RE IN A STATE OF
FLUX AND WHAT I THINK WE'RE
BEING ASKED TO DECIDE IS
WHETHER AT THIS JUNCTURE, AN
UNDOCUMENTED ALIEN WHO IS IN
ALL RESPECTS WOULD BE A MODEL
LAWYER, SHOULD BE LICENSED TO
BE PRACTICE LAW.

JUSTICE CANADY GIVES YOU THE
FEDERAL REASON WHY WE MAY BE
POWERLESS TO DO THAT.

BUT I HAVE MY OWN CONCERNS
ABOUT WHAT THE LICENSE TO
PRACTICE LAW MEANS IN THE STATE
OF FLORIDA WHEN WE, THE COURT,
ARE LICENSING SOMEBODY, WE ARE
NOT SAYING WELL THEY'RE ONLY
LICENSED FOR PRO BONO OR
THEY'RE ONLY LICENSED FOR, YOU
KNOW, ADVISE FOREIGN
CORPORATIONS.

WE GIVE THE LICENSE, IS A
PLENARY LICENSE AND YET, WE'LL
BE REPRESENTING TO THE STATE OF
FLORIDA CITIZENS THAT THIS
GENTLEMAN, AS WONDERFUL AS HE
MIGHT BE, IS, HAS FULL
AUTHORITY TO PRACTICE TEST LAW
IN THE COURTS OF THIS STATE.
THAT'S MY, THAT'S MY CONCERN
ABOUT, IT MAY BE SYMBOLIC TO
SOME BUT HAS REAL IMPLICATIONS
FOR OUR REQUIREMENT THAT WE
PROTECT THE PUBLIC AND WHO WE
LICENSE TO PRACTICE LAW.

>> YOUR HONOR, IF THIS
APPLICANT, GIVE HIM A LAW
LICENSE, HE CAN PRACTICE LAW IN

FLORIDA.

THE THING HE CAN NOT DO, HE CAN NOT ACCEPT EMPLOYMENT FOR PRACTICE OF LAW.

>> HOW DOES THAT, WHAT KIND OF OTHER RULES DO WE HAVE TO HAVE? DO WE HAVE TO, I MEAN ARE WE GETTING TO THE POINT THAT WE'RE GOING TO HAVE TO ISSUE RINGS OR BRACELETS OR SOMETHING SO SOMEONE WHO WOULD HIRE HIM BE AWARE THEY MAY BE VIOLATING FLORIDA LAW OR FEDERAL LAW, NOT FLORIDA LAW, BY THE EMPLOYMENT PROCESS?

I MEAN, WE DON'T REQUIRE PEOPLE TO CARRY DOCUMENTATION OF HOW, WHAT I CAN'T OR CAN'T DO AS A LAWYER.

WE HAVE CONDITIONAL ADMITTEES AND THE PUBLIC IS NOT EVEN AWARE THEY ARE CONDITIONALLY ADMITTED BECAUSE IT IS NOT ILLEGAL FOR THEM TO BE PRACTICING.

SEEMS TO ME IF YOU WOULD HIRE SOMEONE WHO IS NOT AUTHORIZED AND UNDER THE FEDERAL PROGRAM, SEEMS TO ME THAT YOU ARE IN VIOLATION OF FEDERAL LAW YOU HIRE THAT PERSON AND PAY THEM MONEY.

ARE YOU NOT? IS THAT --

>> NO, YOUR HONOR.

LET ME SEE IF I CAN ANSWER SEVERAL OF THESE QUESTIONS WITH THIS STATEMENT.

ALL THIS COURT CAN DO IN TERMS OF THIS APPLICANT IS TO GIVE HIM THE CREDENTIALS WHICH HE EARNED.

THAT IS ALL YOU CAN DO.

YOU CAN'T CHANGE FEDERAL LAW.

I'M NOT, INDEED, IF YOU ADMIT MR. GODINEZ HE CAN ONLY DO WHAT FEDERAL LAW PERMITS HIM TO DO.

HE CAN TAKE ON PRO BONO CASES.

HE CAN HAVE OTHER EMPLOYMENT,

TAKE ON PRO BONO CASES.

WE HAVE LAWYERS IN FLORIDA

DOING THAT.

AND THIS FEDERAL LAW PERMITS --

>> HOW WOULD WE POLICE HIM DOING ANYTHING OTHER THAN THAT? THAT'S THE REAL PROBLEM, AS I SEE IT.

WE DON'T GIVE HIM A LICENSE

THAT SAYS, YOU CAN ONLY
PRACTICE PRO BONO.
SO HOW IN THE WORLD WOULD WE
EVER KNOW IF HE IS DOING
SOMETHING OTHER THAN PRACTICING
PRO BONO?

>> YOUR HONOR, YOU HAVE THE
SAME PROCESS YOU WILL HAVE FOR
ANYBODY WHO IS ADMITTED.
IF SOMEBODY BREAKS THE LAW
AFTER THEY HAVE GOT A LAW
LICENSE THEY ARE SUBJECT TO
DISCIPLINE.

THE PERSON HAS NEVER BROKEN THE
LAW.

>> LET ME ASK YOU THIS.
YOU MENTIONED EARLIER THAT HE
IS NOW, PURSUANT IT NEW
EXECUTIVE ORDER, THAT HAS
DECIDED NOT TO PROSECUTE PEOPLE
IN HIS CASE.

HE IS NOW ABLE TO GET A SOCIAL
SECURITY NUMBER.

>> YES, SIR.

>> HE IS NOW ABLE TO GET A WORK
PERMIT, AM I CORRECT?

>> YES, SIR.

>> HOW DOES THAT ASSIST HIM
EVENTUALLY GETTING LEGAL STATUS
IN THIS COUNTRY?

YOU MENTIONED EARLIER BUT FOR
THAT HE WOULD HAVE TO LEAVE THE
COUNTRY FOR 10 YEARS AND THEN
COME BACK AND THEN APPLY FOR
THE RESIDENCY.

HOW DOES THAT HELP HIM IN --

>> FEDERAL LAW IS FULLY
CHANGED.

THERE IS STILL THAT POSSIBILITY
AND WOULD BE THAT POSSIBILITY.
BUT THERE ARE ALWAYS
POSSIBILITIES WHEN YOU ADMIT
PEOPLE.

AND WHEN YOU ADMIT PEOPLE YOU
EXPECT THEM TO FOLLOW THE LAW.

THERE IS NO REASON TO SUGGEST
THAT THIS MANY A CAN'T WHO --

>> WHY WOULD HE BE PERMITTED TO
GET A SOCIAL SECURITY NUMBER IF
HE IS NOT ALLOWED TO WORK?

I CAN'T UNDERSTAND.

THAT'S WHERE I'M HAVING
PROBLEMS.

>> YOUR HONOR, IF HE GET AS
SOCIAL SECURITY NUMBER HE WILL
BE PERMITTED TO WORK.

THAT'S MY POINT ABOUT THE

POLICY ANNOUNCED IN JUNE 15th.
IF HE, IF HE ACCEPTS --
>> MAYBE I'M CONFUSED.
YOU MENTIONED EARLIER BECAUSE
OF THIS NEW EXECUTIVE DECISION
DO NOT PROSECUTE PEOPLE IN HIS
PLACE.
>> YES, SIR.
>> THAT HE IS NOW IN THE PATH
TO BE ABLE TO GET A SOCIAL
SECURITY NUMBER, HE IS ABLE TO
DO THAT NOW?
>> EXACTLY YOUR HONOR.
I'M SORRY I DIDN'T MAKE THAT
CLEAR.
>> IF HE IS ABLE TO GET SOCIAL
SECURITY NUMBER HE IS ABLE TO
WORK?
>> EXACTLY.
>> SHOULD WE DEFER TO LET THE
PROCESS WORK THROUGH RATHER
THAN DOING IT BEFORE?
>> YOUR HONOR, THAT IS CLEARLY
A POSSIBILITY.
I, WHAT WE WOULD RESPECTFULLY
SUBMIT THE BETTER COURSE OF
ACTION WOULD BE TO SAY, THERE'S
A SEGMENT OF THIS QUESTION THAT
RESTS WITH THE FEDERAL
GOVERNMENT.
AND THE FEDERAL GOVERNMENT CAN
ACT IN THAT AREA.
THERE IS A SEGMENT OF THIS
QUESTION WHICH RESTS WITH THIS
COURT.
ARTICLE 5, SECTION 15 SAYS THIS
COURT HAS EXCLUSIVE
JURISDICTION OVER ADMISSION.
>> NOT CONTRARY TO FEDERAL LAW.
I THINK THAT, IF WE START GOING
DOWN THAT
PATH WE'RE IN REAL PROBLEMS
WITH THIS COURT ATTEMPTING TO
OVERRIDE POLICY DETERMINATIONS
AND LAWS ENACTED BY THIS
GOVERNMENT.
UNLESS WE'RE PREPARED TO HOLD
THIS UNCONSTITUTIONAL.
>> I PROMISE WE'RE NOT ASKING
THIS COURT TO ACT CONTRARY TO
FEDERAL LAW.
WE'RE JUST ASKING THIS COURT TO
ACT PURSUANT TO ITS OWN
AUTHORITY.
-- DULY QUALIFIED.
>> YOU SAID, PART OF YOUR
ARGUMENT HERE IS CALLING INTO

QUESTION THE CONSTITUTIONALITY
OF A FEDERAL LAW.
SO YOU BASICALLY WANT US TO, AT
LEAST, IN ONE LINE OF ANALYSIS
YOU GO DOWN, YOU WANT US TO
DETERMINE THAT THE FEDERAL LAW
IS UNCONSTITUTIONAL AND
THEREFORE WE CAN ACT IN
DEFIANCE OF IT, OR WITHOUT
REGARD TO IT BECAUSE IT'S
BUOYED AS UNCONSTITUTIONAL.
ISN'T THAT YOUR POSITION?
I THOUGHT THAT'S WHAT YOU SAID.
>> WE DID NOT ASK YOU TO RULE
ON FEDERAL LAW.
YOU DO NOT HAVE TO RULE ON THE
FEDERAL LAW.
>> UNLESS IT IS UNCONSTITUTIONAL,
WE HAVE TO OBEY IT, DON'T WE?
>> YOUR HONOR, IF YOU DECIDE IT
APPLIES, WE SUBMITTED IT
DOESN'T APPLY.
WE SUBMITTED WE HAVE DOUBTS
ABOUT ITS CONSTITUTIONALITY.
>> I HAVE NOT YET HEARD HOW, AN
EXPLANATION HOW WE'RE NOT
OPERATING UNDER APPROPRIATED
FUNDS.
I HAVE NOT SEEN THAT ARGUED.
>> YOUR HONOR, I'M NOT MAKING
THAT ARGUMENT.
>> WELL, OKAY IF WE'RE
OPERATING UNDER APPROPRIATED
FUNDS AND WE'RE GOING TO ISSUE
THE LICENSE TO PRACTICE TEST
LAW, I DON'T SEE HOW YOU GET
OUT OF THE FORCE OF THAT
STATUTE UNLESS, AS YOU DID, YOU
TAKE THE POSITION THAT IT'S
UNCONSTITUTIONAL.
THAT SEEMS LIKE TO BE A
PREDICATE FOR US TO ACCEPT YOUR
POSITION ON THAT PART OF THE
ANALYSIS.
>> YOUR HONOR, I THINK, THERE'S
ANOTHER STEP HERE YOU SHOULD
LOOK AT AND THAT IS, A STATE
AGENCY --
>> THAT IS ALTERNATIVE.
IF I UNDERSTAND THE STATUTE
CORRECTLY, THERE ARE TWO
DIFFERENT, TWO DIFFERENT THINGS
WE'RE TALKING ABOUT.
TALKING ABOUT ACTION BY A STATE
AGENCY AND WE'RE TALKING ABOUT
ACTION PURSUANT TO APPROPRIATED
FUNDS.

NOW, YOU'VE GOT YOUR ARGUMENT
ON STATE AGENCY AND WHETHER
WE'RE THAT, MAYBE THAT IS MORE
ARGUABLE.

I DON'T UNDERSTAND THE ARGUMENT
ABOUT APPROPRIATED FUNDS.

>> YOUR HONOR, PERHAPS I'M
MISREADING THE STATUTE BUT I
THOUGHT IT WAS A STATE AGENCY
ACTING WITH APPROPRIATED FUNDS.
IN ANY EVENT ON THE STATE
AGENCY SHOULD LOOK AT THE BRIEF
OF THE DEPARTMENT OF JUSTICE.

>> CERTAINLY NOT WHAT THE
DEPARTMENT OF JUSTICE THINKS --
>> THE DEPARTMENT OF JUSTICE
SAYS COURTS ARE NOT STATE
AGENCIES.

>> BUT IF I REMEMBER CORRECTLY,
THEY SAY, WELL, EVEN IF THEY
ARE, THEY'RE STILL THE,
CALIFORNIA SUPREME COURT AT
LEAST IS OPERATING UNDER
APPROPRIATED FUND AND WOULD BE
CAUGHT BY THAT PART OF THE
STATUTE.

WHAT AM I MISSING?

>> YOUR HONOR, I THINK, FIRST
OF ALL, THE QUESTION ABOUT
WHETHER IT IS WITHIN THE POWER
OF CONGRESS TO DICTATE TO THIS
COURT --

>> GET BACK TO THE QUESTION OF
CONSTITUTIONALITY.

>> THAT IS CONSTITUTIONAL
QUESTION BUT, YOUR HONOR, DO WE
ON A NEED TO REACH THIS?
WE NOW HAVE GOT A FEDERAL
POLICY WHICH GIVES THIS
APPLICANT A PATH TO GET A WORK
PERMIT. TO GET A SOCIAL SECURITY
NUMBER.

WHAT MORE DO WE NEED?

>> IF YOU GOT A SOCIAL SECURITY
NUMBER, IF YOU HAVE IT, HE IS
ABLE TO OBTAIN A SOCIAL
SECURITY NUMBER, THEN WHAT IS
THE ISSUE HERE?

>> YOUR HONOR, YOU JUST SUMMED
UP MY ARGUMENT.

>> IT SEEMS TO ME BECAUSE I
HEARD IN THE CONVERSATION HERE
TODAY YOU SAID, HE HAS TO BE A
U.S. CITIZEN.

ONE DOES NOT HAVE TO BE A
UNITED STATES CITIZEN TO BE A
MEMBER OF THE FLORIDA BAR, DOES

ONE?

>> THAT'S CORRECT.

>> SO, I MEAN SOMEONE WORKING FOR GREENBERG TAURIG IN BUENOS AIRES WHO NEVER PLANS TO STEP IN THE UNITED STATES CAN BECOME A MEMBER OF THE FLORIDA BAR IF HE MEETS ALL THE OTHER REQUIREMENTS.

>> MEETS ALL THE QUALIFICATIONS, YES, SIR.

>> DON'T HAVE TO BE A CITIZEN. IF HE IS AFFORDED A SOCIAL SECURITY CARD WHICH MEANS HE CAN WORK, THEN WHAT'S THE ISSUE?

>> YOUR HONOR, AND I HAVE BEEN SO INARTICULATE, I'M TO NOT EVEN TO MAKE THAT POINT.

>> YOUR POINT THEN, ONCE HE GETS A SOCIAL SECURITY NUMBER, THEN THERE IS NO OBSTACLE TO HIM GETTING A LICENSE TO PRACTICE LAW IN THE STATE?

>> THAT'S CORRECT, YOUR HONOR.

>> WHETHER HE GET AS SOCIAL SECURITY NUMBER OR NOT IS A FEDERAL QUESTION, A FEDERAL ISSUE.

>> AND THE FEDERAL POLICY NOW ALLOWS HIM A PATH TO THAT VERY OBJECTIVE.

>> HOW LONG WOULD IT TAKE TO GET THE SOCIAL SECURITY NUMBER.

>> I'M SORRY, YOUR HONOR?

>> HOW LONG WOULD THIS PROCESS TAKE?

>> YOU KNOW, YOUR HONOR, I WISH I COULD ANSWER THAT QUESTION. PEOPLE WHO FILE ON THE FIRST DAY OF THE APPLICATION FOR BEING RECEIVED ARE ALREADY BEGINNING TO RECEIVE THEIR APPROVALS.

SO WE ANTICIPATE IT WILL BE QUITE SOON.

>> SO IF WE DECIDED CONDITIONALLY, BASED UPON HIM SATISFYING THE FEDERAL REQUIREMENT, SHOULDN'T BE A PROBLEM UNLESS THERE IS OTHERWISE CHARACTER OR FITNESS ISSUE?

>> YOUR HONOR, I THINK THAT'S CORRECT.

WE, WE DON'T EVEN WANT TO WAIT THAT LONG.

WE THINK, HERE'S SOMEBODY WHO HAS COMPLIED WITH EVERY EXISTING RULE AND SHOULD BE GIVEN HIS LICENSE BUT THE POINT YOU MAKE AND THE POINT THAT JUSTICE LABARGA MAKE ARE QUITE SOUND.

>> I'M CONCERNED BECAUSE I'M NOT AWARE OF A CATEGORY BAR FOR THE FOREIGN ATTORNEYS TO HAVE FULL ACCESS TO PRACTICE IN FLORIDA.

WE HAVE A SPECIAL PROVISION AND SPECIAL SECTION FOR FOREIGN COUNSEL TO CONSULT ON FOREIGN MATTERS.

>> THAT'S CORRECT, YOUR HONOR.

>> THAT'S NOT WHAT WE'RE TALKING ABOUT TODAY.

>> YOUR HONOR, WE'RE TALKING ABOUT A PERSON LEGALLY IN THIS COUNTRY AND NOT YET A CITIZEN, GOES TO ABA ACCREDITED LAW SCHOOL, DEMONSTRATES GOOD CHARACTER AND FITNESS. TAKES AND PASSES THE BAR EXAM.

>> YOU ARE ENTITLED TO BE HERE.

>> THAT PERSON WOULD BE ADMITTED IN PRACTICAL TERMS. THAT IS EXACTLY WHERE MR. GODINEZ.

>> HE IS NOT IN THAT SAME CATEGORY, THOSE IN THE STATUS CAN BE HERE THERE IS NOT IMPEDIMENT.

IF DO NOT HAVE THAT STATUS YOU FALL WITHIN THE OTHER CATEGORY?

>> YOUR HONOR, WHERE HE CAN NOW WORK.

>> WE'RE NOT THERE YET AS I UNDERSTAND IT.

THERE IS PROCESS THAT IS AVAILABLE.

IS THAT GUARANTEED?

IS THAT WHAT YOU'RE SAYING?

>> NO, YOUR HONOR.

>> THAT COMES BACK, HAVE YOU EVER SEEN A COURT, OPERATE MAKE A RULING WHAT MAY HAPPEN DOWN THE ROAD?

>> YOUR HONOR, IN TERMS OF ADMISSION THE WAY THE COURT IS ASKING QUESTIONS YOU DO THAT EVERY TIME YOU ADMIT SOMEBODY TO THE BAR.

NOT EVERYBODY ADMITTED TO BAR COMPLIES WITH ALL THE RULES AND

STAYS A MEMBER OF THE BAR.
IN THIS INSTANCE YOU HAVE
SOMEBODY THAT HAS ADMITTED
QUALIFICATIONS.
HE DEMONSTRATED HIS COMPETENCE.
HE DEMONSTRATED HIS CHARACTER
AND FITNESS.
>> GONE THROUGH ALL THE
CHARACTER AND FITNESS
REQUIREMENTS?
PASSED THE CHARACTER AND
FITNESS?
>> YOUR HONOR, I DON'T WANT TO
OVERSTATE THIS BUT I THINK,
MY BROTHER WOULD
DEMONSTRATE TO THE COURT THERE
ARE NO ISSUES OF CHARACTER AND
FITNESS.
>> YOU'RE TALKING ABOUT ONE
PERSON OVER A 4-YEAR PERIOD NOW
IN A UNIQUE POSITION BECAUSE OF
WHAT, THE CHANGE OF THE POLICY
IN JUNE THAT MAY OR MAY NOT
CONTINUE AFTER NOVEMBER.
AND IT JUST STRIKES ME THAT THE
BETTER THING HERE WOULD BE,
EITHER GET THE DEPARTMENT OF
JUST TEST TO PROVIDE THE COURT
WITH INFORMATION OR LET THIS GO
THROUGH WITH THIS PARTICULAR
PERSON GOING AND COMPLETING HIS
CHARACTER AND FITNESS AND THEN
HAVING IT REPORTED BACK BECAUSE
WE'RE ONLY DEALING RIGHT NOW
WITH ONE PERSON.
SOMEBODY TRYING TO MAKE IT A
LITERALLY A FEDERAL CASE BUT
WE'RE TALKING ABOUT ONE PERSON
RIGHT NOW OUT OF THOUSANDS
EVERY YEAR. CORRECT?
THAT SEEK ADMISSION.
>> MAKE SURE I UNDERSTAND YOUR
QUESTION.
THERE IS NO PENDING CHARACTER
AND FITNESS ISSUE.
>> HE PASSED IT?
>> THE BOARD HAS FINISHED THAT
EXAMINATION AND A DOCUMENT,
OFFERED BY THE BOARD HAS BEEN
FILED.
>> WAS A PART OF THE CHARACTER
AND FITNESS.
I THOUGHT ISSUE OF HIM BEING
HERE ILLEGALLY WAS A PART OF
THEIR CHARACTER AND FITNESS
ANALYSIS?
>> YOUR HONOR, I'M QUITE

CONFIDENT IT WAS.
BUT THE BOARD HAS ANNOUNCED IT
HAS NO MORE CHARACTER AND
FITNESS QUESTIONS RELATING.
>> KEPT FOR THIS ONE, EXCEPT
FOR THIS ONE QUESTION?
>> THAT IS NOT A CHARACTER AND
FITNESS QUESTION, YOUR HONOR.
IT IS A QUESTION WHETHER YOU
WANT TO DRAW A BRIGHT LINE
SAYING SOMEONE WHO ENTERED THIS
COUNTRY WHEN THEY'RE NINE YEARS
OLD, WHEN THEY WERE A CHILD,
ELECTED, ENTERED ILLEGALLY --
LEGALLY, STAYED WITH THEIR
FAMILY AFTER VISA EXPIRED.
DAYS WHEN THEY HAD NO IDEA
PARTICULARLY WHAT A VISA WAS.
THAT PERSON WILL BE BARRED FROM
ADMISSION TO THE FLORIDA BAR.
AND WE RESPECTFULLY SUBMIT THE
ANSWER TO THAT QUESTION SHOULD
BE NO BARRIER.
>> THANK YOU.
>> THANK YOU, YOUR HONOR.
>> MR. BLYTHE, I HAVE TWO
QUESTIONS.
HAS HE PASSED THE CHARACTER AND
FITNESS REQUIREMENTS OTHER THAN
THIS ONE THAT SOME OF US THINK
ARE BIG, OTHERS THINK NOT,
WHATEVER THAT IS PENDING BEFORE
US?
>> YES, MA'AM.
THE BOARD HAS REVIEWED THE
APPLICANT'S FILE.
THE ISSUES THAT WERE RAISED IN
THE CHARACTER AND FITNESS
BACKGROUND CHECK THE BOARD
DETERMINED THE ONES THEY
CONSIDERED WERE NOT
DISQUALIFIED FOR ADMISSION BUT
FOR THIS QUESTION THAT HAS BEEN
PRESENTED TO THE COURT.
>> DOES THE BOARD, I'M LOOKING
AT AUTHORIZED LEGAL AID
PRACTITIONER'S RULE CHAPTER 13,
EMERITUS ATTORNEY PRO BONO
PROGRAM.
HAS THE BOARD CONSIDERED
PERHAPS, AGAIN I DON'T KNOW IF
WE'RE TALKING ABOUT A CLASS OF
ONE, THAT IF WE'RE REALLY
TALKING ABOUT SOMEBODY THAT
MIGHT BE ABLE TO STAY IN THIS
COUNTRY BUT NOT BE ABLE TO EARN
A LIVING BUT CAN PROVIDE

SERVICES PRO BONO, THAT THERE SHOULD BE SOME AMENDMENT TO ONE OF THE RULES THAT DOESN'T PROVIDE FOR FULL MEMBERSHIP IN THE FLORIDA BAR BUT ALLOWS THEM TO DO RESTRICTED WORK UNTIL THE FEDERAL GOVERNMENT MAKES A DECISION?

THEN AT THAT POINT WE'RE REALLY NOT GRANTING HIM THE ABILITY TO FULLY PRACTICE LAW?

HAS THAT BEEN THOUGHT ABOUT? BECAUSE I'M LOOKING WHAT WE DO WITH LEGAL AID PRACTITIONERS AND EMERITUS ATTORNEYS AND WE DON'T GIVE THEM FULL LICENSES TO PRACTICE LAW BECAUSE THEY'RE OBVIOUSLY, STUDENTS AREN'T YET MEMBERS BUT FOR THOSE ATTORNEYS WHO ARE RETIRED.

SO HAS THAT BEEN THOUGHT OF?

>> NO, THE BOARD HAS NOT CONSIDERED THAT BUT THAT CERTAINLY MIGHT BE A POSSIBILITY.

ONE OF THE THINGS THAT I HAVE HEARD MENTIONED IN THE CONTEXT OF THE PLENARY LICENSE THAT IS GRANTED TO PRACTICE LAW IS THAT THIS COURT DOESN'T, DOESN'T LICENSE LAWYERS TO BE COPILOTS. WHEN YOU GIVE A LICENSE, YOU ARE SAYING THERE IS NO LIMITATION ON WHAT THAT INDIVIDUAL CAN DO WITH THAT LICENSE WITHIN OBVIOUSLY THE PARAMETERS OF THE LICENSE.

YOU DON'T ISSUE A LICENSE JUST TO DO LITIGATION OR JUST TO DO TRANSACTION OR JUST TO DO PRO BONO OR ANY OF THOSE SORTS OF THINGS AND THAT'S WHERE I GET BACK TO MY, THE POINT THAT, WELL, I UNDERSTAND MY COLLEAGUE FOCUSING ON THIS PARTICULAR APPLICANT, AND THE FACTS OF HIS PARTICULAR CASE.

WHAT THE BOARD HAS COME TO THIS COURT FOR IS AN ADVISORY OPINION.

THE BOARD HAS NOT ADOPTED A POLICY THAT UNDOCUMENTED IMMIGRANTS CAN NOT BE ADMITTED TO THE BAR.

WHAT WE'RE ASKING THE COURT IS, IS THAT A RULE THAT YOU WANT TO PUT IN PLACE?

PERHAPS IF YOUR ANSWER TO THAT IS YES, IT MAY BE APPROPRIATE AT THAT POINT FOR THE COURT TO INSTRUCT THE BOARD TO FILE A PETITION TO CHANGE THE RULES SO THAT WE GO THROUGH THE RULE-MAKING PROCESS, TO BRING THAT ABOUT.

BUT WHILE WE HAVE FOCUSED A LOT ON THIS PARTICULAR INDIVIDUAL, I JUST WANT TO STRESS FROM THE BOARD'S PERSPECTIVE, THIS CASE IS ABOUT THAT BRIGHT-LINE RULE AND NOT JUST ONE --

>> JUST TO MAKE SURE.

THERE IS NO QUESTION THAT SOMEONE WHO IS A LAWFUL RESIDENT OF THIS STATE, CAN RECEIVE A LAW LICENSE; IS THAT CORRECT?

>> YES, MA'AM.

>> WE'RE REALLY ONLY TALKING ABOUT SOMEBODY, IS NOT WHETHER WE CALL IT ILLEGAL, UNLAWFUL, IS NOT LAWFULLY A RESIDENT OF THE STATE OR IT COUNTRY?

>> CORRECT.

>> LET ME ASK YOU, IN THIS PARTICULAR INSTANCE, IS THERE ANY PROBLEM WITH, OF HOW LONG HIS BAR SCORES WILL BE VALID. I CAN'T REMEMBER WHAT YEAR HE ACTUALLY PASSED THE BAR?

>> MY RECOLLECTION HE PASSED THE GENERAL BAR EXAMINATION IN JULY OF 2011.

I DON'T RECALL WHEN HE PASSED THE MPRE BUT THE BAR EXAM SCORES ARE GOOD FOR FIVE YEARS. IT IS AT LEAST UNTIL JULY OF 2016.

WHEN HE PASSED THE MPRE MIGHT HAVE LONGER.

>> DID HE ASK FOR AN EXTENSION?

>> HE CAN PETITION THE COURT FOR AN EXTENSION AND PEOPLE CERTAINLY HAVE DONE THAT.

YES.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.