

**PROPOSED REVISIONS TO THE RULES GOVERNING ADMISSION TO THE BAR
PROPOSAL 2018-006**

An amendment to Rule 15-103(B)(7) NMRA has been proposed for consideration by the Supreme Court.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 11, 2018, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

15-103. Qualifications.

A. **Requirements mandatory.** License to practice law shall be granted only to applicants who fulfill all of the requirements of these rules.

B. **Qualifications.** Every person seeking admission to practice law in New Mexico shall file a formal application as prescribed by these rules and as required by the board. Submission of the application shall constitute submission by the applicant to the jurisdiction of the New Mexico Board of Bar Examiners until a final determination upon admission of the applicant may be completed. Every applicant shall have the burden of establishing to the satisfaction of the board that the applicant possesses all of the following qualifications:

- (1) is at least eighteen (18) years of age;
- (2) is a graduate with a juris doctor or bachelor of laws and letters degree (at the time of the bar examination for which application is made or at the time of application for admission by transferred Uniform Bar Examination (UBE) score) of a law school formally accredited by the American Bar Association or is a graduate of any law school who has been engaged in the practice of law in another state or states for at least four (4) of the six (6) years immediately preceding the person's application for admission to practice in New Mexico;
- (3) is a person of good moral character, physically and mentally fit to practice law;
- (4) is, if ever admitted to practice in any other state or states, in good standing in such state or states;
- (5) is professionally qualified for admission to the bar of New Mexico;
- (6) is in compliance with all child support and spousal support obligations imposed under a "judgment and order for support" as defined in the Parental Responsibility Act,

Sections 40-5A-1 through 40-5A-13 NMSA 1978, or imposed under a child support or spousal support order entered by any other court of competent jurisdiction. If an applicant is not in compliance with a child support or spousal support obligation, the applicant will not be recommended for admission to the bar until the applicant provides the board with evidence that the applicant is in compliance with the judgment or order. If the applicant has appeared on the Human Services Department's certified list of obligors, the applicant shall submit a certified statement from the Human Services Department that the applicant is in compliance with the judgment and order for support. In all other cases, the applicant shall provide evidence acceptable to the board of compliance with all applicable child and spousal support orders; and

(7) is a citizen or national of the United States, an immigrant alien lawfully admitted for permanent residence in the United States, [or] an alien otherwise authorized to work lawfully in the United States; or an individual otherwise residing in the United States. The Supreme Court may admit an applicant who is not lawfully present in the United States who is otherwise eligible for admission to practice law under this rule subject to the condition that the applicant have a contingent plan in the event of an inability to practice law in a form approved by the Lawyers Succession and Transition Committee.

C. Character and fitness standards and investigation.

(1) The purpose of character and fitness investigation before admission to the Bar is to assure the protection of the public and to safeguard the justice system.

(2) The applicant bears the burden of proving good character in support of the application.

(3) The revelation or discovery of any of the following may be treated as cause for further inquiry before the board determines whether the applicant possesses the character and fitness to practice law:

(a) unlawful conduct;

(b) academic misconduct;

(c) misconduct in employment;

(d) acts involving dishonesty, fraud, deceit, or misrepresentation;

(e) acts which demonstrate disregard for the rights or welfare of others;

(f) abuse of legal process, including the filing of vexatious or frivolous lawsuits;

(g) neglect of financial responsibilities or professional obligations;

(h) violation of an order of a court, including child support orders;

(i) conduct that evidences current mental or emotional instability that may impair the ability to practice law;

(j) conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;

(k) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(l) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(m) making of false statements, including omissions, on bar applications in this state or any other jurisdiction; or

(n) as otherwise determined by the board for just and good cause.

(4) The board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors

should be considered in assigning weight and significance to prior conduct:

- (a) the applicant's age at the time of the conduct;
- (b) the recency of the conduct;
- (c) the reliability of the information concerning the conduct;
- (d) the seriousness of the conduct;
- (e) the factors underlying the conduct;
- (f) the cumulative effect of the conduct or information;
- (g) the evidence of rehabilitation;
- (h) the applicant's positive social contributions since the conduct;
- (i) the applicant's candor in the admissions process; and
- (j) the materiality of any omissions or misrepresentations.

(5) The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the board or the Court.

D. **Conviction; rehabilitation.** A person who has been convicted of a serious crime as defined under these rules shall prove good moral character by demonstrating by clear and convincing evidence that the applicant is rehabilitated and satisfies all other requirements for good moral character.

E. **Examination.** Except as otherwise provided with respect to law faculty at the University of New Mexico and applicants for admission by motion under Rule 15-107 NMRA, all applicants shall be required to take and pass the bar examination in New Mexico or meet the requirements of these rules for admission by transferred Uniform Bar Examination score.

F. **Ethics Exam.** Applicants must receive a minimum scaled score of eighty (80) on the Multistate Professional Responsibility Examination (MPRE) prepared and administered by the National Conference of Bar Examiners to be eligible for admission. Applicant must pass the MPRE within one (1) year after the date of notification that the applicant has passed the bar examination or within one (1) year after the date of administration of the Uniform Bar Examination in which a transferred score was earned. For purposes of this paragraph, the date of the notification shall be the date notification is mailed to the applicant by the secretary of the board.

G. **Course on New Mexico law.** All applicants must submit evidence of in-person attendance at, and successful completion of, a course approved by the Supreme Court, which shall include Indian law, New Mexico community property law, and professionalism, within three (3) years prior to being approved for admission.

[As amended, effective November 14, 1988; July 24, 1996; as amended by Supreme Court Order No. 05-8300-010, effective September 1, 2005; by Supreme Court Order No. 08-8300-028, effective for the February 2009 bar examination; as amended by Supreme Court Order No. 14-8300-001, effective June 1, 2015; as amended by Supreme Court Order No. 15-8300-018, effective November 1, 2015; as amended by Supreme Court Order No. 17-8300-022, effective December 31, 2017; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — The requirements of this rule are intended to assist the Board in assessing whether an applicant has demonstrated

- (a) the ability to reason, recall complex factual information and integrate that information with complex legal theories;
- (b) the ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;
- (c) the ability to use good judgment on behalf of clients and in conducting one's

professional business;

(d) the ability to conduct oneself with respect for and in accordance with the law;

(e) the ability to avoid acts that exhibit disregard for the rights, health, safety and welfare of others;

(f) the ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;

(g) the ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts and others; and

(h) the ability to comply with deadlines and time constraints.

[Adopted by Supreme Court Order No. 10-8300-018, effective July 4, 2010.]

Your Name
James R Wood

Phone Number
5055048254

Email
jimwoodjr@gmail.com

Proposal Number
2018-006

Comment

I think that it is inconsistent, unwise, and detrimental to the profession to admit someone to the bar as an officer of the court sworn to uphold the law who is by federal statute in continuing violation of federal law. I am opposed to this modification.

SUPREME COURT OF NEW MEXICO
FILED

MAR 12 2018

A handwritten signature in black ink, appearing to be "JRW", is written over the date stamp.

Your Name
Philip B Davis

Phone Number
5052421904

Email
phil@davislawnm.com

Proposal Number
2018-006

Comment

Comment attached

Upload
2018 03 16 Comment re Proposed Rule 15-103.docx

SUPREME COURT OF NEW MEXICO
FILED

MAR 16 2018

A handwritten signature in black ink, appearing to be 'PBD', is written over the date stamp.

I support the proposed amendment to Rule 15-103. It comports with notions of federalism and the right of the states, and in this case, our State's highest court, to determine for itself the standards by which an applicant for admission to the bar will be considered. It also comports with the Court's – and what should be our legal profession's - recognition of the dignity of persons separate and apart from their immigration status under federal law.

Rule 15-103(C)(3) provides a litany of wrongful actions that do not necessarily disqualify an applicant from consideration for admission but merit further inquiry by the court before admission will be granted. Many of the actions listed include conduct anathema to what is expected of the members of our legal profession, such as “unlawful conduct; ... acts involving dishonesty, fraud, deceit, or misrepresentation; ... acts which demonstrate disregard for the rights or welfare of others; ... abuse of legal process, including the filing of vexatious or frivolous lawsuits; ... neglect of financial responsibilities or professional obligations; ... violation of an order of a court...;” and, “making of false statements, including omissions, on bar applications in this state or any other jurisdiction” Id.

On the other hand, when an individual “is not lawfully present in the United States,” Rule 15-103(B)(7) (as proposed), that reflects a status offense, which may or may not be a result of misconduct or malfeasance as opposed to an accident of birth. If the Supreme Court has established in Rule 15-103(C) that persons who have engaged in the sorts of misconduct and malfeasance listed above may nevertheless be considered for admission to the bar, it defies reason to understand how or why a person whose only unlawful conduct may derive from his or her status, through no fault or actions of his or her own, should be denied on that basis alone the opportunity to seek admission to the bar.

The requirement in proposed Rule 15-103(B)(7) of a contingent succession plan is redundant of the obligation that will be imposed on all members of the Bar by new Rule 16-119 should it be approved and adopted by the Court.

SUPREME COURT OF NEW MEXICO
FILED

MAR 16 2018

A handwritten signature in black ink, appearing to be the initials 'JPA' followed by a horizontal line.

I support the proposed revision to Rule 15-103 permitting undocumented immigrants to become members of the New Mexico Bar. People who have come to this country, built a life for themselves and their families, and who are qualified to become attorneys should be permitted to practice law in New Mexico. These are valuable members of our society whose basic human dignity should be respected. We give people who have committed crimes the opportunity to become members of the bar. We should not keep people out simply because they were born elsewhere.

Alexandra Freedman Smith

SUPREME COURT OF NEW MEXICO
FILED

MAR 16 2018

A handwritten signature in black ink, appearing to be 'AFS', written over the date stamp.

Your Name
Israel Chavez

Phone Number
5056393900

Email
chavezis@law.unm.edu

Proposal Number
Proposal 2018-006

Comment

I am wholly in favor of this proposed rule change. It is fair and it is just. As a law student, this rule represents everything that brought me to law school. As the grandson of bracero workers from Dona Ana County, I believe that immigrant people should be afforded every opportunity we can provide. I applaud the New Mexico Supreme Court for making this move.

SUPREME COURT OF NEW MEXICO
FILED

MAR 20 2018

A handwritten signature in black ink, appearing to be 'IAC', is written over the date stamp.

Your Name
Christopher Elam

Phone Number
5053776161

Email
ElamCh@law.unm.edu

Proposal Number
2018-006

Comment

I am attaching my "off the cuff" thoughts on the matter of 2018-006 Immigration Status on Bar Application.

In short, I am against the said proposal based on the principle of law. While acknowledging the country has a significant issue to overcome with immigration, I think emotion must be removed from the equation to allow an equitable legal system to prevail.

I am happy to follow up with a more thorough brief or comments upon request.

SUPREME COURT OF NEW MEXICO
FILED

MAR 20 2018



MAR 20 2018

Comments for 2018-006, Immigration Status of Bar Applicants



Having lawyers admitted to the bar while in violation of federal law is hypocritical and violates the core principal of law. I am not anti-immigration, but I am in support of enforcing the law of the land. On the contrary, I welcome people to this country to pursue this amazing thing called the American dream. However, those who have come to this country of their own will, or other circumstances, without going through the proper immigration system are here against the law. The issue of DACA, dreamers, or any other description of people that are here illegally is a political hot potato. But as citizens, especially in the legal community, we must lead with principle rather than emotion.

In the application, a member must be in "good standing" for child and spousal support, or they cannot enter the bar. Yet, the proposed changes suggest that someone who is not in "good standing" with the entry requirements into the US is an acceptable standard. Ironically, the next paragraph in the application is "C. Character and Fitness Standards..." I'd call your attention to paragraph C.3.a. "unlawful conduct" which triggers possible investigation on whether one is fit to practice law. If the principle is to allow violation of laws for immigration, are other laws of equal or lesser severity allowed the same "free pass" if the applicant is a "good guy." As long as my fine isn't greater than an illegal entrant's fine, and my first offense isn't greater than 6 months in prison (like a first time illegal entrant), I guess the bar will look the other way. But what about repeat offenders? Someone who is deported then reenters as a repeat offender gets fined again and up to two years in prison. So, I can do all crimes up to a two-year sentence?

Additionally, "...an individual otherwise residing in the United States..." is a very broad category. This goes far beyond "dreamers." That language suggests that anyone who can set one foot in the US, assuming they are otherwise of good character, can then apply for the bar assuming they can meet the other criteria. It's one thing to have sympathy and compassion for people who have lived here for years (yet still wrong, legally), but it's another thing to set absolutely no other litmus test for admission to the bar other than "...individual otherwise residing..."

By the way, what kind of lawyers are we talking about letting into the bar? People who will work for the district attorney's office? The Attorney General's office? That would be interesting to see people who are violating the law each day they remain in the country illegally prosecuting people for offenses that have punishments less than what the prosecuting attorney deserves. If an officer of the court is sworn in and swears to tell the truth, the whole truth, does his status break that oath? Does the illegal lawyer have an allegiance to another country? Does that mean they do not bear true faith and allegiance to the US? If this lawyer is successful, can they be appointed to the bench? Can that judge rule on immigration cases? This slippery slope never ends and is why this process must remain founded in principle, not emotion.

Your Name
Jessica Perez

Phone Number
5754415181

Email
perezje@law.unm.edu

Proposal Number
2018-006

Comment

This revision to the rules governing admission to the bar is a fantastic revision that will benefit New Mexico. It will help current law students questioning what will happen to them with what is currently going on with DACA as well as open New Mexico up as a job market for individuals who could be fantastic admissions to our state bar but otherwise were prohibited on joining a state bar due to immigration status.

SUPREME COURT OF NEW MEXICO
FILED

MAR 21 2018

A handwritten signature in black ink, appearing to be 'JPA', is written over the date stamp.

So if illegals are permitted to practice law in N.M., will our Supreme Court also mandate that the illegal has to notify his client, IN WRITING, that he is in the country illegally and is subject to deportation? Knowing that my attorney might be deported mid representation seems like important information that a client should have. If full disclosure of this material fact is not made, prospective cautious clients would need to ask ALL N.M. attorneys for proof of U.S. citizenship or legal alien status before retaining them.

Charles Sullivan
Albuquerque

SUPREME COURT OF NEW MEXICO
FILED

MAR 21 2018

A handwritten signature in black ink, appearing to be "C. Sullivan", written over the date stamp.



New Mexico
Courts

[nmsupremecourtclerk-grp] Re: comment on proposal 2018-006

1 message

Michael G Rosenberg <mgr@lobo.net>

Wed, Mar 21, 2018 at 2:02 PM

Reply-To: mgr@lobo.net

To: Charles Sullivan <cwsullivan505@yahoo.com>, nmsupremecourtclerk@nmcourts.gov

Send your comment in and copy us. I will copy you my comments when I send them in. MGR

SUPREME COURT OF NEW MEXICO
FILED

MAR 21 2018

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Charles Sullivan <cwsullivan505@yahoo.com>

Date: 3/21/18 12:17 PM (GMT-07:00)

To: nmsupremecourtclerk@nmcourts.gov

Subject: comment on proposal 2018-006

So if illegals are permitted to practice law in N.M., will our Supreme Court also mandate that the illegal has to notify his client, IN WRITING, that he is in the country illegally and is subject to deportation? Knowing that my attorney might be deported mid representation seems like important information that a client should have. If full disclosure of this material fact is not made , prospective cautious clients would need to ask ALL N.M. attorneys for proof of U.S. citizenship or legal alien status before retaining them.

Charles Sullivan
Albuquerque

MAR 21 2018



Rules Committee
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504

To Rules Committee Members:

I am writing to express my support for Proposed Rule Change 2018-006 – Immigration Status of Bar Applicants. The concern which I believe is the most apparent is that the change appears to authorize undocumented immigrants to work within the United States without a work permit and therefore against federal law. However, a review of the pertinent federal law demonstrates that undocumented immigrants can in fact work so long as they do not enter a traditional employer/employee situation. See 8 U.S.C. §1324a (prohibiting a person or other entity to hire an alien for employment or continue to employ an alien, “knowing the alien is an unauthorized alien.”); 8 C.F.R. § 274a.1 (f-g) (excluding independent contracting and casual employment from the definition of “employee” and “employer”). Under federal law an undocumented immigrant who is granted a license to practice law would not be able to work for a firm, non-profit, or governmental agency. However, they would be permitted to do pro bono work, work as an independent contractor, establish a solo law practice, or provide legal advice outside of the United States. As an undocumented immigrant would be able to legally work within the United States in these ways, I see no reason to deny them a license to practice law purely due to their immigration status especially as the proposed rule requires them to have a plan in place for the possibility of deportation.

In addition, the American Bar Association recently passed a resolution “support[ing] the principle that bar admission should not be denied based solely on immigration status.” American Bar Association [ABA], Resolution 108 (Aug. 14-15, 2018) <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolution%20108.pdf>. In addition, the resolution urged Congress to amend 8 U.S.C. § 1621(d) to allow state courts to “permit an undocumented alien seeking legal status to obtain a professional license to practice law in that jurisdiction.” *Id.* The ABA resolution supports the proposed New Mexico rule change. Therefore, I whole heartedly support Proposed Rule 2018-006 and the many undocumented immigrants within the United States who deserve a chance to be successful here, no matter how they came to be here.

Sincerely,

Anne Bruno
J.D. Candidate, Class of 2019
University of New Mexico School of Law

Your Name
James R Lancaster, III

Phone Number
5756498102

Email
aronybbob@aol.com

Proposal Number
2018-006

Comment

I believe that it is ridiculous that we would consider allowing someone who is perpetually in violation of the law to be an officer of the court. How can someone who is technically a criminal be trusted to represent the law?

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be 'CJM', is written over the date stamp.



New Mexico
Courts

[nmsupremecourtclerk-grp] Changing law for undocumented people

1 message

'Susan' via nmsupremecourtclerk <nmsupremecourtclerk-grp@nmcourts.gov>

Fri, Mar 23, 2018 at 8:51 AM

Reply-To: susancmeredith@yahoo.com

To: nmsupremecourtclerk@nmcourts.gov

I appeal to you NOT to approve illegal undocumented people be allowed to practice law in NM. This is a violation of the law.

Thank you,
Susan C. Meredith

Sent from my iPad

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be "CPA" followed by a horizontal line.

Your Name
Timothy King

Phone Number
5053504887

Email
tsking@unm.edu

Proposal Number
2018-006

Comment

The proposed change for qualifications under section 15-103. Qualifications B. Qualifications. (7) to "admit an applicant who is not lawfully present in the United States who is otherwise eligible for admission to practice law" should not be allowed, as all officers of the court are sworn to uphold the laws of the United States of America, as well as those of the state of New Mexico. Allowing this change would not only violate the laws of the nation by the applicant, but also by the members of the NM Supreme Court who allow this to happen.

Furthermore, an applicant who is not lawfully present in the United States is also in violation of section 15-103. Qualifications C. Character and fitness standards and investigation.(3) (a) unlawful conduct; (d) acts involving dishonesty, fraud, deceit, or misrepresentation; (e) acts which demonstrate disregard for the rights or welfare of others; (f) abuse of legal process.

How can this proposal be reconciled with the above facts?

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018





New Mexico
Courts

[nmsupremecourtclerk-grp] Allowing Illegal Immigrants to Practice Law

1 message

'Dawn Lowe' via nmsupremecourtclerk <nmsupremecourtclerk-grp@nmcourts.gov>

Fri, Mar 23, 2018 at 9:30 AM

Reply-To: ddlowe911@yahoo.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Hello,

We wish to comment on the court's consideration of allowing ILLEGAL immigrants to practice law. First and foremost, the issue explains itself. It is not ethical to allow someone in the process of breaking the law to now make a living practicing and defending the law. Secondly, this is a slippery slope. If we allow ILLEGALS special consideration for such, it will not end there. By allowing this, you will essentially dissolve the entire immigration legal status all together.

We appreciate all that these young people have gone through to gain a law degree however, if they are that committed to serving in our country, they need to follow the proper channels to LEGALLY OBTAIN CITIZENSHIP.

We respectfully request your consider our input in this matter.

Thank you,

Daniel and Dawn Lowe

Albuquerque, NM

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be "D. Lowe", written over the date stamp.



New Mexico
Courts

[nmsupremecourtclerk-grp] illegal lawyers being able to practice law in nm

1 message

Molly Mora <mollymora23@gmail.com>
Reply-To: mollymora23@gmail.com
To: nmsupremecourtclerk@nmcourts.gov

Fri, Mar 23, 2018 at 9:33 AM

I hope you don't pass this absurd law. They are braking the law themselves. How are they able to practice law when they are breaking the law themselves. That is ridiculous ! Thank you

SUPREME COURT OF NEW MEXICO

FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be "CPA" followed by a horizontal line.



New Mexico
Courts

[nmsupremecourtclerk-grp] re: Proposal 2018-006 - Immigration status of bar applicants [Rule 15-103 NMRA] [comments begin on p.5];

1 message

R S <rc4rhijos@msn.com>

Reply-To: rc4rhijos@msn.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Fri, Mar 23, 2018 at 9:42 AM

Concerning: Proposal 2018-006 - Immigration status of bar applicants
[Rule 15-103 NMRA] [comments begin on p.5];

I would prefer that persons in the United States Illegally not be allowed to participate in a profession that upholds the Laws of this country.

If the court sees fit to allow Illegal persons to practice law, perhaps the court could also enact some type of requirement that they inform, in a very conspicuous way, any person seeking counsel they they are in this country Illegally.

Thank You for your time

Robert Sanchez.

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be "R. Sanchez", written over the date stamp.

Your Name
Daniel O'Connor

Phone Number
5052759250

Email
djoconnor1@msn.com

Proposal Number
2018-006

Comment

First of all I am amazed that we should allow non-citizens to practice law in this country. But, now we are considering illegal non citizens to not only practice law, but to be part of our court system. I am sure you are aware that businesses can be fined for hiring illegal immigrants - so why would we exempt the court system? Are we running out of legal citizens eligible to practice law? Had someone put in the same time and effort to become legal citizens as they did to become a lawyer we wouldn't even be considering this. I believe this is a slap in the face of the US Constitution to even consider putting an illegal immigrant in our court system.

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be 'DJO', with a horizontal line extending to the right.

Your Name
Linda Nanney

Phone Number
5058983787

Email
lnanney@yukonusa.com

Proposal Number
Proposal 2018-006 - Rule 15-103 NMRA

Comment

It is plane and simple for me. Anyone not legally in this country should not be allowed anything but deportation or prison time then deportation. The only reason these people are still here is because all you liberals have your head up your anus and have no other intention except votes which is also illegally. So in my opinion you should be sent to prison for sedition.

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018



NATHAN H. MANN
HARRIETT J. HICKMAN
JOHN E. FARROW
DARCI A. CARROLL

LAW OFFICES
GALLAGHER, CASADOS & MANN, P.C.

4101 INDIAN SCHOOL RD. N.E., SUITE 200N
ALBUQUERQUE, NEW MEXICO 87110
TEL (505) 243-7848
FAX (505) 764-0153
Email: firm@gcmlegal.com
www.gcmlegal.com

DAVID R. GALLAGHER
(1913 - 2001)
J.E. CASADOS
RETIRED
R. THOMAS DAWE
OF COUNSEL

March 23, 2018

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

Supreme Court of the State of New Mexico
c/o Joey D. Moya, Clerk
P.O. Box 848
Santa Fe, New Mexico 87504-0848



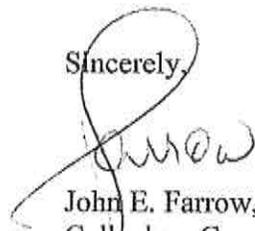
Re: Proposed Amendment to Rule 15-103(B)(7)

Ladies and Gentlemen:

I strongly oppose amending Rule 15-103(B)(7) to allow illegal aliens to practice law in the State of New Mexico. While I am sympathetic to those who are in this state illegally through no fault of their own, their remedy is clear: become a citizen or at least a legal resident. The fact they have thus far refused to exercise some personal responsibility and rectify their status by becoming a citizen or at least a legal resident reflects poorly on their moral character to practice law.

Further, I do not see how anyone who has failed to become a citizen or legal resident of this country can truthfully or honestly take the attorney's oath required by Rule 15-304 to support the Constitutions of the United States and the State of New Mexico. I therefore urge you to reject the proposed amendment.

Sincerely,



John E. Farrow, Esq.
Gallagher, Casados & Mann, P.C.
4101 Indian School Road NE, Suite 200N
Albuquerque, NM 87110
505-243-7848
FAX 505-764-0153

Your Name
Jim Pendergast

Phone Number
5052200963

Email
pendi99@yahoo.com

Proposal Number
15-103

Comment

I am shocked that NM would consider having "illegal aliens" admitted to the bar.
The rule of law should preclude this rule from becoming law!
How can we diminish the law and what is legal and illegal.

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be 'J.P.', is written over the date stamp.

Your Name
Gail Flenna

Phone Number
5052942183

Email
gflenna@gmail.com

Proposal Number
2018-006

Comment

I am not in favor of this proposal.
Lawyers are sworn to uphold the laws and constitution of our country.
Undocumented lawyers would cause a constitutional crisis.

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be 'G. Flenna', written over the date stamp.



New Mexico
Courts

[nmsupremecourtclerk-grp] Mockery of the Justice System

1 message

'Patrick Vigil' via nmsupremecourtclerk <nmsupremecourtclerk-grp@nmcourts.gov> Fri, Mar 23, 2018 at 10:13 AM

Reply-To: pdvigil2000@netscape.net

To: nmsupremecourtclerk@nmcourts.gov, bob@newsradiokkob.com, Bob Clark <bob.clark@cumulus.com>, bob@770kkob.com

To whom it may concern:

I have vehemently opposed to permitting non-US Citizens to practice law in the US. If this passes, I believe that any cases litigated by an illegal alien could be thrown out because of their legal status (not US Citizens) How can you be an officer of a US Court if they are not a US citizen. Decisions, judgements, acquittals, sentencing, etc. could all be thrown out after being deemed "Fruit of the poisonous tree".

Thank you.

Patrick Vigil--

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

Virus-free. www.avg.com



New Mexico
Courts

[nmsupremecourtclerk-grp] Illegal New Mexican Lawyers

1 message

Sharon Stockman <santafepainter@hotmail.com>

Fri, Mar 23, 2018 at 12:00 PM

Reply-To: santafepainter@hotmail.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

I am against the proposal to allow illegal immigrants from other countries to practice law here in New Mexico and the United States.

We are loosing our country and our consitution by not obeying our laws. We are hurting our people that our here legally.

These people are legals. They are in this country breaking our laws, first by coming here and not going through the proper immigration channels. Please do not do this.

Thank you,

Sharon Stockman
3330 Calle Po Ae Pl, #1101
Santa Fe, NM 87507

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be "CPA" followed by a horizontal line.



New Mexico
Courts

[nmsupremecourtclerk-grp] Proposal 2018-006

1 message

Leticia Torres <leticiatorres1@comcast.net>

Fri, Mar 23, 2018 at 1:09 PM

Reply-To: leticiatorres1@comcast.net

To: nmsupremecourtclerk@nmcourts.gov

As a Hispanic citizen of this country who must live under the laws of this country, I am opposed to this proposal. There should not be a different standard for anyone who has not committed to a primary obligation of legal citizenship, while using the resources of this country to attain the privileges of professional standing. This becomes especially disrespectful and abusive when such an individual is allowed to become a representative of a court of law.

SUPREME COURT OF NEW MEXICO
FILED

MAR 23 2018

A handwritten signature in black ink, appearing to be "Leticia Torres", written over the typed name.



New Mexico
Courts

[nmsupremecourtclerk-grp] Allowing Illegal Aliens to Practice Law

1 message

'Ann Bresson' via nmsupremecourtclerk <nmsupremecourtclerk-grp@nmcourts.gov>

Mon, Mar 26, 2018 at 3:54 PM

Reply-To: annbresson@yahoo.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Dear Sir or Madame;

It was brought to my attention on a morning radio program last week (770 KKOB) that the New Mexico Supreme Court is considering allowing illegal aliens to practice law in our New Mexico courts.

I am a resident of Albuquerque, NM, a registered voter, and an United States citizen. I am against anyone who is here in the United States illegally being allowed to practice law in our New Mexico courts. These illegal aliens who have passed the bar exam should be smart enough to find a way to become a legal resident, if not an United States citizen, before being allowed to practice law in NM courts.

Thank you for considering my opinion.

Sincerely Yours,

Mrs. Ann C. Bresson
1426 Canyon Hills Drive NE
Albuquerque, New Mexico 87112
(505) 298-1357
annbresson@yahoo.com

SUPREME COURT OF NEW MEXICO
FILED

MAR 26 2018

A handwritten signature in black ink, appearing to be "CAB" followed by a horizontal line.

Rules Committee
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504

SUPREME COURT OF NEW MEXICO
FILED

MAR 27 2018



Dear Rules Committee Members,

The University of New Mexico School of Law Chapter of the American Constitution Society for Law and Policy (hereinafter "ACS") writes to express its support for Proposed Rule Change 2018-006 – Immigration Status of Bar Applicants.

The ACS believes that law should be a force to improve the lives of *all* people. ACS works for positive change by shaping debate on vitally important legal and constitutional issues through development and promotion of high-impact ideas to opinion leaders and the media; by building networks of lawyers, law students, judges and policymakers dedicated to those ideas; and by countering the activist conservative legal movement that has sought to erode our enduring constitutional values. By bringing together powerful, relevant ideas and passionate, talented people, ACS makes a difference in the constitutional, legal and public policy debates that shape our democracy.

ACS fervently supports the Proposed Rule because of its enduring effort to bring into the legal profession law students and lawyers that are passionate, talented, and most importantly, qualified to practice law regardless of their immigration status.

ACS has actively sought to reform immigration laws and regulations and now seeks to assist in the adoption of the Proposed Rule. New Mexico needs these individuals in the legal profession regardless of their immigration status because they bring a unique perspective to the law and they will adequately represent their potential clients with ethical zeal.

Several other states have modified their rules in order to admit bar applicants regardless of their immigration status. Although New Mexico would not be the first in this movement, it would nonetheless be a pioneer. As a border state, New Mexico and our law school have an increasing number of undocumented law students. These undocumented law students have the same, if not more of a capability, to practice law as those with legal status. It is not only necessary for these individuals to be admitted to the bar for their own personal sake, but also for New Mexico's need for qualified attorneys.

The responsibility of the Supreme Court of New Mexico to admit qualified individuals to the State Bar regardless of immigration status must be exercised. ACS wholeheartedly supports the Proposed Rule because of the aforementioned statements.

Sincerely,



Ramón A. Soto
President,

The University of New Mexico School of Law Chapter of the American Constitution Society



Your Name
Elizabeth Elia

Phone Number
2022761328

Email
elia.elizabeth@gmail.com

Proposal Number
Rule 15-103(B)(7)

Comment

As a member of the NM Bar, I'd like to express my support of the proposed rule to allow eligible applicants to practice in NM regardless of immigration status.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018

A handwritten signature in black ink, appearing to be 'E. Elia', written over the date stamp.

Your Name
Paige Mowrer

Phone Number
5053737984

Email
name@host.com

Proposal Number
15-103(B)(7)

Comment

This rule continues the long tradition of New Mexican support of our immigrant population. It ought to be passed.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018

A handwritten signature in black ink, appearing to be 'PA' followed by a horizontal line.

Your Name
EVELYN

Phone Number
5057379178

Email
ibarraev@law.unm.edu

Proposal Number
2018-006

Comment

DREAMERS are hardworking, intelligent, and full of strength. They are the best this country has got to offer. Despite all the barriers that have been put in their way, they continue to thrive. It is time to open the doors and finally allow this group the same rights that have been handed to everyone else. No more barriers, no more keeping people out. It time for DREAMERS to be treated fairly.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018

A handwritten signature in black ink, appearing to be 'E. Ibarra', is written over the date stamp.

Your Name
Anna Nassiff

Phone Number
5057155568

Email
anna.nassiff@gmail.com

Proposal Number
15-103(B)(7)

Comment

I strongly support the proposed changes to 15-103(B)(7). The current limitations placed on who may join the state bar are arbitrary and should be expanded to represent all members of our community. Especially in a state with a dearth of legal representation, it would be absurd to turn away eligible, competent potential attorneys because of their immigration status.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018

A handwritten signature in black ink, appearing to be 'AN' with a long horizontal stroke extending to the right.

Your Name
Janine Caller

Phone Number
5057301416

Email
callerja@law.unm.edu

Proposal Number
2018-006

Comment

I am fully in support of Rule 2018-006. I am a law student, and believe the practice of law should have a variety of points of view and life experiences. Not only does this add value to the legal profession and the quality of services provided to clients, but diversity in the law makes our country a more just place to live. To continue to ban undocumented people who have shown their commitment to law by excelling in law school, and passing the bar, would be a great disservice to our state and the legal profession.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018

A handwritten signature in black ink, appearing to be 'J. Caller', is written over the date stamp.

Your Name
Bridget Mullins

Phone Number
5058002089

Email
Mullins.bridget@gmail.com

Proposal Number
2018-006

Comment

I support this Proposed Rule. Applicants to the Bar who are otherwise qualified should not be denied based on immigration status. New Mexico will be losing out on a talented pool of attorneys.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018

A handwritten signature in black ink, appearing to be 'Bridget Mullins', written over the date stamp.

Your Name
Luis Leyva

Phone Number
5758082042

Email
leyval03@unm.edu

Proposal Number
15-103(B)(7)

Comment

We need to increase the representation of immigrants in the legal field. Regardless of immigration status, these students were able to achieve all the same requirements as all the other aspiring attorneys. By going through this much effort they have already proved their worth to our community. We should not deny them the ability to practice law because of something they cannot control, their legal status. These aspiring attorneys only want to give back to our state and there is no reason for our state to turn its back on them.

SUPREME COURT OF NEW MEXICO
FILED

MAR 29 2018



Your Name
Jessica

Phone Number
5055452861

Email
Jessicaortega1195@yahoo.com

Proposal Number
15-103(B)(7)

Comment

Yes, this would be a great opportunity for those children that were brought here when young but didn't meet the deadlines to apply for DACA or other type of amendment. This would be a great opportunity for those immigrants to show their value in the community they grew up in.

SUPREME COURT OF NEW MEXICO
FILED

MAR 30 2018

A handwritten signature in black ink, appearing to be 'CJA', with a horizontal line extending to the right.

WILLIAM L. LUTZ
P.O. Box 1837
Las Cruces, NM 88004-1837
575-526-2449

SUPREME COURT OF NEW MEXICO
FILED

MAR 30 2018



March 29, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

via email: nmsupremecourtclerk@nmcourts.gov

***Re: Proposal Revision of Rules governing Admission to the Bar, Proposal 2018-006,
Proposed Amendment to Rule 15-307 (B)(7) NMRA***

I am responding to the above proposed amendment to the rules governing admission to the New Mexico State Bar to allow persons who are illegally in this Country to secure admission to the State Bar of New Mexico.

As a former United States Attorney for the District of New Mexico from 1982 to 1991, I read with great concern this proposal. Proposals such of this are a growing pattern where states attempt neither to recognize Federal sovereignty nor Federal law with which they politically disagree with. The Constitution of the United States is the Supreme Law of the Land (Article VI, Clause 2 U.S. Constitution).

Congress, as this Court is aware, has passed comprehensive immigration statutes which are exclusively a province of the United States Government. The Supremacy Clause provides a clear rule that Federal Law shall be the Supreme Law of the Land and Judges of every state shall be bound by thereby, anything in the Constitution or laws of any state to the contrary notwithstanding. Federal Governance of immigration and alien status is extensive and complex. Congress has specified categories of aliens who may not be admitted to the United States, unlawful entry and unlawful reentry are Federal Offenses. Once here, aliens are required to register with the Federal Government and to carry proof of status on their person. Failure to do so is a Federal Misdemeanor. These broad areas of Federal Immigration Law preempt state law. See for example, Arizona v. United States ___ U.S. ___ 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

In regard to this, Congress has specifically spoken on the issue of public benefits in 8 USC §1621. This statute states that, except as provided in subsection (b) and (d) of this section, an alien who is not legally in the United States is not eligible for any state or local public benefit as defined in subsection C. Subsection C includes a professional license. The exception in (d) that allows the state to provide a local public benefit only by enactment of a state law after August 22, 1996. To the knowledge of the undersigned, no such law has been passed in the State of New Mexico. Thus, this proposed provision is in violation of the above Federal Statute. This reading of this Statute is consistent with the Supreme Court of Florida's decision in Florida

Board of Bar Examiners re Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar, 134 So. 3d 432 (Fla.2014) “ The plain language of this statute and case law indicate that the phrase enactment of a State law requires a state legislature to address this appropriation related issue and pass legislation, which the governor must either approve or permit to become law of the state.” 134 So. 3d at 435. The Florida Court then cited a number of cases supportive of its position.

There is one case that the undersigned is aware of which takes a contrary position to Florida Supreme Court, an intermediate appeals Court in New York. In re Vargas, 10 N.Y.S. 3d 579 (S.Ct. App. Div. N.Y. 2015). The opinion of the undersigned in this case was a very poorly reasoned decision which in effect held that 8 USC § 1621 unconstitutionally infringed on the sovereign authority of the state to divide power among the three equal branches. This in effect rewrote the congressional legislation which is inappropriate statutory construction of the decision of the Court violated the Supremacy clause. This is a typical example of some courts that now place politics over properly reviewing clear and unambiguous statutes under recognized methods of statutory interpretation.

California on the other hand, has actually passed a statute allowing licensing of illegal aliens. See § 6064 of the California Business and Professions Code. Using this provision passed by the California Legislature, the Supreme Court of California, authorized admission of illegal aliens to the Bar. See in re Garcia, 315 P. 3d 113 (Cal. 2014).

This action in California is poor policy. It is part of a growing trend in California and other states to attempt to ignore Federal Law such as Immigration Law and Drug Laws with which the party in power does not agree.

The United States has always taken pride in that it is a country of laws. This is embodied in the oaths that are generally taken in New Mexico to support the Constitution of the United States and the Constitution of New Mexico. Furthermore, the Judicial Code of Conduct reinforces this provision. See Rule 21-101 NMRA (A judge shall respect and comply with the law including the Code of Judicial Conduct).

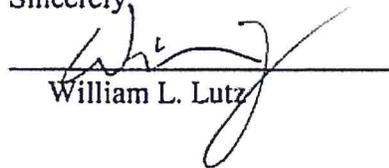
Such a statute of this creates numerous other problems. Federal Law requires all aliens to register regularly. Failure to do so is a misdemeanor. See 8 U.S.C. § 1302, see 8 U.S.C. § 1306. It is a crime for an employer to employ someone who is illegally in this country. See 8 U.S.C. § 1324 a. It is also a crime to transport or attempt to transport someone illegally in this country knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of the law. 8 U.S.C. § 1324 (a) (1) (A) (ii). It is also a federal crime to conceal, harbor or shield from detection, someone who is illegally in the country. 8 U.S.C. § 1324 (a) (1) (A) (ii). In allowing persons to practice law creates significant problems and probably will create unintended consequences. The ability to be employed is nonexistent. One could only be a solo practitioner.

Furthermore, it is not in the best interest of the public to have someone that may be arrested and deported to be a member of the Bar. For example, such an admittee to the New Mexico State Bar would have serious impediments to respect clients, in areas of the state where Border Patrol checkpoints exist nearby. Such an attorney would unlikely be able to attend any hearings, depositions, or meetings in certain parts of the State.

Therefore, in my opinion, this provision violates Federal Law and should not have been proposed to the Supreme Court of New Mexico. We are a nation of laws and as attorney's we must respect the law not knowingly violate in, even as to laws with which we might personally disagree.

This is further, not in the best interest of the public to have an attorney that may or may not be here the next day. Having some plan, in the event that happens, is not really realistic and may put potential clients in situations that denies them their right to a day in court. I hope that the Supreme Court will not put politics over the rule of law and will not adopt this rule.

Sincerely,


William L. Lutz

WLL/ldd

Your Name
Taylor Lieuwen

Phone Number
5052468972

Email
tlieuwen@enlacenm.org

Proposal Number
15-103(B)(7)

Comment
I strongly support this proposed rule.

SUPREME COURT OF NEW MEXICO
FILED

MAR 30 2018

A handwritten signature in black ink, appearing to be the initials 'TL' followed by a horizontal line.

IMMIGRATION LAW STUDENT ASSOCIATION
UNM SCHOOL OF LAW | 1117 STANFORD NE | MSC11 6070 | 1 UNIVERSITY OF NEW MEXICO
ALBUQUERQUE, NM 87131 | IMLSA@LAW.UNM.EDU

March 22, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

SUPREME COURT OF NEW MEXICO
FILED

MAR 30 2018



Dear Honorable Justices of the New Mexico Supreme Court,

The Immigration Law Student Association (ImLSA) at the University of New Mexico School of Law submits this letter in support of the proposed amendment to Rule 15-103(B)(7). ImLSA was founded in 2016 to advocate for our immigrant law students regardless of their immigration status.

The proposed rule change is an important step to equality in New Mexico's legal system. The State Bar tests a law school graduate's capability to practice the law and when a graduate passes the bar that graduate should be admitted based on their academic, personal and professional merits, not on an immigration status that they have little control over. There is much uncertainty and anxiety in law school generally, but it weighs heavier on immigrant students who do not know whether they will be admitted to the New Mexico State Bar after completing their studies based on their immigration status or lack thereof.

In adopting this rule change, the New Mexico Supreme Court is opening the State Bar to embrace all persons who have attained a law degree and passed the Bar Exam. The adoption of this rule would be in line with New Mexico's long standing advocacy and protection of its undocumented and immigrant residents. In the current national conversation about immigration, the New Mexico Supreme Court is signaling that as a state, we do not discriminate against otherwise qualified persons based on their immigration status.

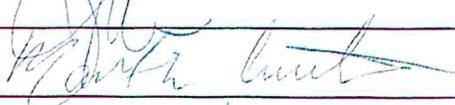
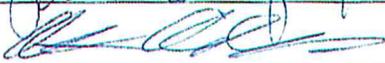
ImLSA thanks the New Mexico Supreme Court for considering this rule revision and strongly encourages the Court to adopt the revision as drafted.

Sincerely,

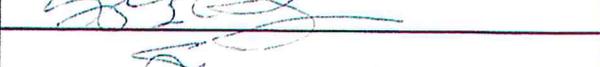
 - President - Secretary - Vice President - Treasurer

2017-2018 ImLSA Executive Board

The undersigned law students support ImLSA's letter of support.

Student's Printed Name	Student's Signature
Paige Dixon	
Cinne Bruno	
KARI RUMA	
Martha Cervantes	
MEAGAN MURIEL	
Lauren Jones	
Coxig Turpin	
Joel Lebo	
Ariel MacMillan Sanchez	
Richard Spradlin	
Jessica Perez	
Zoila Alvarez Hernandez	
Alex Adrian	
Lionel Betsch	
Mizael Carrera	
Carmen Borra	
CHRIS PAPA LEO	
Heather Tannen	
FRANCISCO BALDERRAMA	
Christopher Muldrow	
MARROW ANGELO	
Christopher Green	
Marcus Sutillo	
Ashley Cook	

Student's Printed Name	Student's Signature
Kristen Edwards	Kristen Edwards
Antonia Aguilar	Antonia Aguilar
Mara Yarbrough	Mara Yarbrough
Zameez Burnette	Signature
Morgan Johnson	Morgan Johnson
Adriana Gandara	Adriana Gandara
Paige Mowrer	Paige Mowrer
Alexander Tucker	Alexander Tucker
Josh Lilley	Josh Lilley
Jennifer Vickery	Jennifer Vickery
Michelle Holt	Michelle Holt
Renee Lewis	Renee Lewis
Valeria Garcia	Valeria Garcia
Janette Duran	Janette Duran
DENISE Sanchez	DENISE Sanchez
Janie Alvarado	Janie Alvarado
Kyle Duffy	Kyle Duffy
Samantha Ross	Samantha Ross
Jazzai Timerson	Jazzai Timerson
LUCY RIVER	LUCY RIVER
Kenneth Detro	Kenneth Detro
Nadine Padilla	Nadine Padilla
BRUNO GONZALEZ	BRUNO GONZALEZ
Robert Hart	Robert Hart

Student's Printed Name	Student's Signature
Benjamin Maggard	Ben Maggard
Drego Trujillo	
Lenaya Montoya	
Kaleigh Gardner	Kaleigh Gardner
Saldina Gomez	
Alexandra Benantes	
Cody Morgan	Cody Morgan
Luis Sanchez	
John Morseau	
Auber Holland	
Brent Chapman	Brent Chapman
Israel Chavez	
Diana A Torres	Diana A Torres
Cruz Lopez	
Sam Ashman	
Ramon Hernandez	
Cathy Garcia	
Mark Rosebrough	
Zackary Awintoro	
Erika Avila	
Victor Hall	Victor Hall
Isel Serrano	
Simon Serrano	
Julia Shriver	

Student's Printed Name	Student's Signature
Lilia Diaz	
Veronica Peregino	Veronica Peregino
DANIEL DA SILVA	
Romana Ollaris	
Janine Callier	Janine Callier

Your Name
Ella Joan Fenoglio

Phone Number
5052661955

Email
ellajoan@highfiber.com

Proposal Number
2018-006

Comment

Please approve this proposed rule. It supports the citizens of New Mexico as well as prospective members of the Bar. As a longtime member of this Bar, I urge you to approve the 2018-006 Rule Change. Thank you for your consideration of my comments.

SUPREME COURT OF NEW MEXICO
FILED

MAR 30 2018

A handwritten signature in black ink, appearing to be 'EJF', is written over the date stamp.

April 2, 2018

SUPREME COURT OF NEW MEXICO
FILED

Rules Committee
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504

APR - 2 2018



Dear Rules Committee Members,

The University of New Mexico School of Law student chapter of the American Civil Liberties Union strongly supports the proposed amendment to Rule 15-103 NMRA. The fundamental civil liberties protections of the Bill of Rights and the U.S. Constitution protect every person in this country—including non-citizens. The proposed amendment aligns with federal and state law, UNM values of diversity and inclusion, essential principles of fairness, and the dignity of all persons irrespective of their immigration status. As UNM law students, we stand with our undocumented classmates, and we know that they deserve the same opportunity for professional licensure available to our classmates who are citizens.

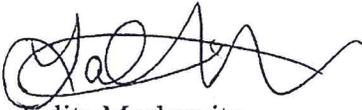
Individuals seeking to practice law in New Mexico should not be discriminated against based on their immigration status or lack of work authorization. This amendment would allow the New Mexico Board of Bar Examiners to assess each applicant for admission to the Bar based on their own merits and their individual character and fitness to practice law. The fact that an undocumented immigrant is in this country without lawful authorization does not demonstrate unfitness to practice law. If anything, successful completion of the other eligibility requirements demonstrates extraordinary perseverance and dedication on the part of undocumented immigrants, who face significant hardships and obstacles to accessing higher education. As law students, we have seen first-hand how hard our undocumented classmates work, often learning the law in their second language, while working to afford tuition without access to government loans, and living with the stress and uncertainty that comes with being undocumented in this country – to say nothing of the ordinary stress that school places on all of us. We have been impressed and humbled by their contributions to our law school community.

The New Mexico Constitution establishes the right of its Spanish-speaking residents to learn in its public schools. N.M. Const. art. XII, § 8. New Mexico law mandates that public post-secondary educational institutions in the state “shall not deny admission to a student on account of the student’s immigration status.” NMSA 1978, § 21-1-4.6. And yet, as currently written, Rule 15-103 may force undocumented UNM School of Law graduates to leave their community and the home they love in the state that educated them in order to serve as attorneys in one of a growing number of states where immigration status is not a bar to licensure. As members of UNMSOL’s ACLU chapter, we believe that this policy is unjust, and we urge the adoption of the Court’s proposed amendment.

Our state and our law school community are enriched and strengthened by our diverse cultures, histories, and experiences. As law students, we have benefited from the perspectives and contributions of our undocumented classmates. Likewise, the State Bar and the community that it serves will only benefit from the inclusion of attorneys with a wide range of personal

backgrounds and lived experiences, including undocumented immigrants. The Court should adopt its proposed amendment, and should allow applicants, regardless of immigration status or work authorization, to demonstrate their integrity and qualification to practice law in our state.

Sincerely,



Lalita Moskowitz

President

UNM School of Law American Civil Liberties Union Chapter

ACLU

New Mexico

UNM School of Law



[nmsupremecourtclerk-grp] Comment to rule

1 message

Claudia Medina <cmedina@enlacenm.org>

Mon, Apr 2, 2018 at 10:06 AM

Reply-To: cmedina@enlacenm.org

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Dear Mr. Moya:

I hereby, would like to submit my comment to the proposed changes to the rules governing admission to the Bar.

I read the proposal and applaud the way it allows undocumented immigrants to be admitted to the bar if they meet the other requirements. There are highly trained bilingual individuals that would be authorized to practice law in NM. We need more bilingual attorneys in our state.

I am the director of Enlace Comunitario, a non-profit that provides services to immigrant victims of domestic violence. We have a legal department within our agency and it has been a struggle to find perfectly bilingual attorneys who understand the culture of the clients we serve, to apply for a job with us. Currently we have two openings for staff attorneys and legal director and have not been able to fill these positions for more than a year.

Thanks for your consideration to my comments.

Respectfully,

Claudia

Claudia Medina

Executive Director

SUPREME COURT OF NEW MEXICO
FILED

APR - 2 2018

PO Box 8919, Albq, NM 87198

Tel: 505.246.8972, ext. 23

Fax: 505.246.8973

web: www.enlacenm.org

Eliminando la violencia doméstica. Eliminating domestic violence.

Make a secure, tax-deductable donation to Enlace Comunitario today!



Your Name
Lalita Moskowitz

Phone Number
5052522200

Email
moskowla@law.unm.edu

Proposal Number
2018-006

Comment
Please see attached comment.

SUPREME COURT OF NEW MEXICO
FILED

APR - 2 2018



I am writing to express my strong support for the proposed amendment to Rule 15-103 NMRA. Neither immigration status nor lack of work authorization should be an automatic bar to practicing law in New Mexico.

The fact that an individual is undocumented does not undermine his/her character and fitness to practice law. Undocumented status certainly should not be an automatic bar to admission, given the long list of behaviors and serious criminal offenses under the current rule which are merely "cause for further inquiry" when committed by citizens. I personally know several undocumented law students: they are some of the finest members of our law school community, and some of the most dedicated to creating positive change in the Bar, the state, and the country. Undocumented persons are valuable members of our society, whose human dignity should be respected.

Undocumented applicants to the New Mexico State Bar should be judged on the same criteria as all other applicants, and I have no doubt that adoption of this proposed rule will only serve to strengthen the New Mexico State Bar.

Your Name
Benjamin Maggard

Phone Number
5055547003

Email
maggarbe@law.unm.edu

Proposal Number
2018-006

Comment
See attached comment.

SUPREME COURT OF NEW MEXICO
FILED

APR - 2 2018



I support the proposed rule change. Our legal principles and rules must reflect the reality that we live in and the facts that surround us, and the simple fact is that otherwise perfectly qualified individuals may currently be barred from serving as lawyers due to a blanket ban based on immigration status. While the question of what a person's immigration status is and why they have not undergone the standard and legal immigration process may be pertinent when evaluating whether or not an individual should be admitted to practice law, many of these people did not have a choice in the matter of their immigration. Individuals who are only violating immigration laws due to the decisions of their parents cannot be held to the same degree of responsibility as those who made the decision themselves to enter the country unlawfully. A complete refusal to allow any of these individuals the opportunity to practice law, as opposed to a fact and person specific inquiry into the particular situation and life that have led to that person's immigration status, cannot be viewed as a fair process. Even people who have committed crimes may sometimes be able to practice law so long as they demonstrate that their personal moral character has changed, and it is only proper that we extend the same courtesy to those who have not undergone the expected immigration process. The individuals who seek to practice law while not lawfully residing in the United States possess unique perspectives on our immigration system, and aside from this one aspect of their past, have proven themselves otherwise fully equal to any other person seeking to practice law. It is in the best interest of the state, the country, the profession, and fairness that they be allowed to demonstrate that they are qualified and worthy of practicing law in the state of New Mexico.



New Mexico State Senate

STATE CAPITOL
Santa Fe 87501

March 30, 2018

SUPREME COURT OF NEW MEXICO
FILED

APR - 4 2018

A handwritten signature in black ink, appearing to be "J. R. Candelaria".

Joey D. Moya, Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

Dear Mr. Moya:

I am writing to you to voice my support of the proposed amendment to Rule 15-103(B)(7) NMRA allowing qualified individuals to be eligible to practice law in New Mexico regardless of their immigration status.

The numerous qualifications required for admission to the State Bar of New Mexico ensure that applicants have met rigorous educational and ethical standards. An applicant's undocumented status does not reflect in any way on the person's character and fitness to practice law in New Mexico, nor does it suggest that the applicant will not be able to vigorously defend clients' interests or serve as an officer of the court.

It is noteworthy that graduation from an American Bar Association-accredited institution satisfies a requirement for bar admission under Rule 15-103(B)(2) NMRA, and the American Bar Association, itself, based on a vote by its House of Delegates, has formalized its support for the principle that bar admission should not be denied based solely on immigration status.

I strongly urge you to move forward with the adoption of the proposed amendment to Rule 15-103(B)(7) NMRA allowing qualified individuals to be eligible to practice law in New Mexico, regardless of their immigration status.

Sincerely,

A handwritten signature in black ink, appearing to be "Jacob R. Candelaria".

JACOB R. CANDELARIA
State Senator, District 26

JRC:clm

Your Name
Annie Brethour

Phone Number
2565086215

Email
brethoan@law.unm.edu

Proposal Number
2018-006

Comment

I am strongly in support of allowing undocumented immigrants to be allowed to take the New Mexico Bar and subsequently be admitted to the New Mexico Bar. So long as these individuals meet all other requirements to be admitted to the Bar, they should be allowed to be members of the New Mexico Bar. Other states already allow this, New Mexico should too. At the end of the day, New Mexico needs good lawyers, and there are undocumented individuals who no doubt would make great lawyers for this state. So long as these individuals meet all other requirements for admission to the Bar, there is absolutely no reason they should not be admitted simply due to their undocumented status. Furthermore, the fact that a person is undocumented should not mean that they could not pass the ethical requirements; these individuals are just as ethical as anyone else, and if they can pass law school and the Bar Exam, they are just as worthy of Bar Admission as anyone else.

SUPREME COURT OF NEW MEXICO
FILED

APR - 5 2018

A handwritten signature in black ink, appearing to be 'APM', with a horizontal line extending to the right.



New Mexico
Courts

[nmsupremecourtclerk-grp] Proposed Rule 15-103(B)(7)

1 message

Diane Garrity <dgarrity@sgmnmlaw.com>
Reply-To: dgarrity@sgmnmlaw.com
To: nmsupremecourtclerk@nmcourts.gov

Thu, Apr 5, 2018 at 11:06 AM

Good Morning:

I support the proposed rule change to allow DACA status immigrants to become members of our state bar. Status of immigration in this highly charged political climate should not be a disqualification. Status is not a character issue, but in this case, reflects an individual who participated in the immigration program in effect at the time to gain lawful status. The fact the DACA immigrants had the status removed, it not a reflection on character, but political whim.

Thank you.

My bar number is 5559.

Diane Garrity

Diane Garrity
Serra & Garrity, P.C.
1331 Seville Road
Santa Fe, New Mexico 87505
505-983-6956 o
505-470-4803 m
dgarrity@sgmnmlaw.com

SUPREME COURT OF NEW MEXICO
FILED

APR - 5 2018

A handwritten signature in black ink, appearing to be "Diane Garrity".



New Mexico
Courts

[nmsupremecourtclerk-grp] Proposed Rule Change 2018-006

1 message

James Harrington <harr77@earthlink.net>
Reply-To: harr77@earthlink.net
To: nmsupremecourtclerk@nmcourts.gov

Thu, Apr 5, 2018 at 10:00 AM

Dear Mr. Moya -

I wholeheartedly support Proposal No. 2018-006 proposing to amend Rule 15-103(B)(7)) NMRA, and I urge the Court to adopt it. It is my strongly held personal view that immigration status should have no bearing on an applicant's qualifications to practice law in our state.

My name is James E. Harrington, Bar No. 14984. My phone number is 505-983-8863, and my e-mail is harr77@earthlink.net.

Thank you for your attention.

Jim Harrington

SUPREME COURT OF NEW MEXICO
FILED

APR - 5 2018

A handwritten signature in black ink, appearing to be "JPH" followed by a horizontal line.

Your Name
Kaitlin Alley

Phone Number
5054665600

Email
kaitlin@noblelawfirm.com

Proposal Number
2018-006

Comment

I am an immigration attorney in Santa Fe. I fully support this rule change allowing DACA recipients and other eligible immigrants to be admitted to the New Mexico Bar regardless of their immigration status. The reality is that our immigration system is broken and our laws make it impossible for many immigrants to gain legal status. As you know, DACA does not give legal status in our country, it only provides recipients with work permits. The vast majority of DACA students have lived in the U.S. their entire lives with no path to legal residency or citizenship. It would be against our values as New Mexicans to disallow them to be admitted to the NM Bar because our federal immigration system is broken. If someone is otherwise eligible to be admitted, it is cruel to allow their immigration status to prevent them from practicing. Thank you.

SUPREME COURT OF NEW MEXICO
FILED

APR - 4 2018

A handwritten signature in black ink, appearing to be 'K. Alley', written over a horizontal line.



New Mexico
Courts

[nmsupremecourtclerk-grp] 15-103

1 message

Charles Knoblauch <quidproquo@zianet.com>

Thu, Apr 5, 2018 at 5:58 PM

Reply-To: quidproquo@zianet.com

To: nmsupremecourtclerk@nmcourts.gov

I heartily approve of the proposed changes to the rule regarding admission to permit anyone resident in the United States to practice law.

Charles E. Knoblauch

Attorney at Law

1412 Lomas Blvd. NW

Albuquerque, NM 87104

(505) 842-0392

SUPREME COURT OF NEW MEXICO
FILED

APR - 5 2018

A handwritten signature in black ink, appearing to be "C.E. Knoblauch".



SUPREME COURT OF NEW MEXICO
FILED

April 5, 2018

APR - 5 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov

Dear Mr. Moya:

We write to strongly recommend that the New Mexico Supreme Court adopt proposed Amended Rule 15-103(B)(7), which would allow the licensure of undocumented lawyers who otherwise qualify for admission to the State Bar. We believe that this proposed rule will be beneficial to the state because it will allow aspiring lawyers to focus on learning the law without the distraction of worrying about issues related to their immigration status. It also is likely to increase the number of bilingual attorneys in the state who have a desire to serve immigrant communities.

In accordance with New Mexico state law, UNM School of Law admits students without regard to their immigration status. As a result, in any given year it is likely that we have students who are undocumented or who currently have deferred action status (DACA) on the basis of their undocumented entry into the U.S. as young children. Out of fairness to these students, they should be permitted to obtain licensure to practice law in the state.

At our law school our goal is to ensure that our students succeed, both academically and personally. As a professional school, we also believe that we have a special duty to support our students' career development. For our undocumented and DACA students, the personal burden on them is particularly strong, given that they are not eligible for federal financial aid. For these students, the mere fact that they have succeeded at graduating from law school under these extremely challenging circumstances is quite an accomplishment. Add to that the fact that they do not even know if they will ever be able to practice law once they graduate, and it is quite remarkable that they even stay in school. Despite that, many of them thrive while here.

We note that at least five states (California, Florida, Illinois, Nebraska, and New York) have expressly authorized the admission to the bar of undocumented immigrants by statute, regulation, or decision of the state supreme court. In addition, we understand that Wyoming amended its law to delete language requiring applicants to the bar to be United States citizens.

Extending bar admission to undocumented and DACA immigrants has many positive virtues for the state. One of those virtues for New Mexico is that it will allow the state to benefit from the investment that it has made in their education. Moreover, we believe that the amended rule furthers our obligation and our commitment to equality under the law. That principle of equality is at the heart of Resolution 108, which was adopted by the American Bar Association's House of Delegates in August of 2017. That Resolution supports the principle that no applicant should

be denied admission to the bar based solely on immigration status. Proposed Amended Rule 15-103(B)(7) is consistent with the Resolution.

Please adopt the proposed Amended Rule. It will strengthen access to justice in the State of New Mexico while maintaining a high standard for licensure in this state. Furthermore, it simply is the right thing to do.

Sincerely,



Alfred Mathewson
Dean & Professor of Law



Sergio Pareja
Dean & Professor of Law

APR - 6 2018



April 6, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Dear Honorable Justices of the New Mexico Supreme Court,

I, Alicia Ubeda-Harvey support the proposed amendment to Rule 15-103(B)(7).

I am a first year law student at the University of New Mexico (UNM). I did not grow up in New Mexico but moved here two years before attending law school. Part of what drew me to New Mexico and UNM School of Law in particular was the focus on diverse perspectives. I grew up internationally and have found that solutions created by a diverse set of opinions are always stronger.

I am a US citizen and have some financial support from my family to attend law school. However, deciding to attend law school was still a big financial and personal decision for me. Despite my position of privilege I continue to feel the challenges of being in law school financially, personally and academically. I know some of my classmates face even more daily challenges than I do but I appreciate that they are in our classroom providing their perspectives and I hope to practice with them in New Mexico after we graduate and pass the bar.

Just like me, my fellow classmates are constantly worried about school and money but some of them have the added stress of not knowing what their immigration status will be tomorrow. Despite all of their concerns they are still working to meet all of the requirements. The ironic thing is that even though I get good grades in law school, I have not been exposed much to the legal system. Rather, it is my undocumented classmates who better understand the realities of the legal system. It is their immigration status and life experiences, which add to their qualifications to become a lawyer.

I think any ethical person who can overcome the financial, personal and academic challenges of three years of law school should be considered eligible by the New Mexico State Bar to practice law. I believe passing Rule 15-103(B)(7) can only improve the legal profession in New Mexico.

Sincerely,



Alicia Ubeda-Harvey
J.D. Candidate- Class of 2020
University of New Mexico School of Law

Your Name
Valeria Garcia

Phone Number
5053159618

Email
garciaval@law.unm.edu

Proposal Number
2018-006

Comment

I am writing to express my wholehearted support for proposal 2018-006, and applaud the Court for moving towards the inclusion and support of immigrants who wish to provide legal services to the New Mexico community. I am a proud Mexican-American who was raised by immigrants in the Albuquerque south valley, and I have seen first hand the tremendously positive impact that immigrants have in New Mexico. I will graduate from UNM School of Law in May and hope to be admitted to the bar in the fall, and I know my DREAMER colleagues deserve to be sworn in just as much as I do. They are hard workers who are passionate about serving New Mexicans, just like the rest of us. I strongly urge the Court to pass the proposal and to uphold our state values of diversity and inclusion.

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018

A handwritten signature in black ink, appearing to be 'GPA', with a horizontal line extending to the right.

APR - 9 2018

April 8, 2018



Dear Rules Committee Members,

I am writing as a first-year law student at University of New Mexico School of Law. I came to law school from a background in immigration solidarity work and organizing and came hoping to find tools to be a more effective advocate. As I have entered legal immigration advocacy spaces, I have become aware of two truths that seem in conflict: *First*, as a non-immigrant, I have been presented with considerable opportunities for collaboration and even leadership in legal immigration advocacy work. *Second*, those with the *lived experience* I lack are the strongest advocates but are traditionally excluded from the same legal advocacy spaces I have been so quickly invited to fill.

While I have always called New Mexico my home, as a non-immigrant I feel that my role in affecting immigration justice in our community must be informed by those whose experiences give this justice work meaningful direction. I hope to one day form part of a legal community that invites the leadership of those whose lives are most directly affected by the issues our legal advocates seek to remedy. The proposed amendment to Rule 15-103(B)(7) NMRA is an important step in this direction.

Respectfully submitted,



Denali Wilson
Juris Doctor Candidate, Class of 2020
University of New Mexico School of Law

Your Name
UNMSOL Black Law Students Association

Phone Number
5052772146

Email
namc@host.com

Proposal Number
2018-006

Comment

We strongly support the rule amendment. Please reference our attached comment.

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018

A handwritten signature in black ink, appearing to be 'JPA', is written over the date stamp.

Black Law Students
Association

BLACK LAW STUDENTS ASSOCIATION

UNM SCHOOL OF LAW | 1117 STANFORD NE | MSC11 6070 | 1 UNIVERSITY OF NEW MEXICO
ALBUQUERQUE, NM 87131 | BLSA@UNM.EDU

March 22, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018



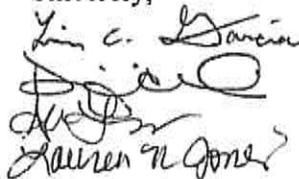
Dear Honorable Justices of the New Mexico Supreme Court:

Thank you for the opportunity to comment on the proposed amendment to Rule 15-103(B)(7) NMRA. The Black Law Students Association (BLSA) strongly supports the proposed revisions to the rules governing admission to the bar.

The proposed amendment provides clarity and direction to New Mexico immigrant bar candidates. Additionally, the amendment solidifies New Mexico Supreme Court's (NMSC) objectiveness and fairness to all people. By adopting the proposed amendment NMSC will be upholding and endorsing equal opportunity laws. The proposed amendment expressly denies discrimination while maintaining high standards for New Mexico bar candidates. We pray that the Court will give the proposed amendment favorable consideration.

Again, thank you for the opportunity to comment.

Sincerely,



2017-2018 BLSA Executive Board

Your Name
Luis C. Garcia

Phone Number
2024607323

Email
lc.vaz.garcia@gmail.com

Proposal Number
2018-006

Comment

I strongly support the proposed rule and my comment is attached.

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018

A handwritten signature in black ink, appearing to be 'L. Garcia', written over a horizontal line.

April 8, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018



Dear Honorable Justices of the New Mexico Supreme Court:

Thank you for the opportunity to comment on the proposed amendment to Rule 15-103(B)(7) NMRA. I strongly support the proposed revisions to the rules governing admission to the bar.

I am an immigrant. My mother, father, brother, sisters, and wife are all immigrants. Thus, my bias is conceded. Nonetheless, I find this rule to be a common sense solution to a defining issue of our time—immigration. The proposed rule simply fosters an opportunity to individuals that have fulfilled all requirements to practice law, regardless of their immigration status. As a military man, I know the Department of Defense (DoD) affords immigrants a similar opportunity under the Military Accessions Vital to National Interest (MAVNI) program, with the added incentive of citizenship. Thus, just as the DoD has found it proper to allow qualified immigrants to serve in the military, the Court should also find it proper to allow qualified applicants to practice law in New Mexico. Immigration status should not prevent otherwise qualified professionals from practicing law in our State. I support and pray that the Court will give the proposed amendment favorable consideration.

Again, thank you for the opportunity to comment.

Sincerely,



Luis C. Garcia

Your Name
Ann Williams

Phone Number
5055079535

Email
annkwms@hotmail.com

Proposal Number
2018-006

Comment

They should be allowed to practice law in the state of New Mexico

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018

A handwritten signature in black ink, appearing to be 'JW', is written over the date stamp.

APR - 9 2018



To the New Mexico Supreme Court,

I would like to remind the courts who exactly the people applying for the bar are. For many of you it has been a long time since law school, however, I am currently in law school and I can personally attest to everything that I am about to say. I speak for most law students when I say, law school is no cake walk. Before law school, you get to college and realize you have to spend the next four years performing at your very best. You need to keep your G.P.A. as high as possible, you have to involve yourself heavily in the community, and you need to completely give your ALL to academics. Then, as if that were not enough, you need to prep yourself for a 4 to 5 hour LSAT exam, which takes months to prepare for, and oftentimes, still leaves you feeling inadequate. All of that just for a chance to apply. Then, if you are lucky enough to get into law school, the reality sets in and you realize if you want to go to law school and fulfill your dreams, most likely you are going to owe the government over \$100,000 in student loans, but it is your dream, so you do it. Once again, you find yourself in the fickle world of academics, this time with much more pressure. The subjects are more complex, the professors are much less sympathetic, and the people around you are much more competitive. You are in a constant state of survival. You are constantly drowning in reading with legal writing assignments, motions, and community service being thrown at you like curve balls at a baseball game. If you are lucky enough to make it through law school, then you have to pass the bar while also putting all your personal business on display for a group of people who you have never met before, so that they can decide whether or not you are fit to practice.

The point of this is to show that many of the fears that some have are displaced. The people applying for admission to the bar are not people who come to the United States to commit crimes. They are hard-working people who came to the U.S. in search of a better life. They have spent, at the very least, seven years dedicating themselves to the laws of the United States. Many people have commented that these "undocumented" people are committing crimes constantly, however, we know this is not true. The act of coming into the U.S. without proper documentation is illegal, but it is a single act. It does not run with you for the rest of their life. This is like saying any of you who have ever broke any law are criminals forever because you made a mistake one time. Furthermore, in many situations, these "undocumented" people were children when they came to the U.S., they had no control in how they got to the U.S., the only thing they CAN control is what they do while they are here. Many of us law students hold the weight of the world on our shoulders, we rely on the courts to do the right thing and when they do not, we as lawyers, fight the system and fight for the rights of others. We are prepared to fight for our brothers and sisters of law, regardless of where they were born. I, the future attorney, am asking the court to remember your days in law school and remember how hard you worked to get where you are today, and ask yourself: How would you feel if your dreams were halted because you were born somewhere else? All we ask is for the court to do the right thing. In the end we are neither legal nor illegal, were are not democrats or republicans, we are all born human and we all die human. It is time we are all treated like humans! Sincerely,

Robert Gandara



MALSA

April 5, 2018

Dear Honorable Justices of the New Mexico Supreme Court,

We are the Mexican American Law Student Association (MALSA) at the University of New Mexico School of Law. MALSA was founded in the early 1970s by a group of law students at the University of New Mexico. The law students sought more diverse representation in the legal community and they founded MALSA to recruit, support, and assist Latino and Hispanic law students. In 2010, MALSA Inc. was established as a 501(C)(3) domestic non-profit corporation focused on increasing diversity in the legal profession and giving back to our community through service projects.

We are writing to express our support of the proposed amendment to Rule 15-103(B)(7). We strongly believe that Immigration status does not control an attorney's ability to advocate for clients, nor is it evocative of professional integrity. The proposed amendment to Rule 15-103(B)(7) codifies this opinion.

This is an issue that affects our current and future law school community and is closely aligned with MALSA's mission to foster a more diverse representation in the legal community. Our current students affected by this rule are active members of our law school and would be a great addition to the legal community of New Mexico. They will zealously advocate for their clients, and will be of special importance to the immigrant community of this state.

MALSA is just one of many student organization at the law school that aim to empower all law students to become the best possible advocates and we hope your Honors pass this amendment that would only benefit our New Mexico communities.

SUPREME COURT OF NEW MEXICO
FILED

APR - 9 2018

Respectfully,

Valeria Charua
MALSA President

Verevise Peregrino
MALSA VP

2017-2018 MALSA Executive Board

[Signature]
MALSA Treasurer

Zackary Quintero
New Mexico Hispanic Bar - Representative

[Signature]

[Signature]
MALSA Secretary

Sabina Hernandez
TL Representative

Christina
MALSA Mentorship Chair

APR - 9 2018

Re: Proposal 2018-006

I am writing in opposition to Proposal 2018-006, Proposed Revisions to the Rules Governing Admission to the Bar. 

I understand the emotional underpinnings of this proposed change and I suspect that it may have been prompted by the limbo in which DACA individuals find themselves. Yet, we have all heard the saying: "compelling facts make bad law." It sets a very dangerous precedent to grant Bar admission to those who are breaking at least one of the laws which they must also swear to uphold.

I have been admitted to practice law in more than one jurisdiction, including New Mexico. In all instances I took an oath to uphold the Constitution and the laws of the United States. Someone who is here illegally has broken and is continuing to break at least one of those laws which I swore to uphold. This creates several problems, the most obvious of which is how anyone who is breaking a law can honestly swear to uphold that law.

In addition to the hypocrisy of an applicant swearing to an oath the substance of which he or she has already broken, there is the problem of the Bar itself supporting a disregard and disrespect of law which the membership has already sworn to uphold. This places the members of the Bar in a difficult situation in which they are in effect supporting a violation of their oath.

Moreover, it creates the same sort of conflict for those who would hire an attorney who is an illegal immigrant. The Immigration Laws of the United States prohibit assisting a foreign national whom one knows is illegally in the U.S. with employment, either by referral to an employer or by serving as an employer of the illegal alien.

Lawyers are often referred to as "officers of the court" because their job is to uphold the law, even the laws with which they disagree. That does not prohibit a lawyer from advocating and otherwise seeking to effectuate change in the existing laws. Lawyers should not, however, willingly disregard existing laws, nor should they advocate for or support violation of those laws with which they do not agree. To do so is an attack on the very soul of our justice system.

As stated above, the proposal as written creates a dangerous precedent. If this proposed revision is indeed directed at DACA or similar individuals, I would suggest a much narrower scope that perhaps allows a provisional and temporary Bar admission while the individual is in the process of seeking citizenship or other permanent legal residency status. As the proposed revision stands, however, it is an insult to the oath that every attorney must uphold.

Barbara P. Blumenfeld

SUPREME COURT OF NEW MEXICO
FILED

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

APR - 9 2018

April 9, 2018



Dear Mr. Moya,

Below are comments on Proposed Amended Rule 15-103(B)(7) being considered by the New Mexico Supreme Court. Kindly pass on this correspondence to our NM Supreme Court judges.

**Joint Comment in Support of Amended Rule 15-103(B)(7) on Behalf of
Undersigned Professors and Staff of the University of New Mexico**

We write in support of the proposed Amended Rule as UNM faculty and staff. Some of us serve on the faculty of the UNM School of Law. Others participate in the UNM Sanctuary Campus Working Group or serve on the UNM Provost's UndocuTask Force. The Working Group includes faculty, staff and students of UNM dedicated to a safe and supportive campus environment for all our students, including those of undocumented immigrant status. The Task Force includes faculty, staff and students of UNM convened by the Provost to recommend programs and policies to better support our undocumented students, including in the areas of student loans, professional development, and legal advocacy.

We are aware as UNM faculty and staff that our University admits students, as required by state law, without regard to their immigration status. We welcome incoming students who are US citizens, US residents, and foreign nationals with student and other non-immigrant visas. We also welcome students who are undocumented or who currently have deferred action status (DACA) on the basis of their undocumented entry into the US as children. As faculty we are responsible for educating all our students, which entails that we do all that we are able to ensure that they succeed academically and thrive personally as members of our academic community. In terms of our professional students, we have special responsibilities to support their career development, given the intellectual, social, and financial resources they invest in UNM, not limited to the tuition that they and their families pay. For our undocumented professional students, the financial costs of their degrees are significant, particularly given their ineligibility for federal financial aid, and the fact that some are first-generation college students. For our undocumented law students, the issue of licensure to practice law is of particular concern, because without membership in the State Bar of New Mexico, they cannot fully practice the craft for which they typically have dedicated seven or more years of post-secondary academic course work.

Turning specifically to Rule 15-103(B)(7), which would allow the licensure of undocumented lawyers who otherwise qualify for admission to the State Bar, we support the proposed amended Rule. As faculty and staff of UNM, we share the concern of our State Bar and Bench for the ethical and professional legal representation of all clients in the State of New Mexico. In this context we turn our attention to the language in the proposed rule that requires undocumented candidates for Bar admission to draw up a contingency plan that would allow for the transfer of cases in the case of the attorney's inability to practice law. We appreciate that this text in provision (B)(7) of the proposed Amended Rule is likely intended to allow for situations in which an undocumented lawyer is detained or deported due to his or her immigration status. At the same time, we recognize that contingency plans are useful and sometimes necessary for any prospective or current members of the Bar who may face a variety of exigent circumstances requiring the transfer of a case to another attorney. That said, we support the language of the proposed Amended Rule because it will allow qualified undocumented attorneys to be admitted to the State Bar and to represent clients seeking to benefit from their professional and ethical expertise and training. We are confident that the proposed Amended Rule will strengthen access to justice in the State of New Mexico and ensure the admission of qualified attorneys to our State Bar.

Sincerely,

Jennifer Moore
UNM Law Professor
Member, UNM Sanctuary Campus Working Group
& UNM Provost's UndocuTask Force

Sarah Steadman
UNM Law Professor
Member, UNM Sanctuary Campus Working Group

Cristyn Elder
Professor, UNM English Department
Member, UNM Sanctuary Campus Working Group

Antoinette Sedillo-Lopez
UNM Law Professor Emerita

Scott England
UNM Law Professor

Felipe Gonzales
Professor, UNM Sociology Department
Member, UNM Sanctuary Campus Working Group

Daniel Ortega
Director of International Programs, UNM Law School

Kip Bobroff
UNM Visiting Law Professor

Alexander Siek
UNM Law Professor

Steven Homer
UNM Law Professor

Ernesto Longa
UNM Law Professor
Member, UNM Sanctuary Campus Working Group

Rebecca Kitson
Member, UNM Provost's UndocuTask Force
UNM Adjunct Law Professor

Michelle Rigual
UNM Law Professor

John LaVelle
UNM Law Professor

Gabriel Pacyniak
UNM Law Professor

Eileen Gauna
UNM Law Professor Emerita

Robert Schwartz
UNM Law Professor Emeritus

Jennifer Tucker
Professor, UNM Department of
Community & Regional Planning
Member, UNM Sanctuary Campus Working Group

Jeanette Wolfley
UNM Law Professor

Camille Carey
UNM Law Professor

Szu-Han Ho
Professor, UNM Art Department
Member, UNM Sanctuary Campus Working Group

Clifford Villa
UNM Law Professor

Peter A. Winograd
UNM Law Professor Emeritus

Mary Leto Pareja
UNM Law Professor

Maryam Ahranjani
UNM Law Professor

Olsi Vrapı
Member, UNM Provost's UndocuTask Force
UNM Adjunct Law Professor

David Pallozzi
UNM Law School Director of Admissions

Dominika Laster
Professor, UNM Department of Theatre and Dance
Member, UNM Sanctuary Campus Working Group
& UNM Provost's UndocuTask Force

Nathalie Martin
UNM Law Professor

Sarah Townsend
Member, UNM Sanctuary Campus Working Group
Professor, UNM English Department

Lucrecia Jaramillo
UNM Law Professor

Christine Zuni-Cruz
UNM Law Professor

Armando Bustamante
Staff, UNM El Centro de la Raza
Member, UNM Sanctuary Campus Working Group
& UNM Provost's UndocuTask Force

Lorena Blanco-Silva
Staff, UNM Division for Equity and Inclusion
Member, UNM Provost's UndocuTask Force

Aliza Organick
UNM Law Professor

Traci Quinn
Curator of Education & Public Programs, UNM Art Museum
Member, UNM Sanctuary Campus Working Group

Lizdebeth Carrasco-Gallardo
UNM JD Candidate, Class of 2020
Member, UNM Provost's UndocuTask Force

Amanda Bassett
Director, Advancement & Alumni Relations
and Office for Community Faculty, UNM School of Medicine
Member, UNM Provost's UndocuTask Force

Marisa Castañeda
Graduate Contracts Manager, UNM Graduate Studies
Member, UNM Sanctuary Campus Working Group

Rebecca Schreiber
Professor, UNM Department of American Studies
Member, UNM Sanctuary Campus Working Group
& UNM Provost's UndocuTask Force

Gloria Valencia-Weber
UNM Law Professor Emerita

Selene Vences-Ortiz
Organizer, UNM New Mexico Dream Team
Member, UNM Sanctuary Campus Working Group

Scott Hughes
UNM Law Professor

Frederick Hart
UNM Law Professor Emeritus

Jesús Costantino
Professor, UNM English Department
Member, UNM Sanctuary Campus Working Group

Jessica Goodkind
Professor, UNM Sociology Department
Member, UNM Sanctuary Campus Working Group

Chrysta Carson Wilson
Graduate Student Member, UNM Sanctuary Campus Working Group

[47 signatories in all]

Your Name
Cathy Garcia

Phone Number
5622909832

Email
garciaca@law.unm.edu

Proposal Number
2018-006

Comment

To the Honorable Justices of the Court,

As a current law student at UNM, I support amending the 15-103 to allow bar admission for individuals regardless of their immigration status. I want the voices of my peers, who have worked tirelessly to earn their JD and to pass the Bar Exam, to have their work recognized and validated by our state. I believe that the life experiences of these individuals gives them a unique perspective on the law, and the challenges that an individual, their family, and their community must overcome. I believe their experiences make them valuable advocates for their communities, one I share. As the daughter of an undocumented immigrant, hard work, tenacity, and a sense of fairness and justice were ingrained during my upbringing. I would be honored to, one day, be able to serve alongside these dedicated individuals as an officer of the court.

Thank you so much for considering this amendment. Respectfully submitted, Cathy Garcia

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018

A handwritten signature in black ink, appearing to be 'C. Garcia', written over the date stamp.

Your Name
Horatio Moreno-Campos

Phone Number
5056522856

Email
horatiomorenocampos@gmail.com

Proposal Number
2018-006

Comment

I fully support this proposed rule change. "No human being is illegal." (Quote from Elie Wiesel, a holocaust survivor)

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018

A handwritten signature in black ink, appearing to be the initials 'HMC' followed by a horizontal line.



SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018

A handwritten signature in black ink, appearing to be "J. D. Moya", written over a faint circular stamp.

April 10, 2018

Via U.S. first-class mail and email to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504
nmsupremecourtclerk@nmcourts.gov

Re: Proposed Amendment to Rule 15-103(B)(7)

Dear Honorable Justices of the New Mexico Supreme Court:

The American Civil Liberties Union of New Mexico strongly supports the proposed amendment to Rule 15-103 NMRA. The fundamental civil liberties protections of the Bill of Rights and the U.S. Constitution protect every person in this country—including non-citizens. The proposed amendment aligns with federal and state law, New Mexican values of diversity and inclusion, essential principles of fairness, and the dignity of all persons irrespective of their immigration status.

Individuals seeking to practice law in New Mexico should not be discriminated against based on their immigration status or lack of work authorization. This amendment would allow the New Mexico Board of Bar Examiners to assess each applicant for admission to the Bar based on their own merits and their individual character and fitness to practice law. The fact that an undocumented immigrant is in this country without lawful authorization does not demonstrate unfitness to practice law. If anything, successful completion of the other eligibility requirements demonstrates extraordinary perseverance and dedication on the part of undocumented immigrants, who face significant hardships and obstacles to accessing higher education.

Not only would qualified immigrant attorneys enrich our state bar in terms of diversity, but the measure of providing immigrant attorneys access to licensure would have the capacity to make a segment of our population safer. Because non-citizens deserve and require the same constitutional protections in this country as citizens, these members of our state need to have equal access to our Courts, which we know is currently suppressed by fear and misinformation. Having qualified immigrant lawyers as members of our bar would provide the opportunity for these underserved communities to have access to attorneys who know and understand the dynamics of being undocumented in this country. And qualified immigrant lawyers would, hopefully, provide these communities with better confidence in their access to our Courts and correct information concerning their rights.

Further, immigrant lawyers who remain at risk for deportation under current federal policies are in no different position from a solo practitioner who suddenly has an incapacitating stroke, or debilitating car accident. It is unnecessary to single out immigrant attorneys based on this risk. Indeed, proposed Rule 16-119 addresses the issue, and would require all attorneys to develop a succession plan in case of an emergency.

The New Mexico Constitution establishes the right of its Spanish-speaking residents to learn in its public schools. N.M. Const. art. XII, § 8. New Mexico law mandates that public post-secondary educational institutions in the state "shall not deny admission to a student on account of the student's immigration status." NMSA 1978, § 21-1-4.6. And yet, as currently written, Rule 15-103 may force undocumented UNM School of Law graduates to leave the home they love in the state that educated them in order to serve as attorneys in one of a growing number of states where immigration status is not a bar to licensure.

The ACLU of New Mexico knows that our state is enriched by our diverse cultures, histories, and perspectives. Likewise, the State Bar and the community that it serves will only benefit from the inclusion of attorneys with a wide range of personal backgrounds and lived experiences, including undocumented immigrants. The Court should adopt its proposed amendment, and should allow undocumented applicants to demonstrate their integrity and qualification to practice law in our state.

Sincerely,



Leon Howard
Legal Director, American Civil Liberties Union of New Mexico
Co-Chair, New Mexico State Bar Committee on Diversity in the Legal Profession
ACLU-NM
P.O. Box 566
Albuquerque, NM 87103
lhoward@aclu-nm.org
Phone: (505) 266-5915 Ext. 1008
Fax: (505) 266-5916

Your Name
Janette Duran

Phone Number
5059347341

Email
duranja@law.unm.edu

Proposal Number
2018-006

Comment

I would like to express my support for the proposed amendment to Rule 15-103(B)(7). Undocumented individuals who can pass the bar should not be banned based on their immigration status. Immigration status is not indicative of a person's academic merit or ability to advocate for a client, but something that an individual may have little control over. The legal community in New Mexico can only benefit from the increased diversity and a wider perspective that this amendment would encourage. I applaud the Court for considering this change and strongly encourage its adoption.

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018

A handwritten signature in black ink, appearing to be 'J. Duran', with a horizontal line extending to the right.

APR 10 2018

April 10, 2018

Joey D. Moya
Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov



Dear Mr. Moya,

Thank you for the opportunity to comment on the proposed Amended Rule 15-103(B)(7). As faculty members and members of the admissions committee at the University of New Mexico School of Law, we write to support the proposed Amended Rule 15-103(B)(7), particularly the language allowing the Supreme Court to admit "an individual otherwise residing in the United States" to the New Mexico State Bar.

For more than a decade, New Mexico law has explicitly prohibited UNM and any other higher education institutions from discriminating against residents of New Mexico on the basis of federal immigration status for purposes of admission, tuition rates or state financial aid.¹ Pursuant to law, the School of Law has occasionally admitted students whose immigration status might otherwise present an issue in the absence of such a law.

Students admitted to the School of Law pursuant to the law and who dream of becoming a lawyer face an awkward reality if the Board of Bar Examiners denies such a student the opportunity to take the bar exam and gain admission to the bar. The State of New Mexico's policy to encourage students to seek enrollment in a professional degree program by guaranteeing them such rights, but then to deny them professional licensure and the opportunity to practice is possible, of course, because the Legislature sets higher education policy and the Supreme Court and the Board of Bar Examiners set policy on admission to the bar.

But such an outcome would have made Franz Kafka smile. It is absurd for the state's law school to admit a law student pursuant to clear New Mexico law and, on behalf of the state, accept significant tuition payments for three years of education and then for the state, through a different legal entity, to deny the same student the opportunity to be admitted to the bar. State law should be internally consistent.

Our views are also consistent with the views and values of the largest professional organization for lawyers in the United States. Last year, the American Bar Association passed a resolution that bar admission should not be denied solely on immigration status.² If the Supreme Court proceeds with the proposed rule, New Mexico will join a number of states that already admit members regardless of immigration status. We think that such an approach is not only more consistent with existing state law and policy but is also the morally right thing to do.

¹ N. M. S. A. 1978, § 21-1-1.2, enacted in 2005.

² See ABA Resolution 108

(<https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/108.pdf>).

That said, in our view, the language requiring undocumented attorneys to submit a contingency plan is redundant and unnecessarily prescriptive. The issues addressed by the contingency provision reflect the same issues that face any lawyer in New Mexico in light of the realities of life. Indeed, it is more foreseeable that, in any given year, clients of one of the thousands of member of the New Mexico bar will experience an unexpected accident or sudden illness of their lawyer than that their lawyer will be deported.

The goal of the contingency plan requirement seems already to be addressed by general professional and ethical conduct to which members admitted to the bar must adhere in Rule of Professional Conduct 16-101 to 104. The State Bar Office of General Counsel provides ethics support and opinions to attorney members, and the Disciplinary Board of the New Mexico Supreme Court accepts and reviews complaints and disciplines lawyers for misconduct. We therefore recommend striking the sentence, "The Supreme Court may admit an applicant who is not lawfully present in the United States who is otherwise eligible for admission to practice law under this rule subject to the condition that the applicant have a contingent plan in the event of an inability to practice law in a form approved by the Lawyers Succession and Transition Committee."

Although we object to the language about a contingency plan and would recommend deleting it from the proposed rule, we would, of course, rather see the whole amendment adopted than none of it.

Thank you for considering our views.

Sincerely yours,

Kevin Washburn
Regents Professor of Law

Maryam Ahranjani
Assistant Professor of Law

Your Name
Rod D. Baker

Phone Number
5052869700

Email
rdbaker@swcp.com

Proposal Number
2018-006

Comment

See attached file

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018

A handwritten signature in black ink, appearing to be 'RDB', is written over the date stamp.

APR 10 2018



Ladies and Gentlemen:

I write in opposition to the proposal to permit persons not in New Mexico legally to practice law here. It is oxymoronic to have a person knowingly engaging in ongoing unlawful activity also to be qualified to pass before the bar of the courts of our state. Allowing illegal immigrants to practice law and be sworn in as lawyers will grant the privilege of upholding the law and defending the U.S. and New Mexico Constitutions to people who are intentionally violating the rules. An attorney who has taken an oath of office to uphold the law, but breaks the law every day: How will the Court square that circle?

This proposed rule change is a solution without a problem. What motivates it other than some misplaced sense of compassion? There is no evidence of any shortage of attorneys in our state such as would justify an exception to the general rule that we draw our attorneys from the body of law-abiding residents. There is no sound rationale for this proposed rule change; it is based not in any solid reasoning, but solely upon appeals to emotion and/or to a political agenda.

Practicing law is a privilege, not a right. Persons who have run afoul of the law (state or federal) in the past surely should be permitted to apply for bar admission, but only AFTER they have "made things right" by paying all fines, or serving their sentence, complying with conditions of parole or release, etc. This concept of offering a "second chance" to lawbreakers should apply as well to persons who violate federal immigration law. But this proposal to permit unrepentant illegal immigrants to sit for the bar exam is unfair to all persons who have been (or will be) denied that privilege due to other unresolved, non-immigration-related offenses, however minor. Where are we going to draw the line? Once we open the bar door to one variety of misdemeanor, the contention will begin over extending the same waiver to others. How does this promote the rule of law in New Mexico? It does not. It erodes respect for law by people both inside and outside of the legal profession.

Compounding the potential problems presented by this proposal is the fact that many persons in New Mexico illegally are not right with the law in other regards besides their immigration status. Many – but concededly not all – illegal immigrants have broken or will break other laws such as engaging in identity theft, tax evasion, and forgery. It is imperative that these types of lawbreakers not be offered the chance to mask these serious crimes and then slip into membership to the New Mexico bar.

The idea that known ongoing lawbreakers should be officers of the court is so inimical that even the Obama administration opposed it.

In a 2012 brief to the California Supreme Court, the Obama Department of Justice stated that "federal law prohibits giving a public benefit, such as a bar license, to an 'unlawfully present alien'" because a relevant federal statute was "plainly designed to preclude undocumented aliens from receiving commercial and professional licenses issued by states and the federal government."

Proposal 2018-006, to amend Rule 15-103, should be rejected.

Your Name
Sam Ashman

Phone Number
5053105356

Email
ashmansa@law.unm.edu

Proposal Number
2018-006

Comment

I strongly support this proposal, as I believe that it is only just. A person's effort to practice law in the only place he or she knows as home is by no means a mark against that person's character, and has no bearing on fitness for the bar.

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018



Your Name
Lizdebeth Carrasco

Phone Number
5053580511

Email
carrasli@law.unm.edu

Proposal Number
2018-006

Comment

I fully support the proposed rule change 2018-006.

Denying someone the ability to practice law in the state on the basis of immigration status, despite them having completed law school and all other requirements, is not in line with our values and inclusive culture. New Mexico is a welcoming place with a very diverse population, both in background and experiences. Denying undocumented immigrants the ability to practice law in the state on the basis of immigration status is not only contrary to this, it is also not in the best interest of the New Mexican people because we will be shutting the door on a pool of qualified, competent lawyers who otherwise would be allowed a license to practice law in the state.

I believe it is time for New Mexico to follow in the footsteps of other states that have changed their rules to allow undocumented immigrants to practice law. I commend the Court for considering this rule change and ask that it be adopted.

Thank you.

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018

A handwritten signature in black ink, appearing to be 'L. Carrasco', written over the date stamp.

Your Name
Kristina G. Fisher

Phone Number
5054903237

Email
nm@risestronger.org

Proposal Number
2018-006

Comment

As a member of the New Mexico Bar, I am writing to express my strong support for Proposed Rule Change 2018-006, Immigration Status of Bar Applicants.

A lack of legal immigration status should not prevent someone from practicing law in New Mexico. As we have seen with the whip-sawing status of DACA recipients, legal status in this country can be arbitrary and changeable. Many New Mexicans lack legal status because they were brought to the United States as children. If they complete law school, pass the bar, and fulfill the rigorous character and fitness requirements, they should be admitted to our bar and allowed to practice law in New Mexico.

This rule is consistent with the principles of federalism, specifically New Mexico's right to determine its own standards for bar admission, as well as our legal community's long history of valuing diverse perspectives and backgrounds. I commend the Supreme Court for proposing this rule change and I urge its adoption.

SUPREME COURT OF NEW MEXICO
FILED

APR 10 2018





924 Park Ave SW, Ste C
Albuquerque, NM 87102
505.255.2840
nm-povertylaw.org

April 10, 2018

VIA Electronic Mail

Joey D. Moya
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-848
nmsupremecourtclerk@nmcourts.gov

**SUPREME COURT OF NEW MEXICO
FILED**

APR 10 2018

Re: Comment on Proposal 2018-006

Dear Mr. Moya:

We write to strongly support the amendment to Rule 15-103(B)(7) NMRA. The New Mexico Center on Law and Poverty (Center) is a non-profit law firm dedicated to advancing economic and social justice through education, advocacy and systemic impact litigation. We work with low-income New Mexicans on a variety of issues to improve living conditions, increase opportunities and protect the rights of people living in poverty. As a legal organization, we have had excellent law students work with us as clerks and interns that are currently ineligible to practice law in the State of New Mexico because of their immigration status. Attorneys that are currently excluded under the rule have contributed, and will continue to contribute, deeply to the legal community in New Mexico and if admitted would increase access to legal services in underserved communities. The amended rule complies with federal law and maintains the high character and fitness standards placed on all admitted attorneys. We urge the Court to amend Rule 15-103(B)(7) NMRA to allow all qualified attorneys to the Bar, regardless of immigration status.

A number of states, including California, have already determined that they will allow undocumented law graduates who satisfy other admission requirements to practice law. Federal law allows State courts to grant admission to qualified attorneys regardless of their immigration status. 8 U.S.C. §1621(d) states that "[a] State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." The proposed amendment satisfies the applicable requirement under §1621(d). The New Mexico Board of Bar Examiners came to the same conclusion. See *S-1-SC-36758*.

Immigration status does not have a bearing on the fitness to practice law or to faithfully uphold the Constitution and laws of the United States and New Mexico and to maintain the respect due to Courts of Justice and judicial officers.¹ In most cases, attorneys that would seek admission under the amended rule came into the Country as children and to escape economic or political exploitation through no fault of their own. As the California Supreme Court stated:

¹ See Supreme Court of New Mexico Attorney's Oath.



924 Park Ave SW, Ste C
Albuquerque, NM 87102
505.255.2840
nmpoertylaw.org

"we conclude that the fact that an undocumented immigrant's presence in this country violates federal statutes is not itself a sufficient or persuasive basis for denying undocumented immigrants, as a class, admission to the State Bar." *In re Garcia*, 315 P.3d 117, 130-31, 58 Cal. 4th 440, 460 (Cal. 2014). California was the first to pass legislation that explicitly allowed individuals to be admitted to their State bar, regardless of immigration status.

The amendment to Rule 15-103 NMRA includes an unnecessary provision that attorneys who do not have a lawful immigration status submit a succession plan. The basis of this provision is that undocumented lawyers risk detainment and deportation that would place risk on their clients. This risk is fully mitigated by the proposed amendment to Rule 16-119 that this Court is also considering. Under the proposed Rule of the Code of Professional Conduct, every practicing lawyer in New Mexico would be required to complete a succession plan in the event that the attorney would be suddenly unavailable. The rationale for the rule can be found in the comment of the proposed rule- "When a lawyer is unexpectedly unable to practice for an extended period of time, the lawyer's clients, staff, and practice are at risk of significant harm. By taking proactive steps to plan for an unexpected interruption in practice, including implementation of a succession plan, a lawyer can avert or mitigate such harm." Proposed Rule 16-119, Comment [1]. Immigrant lawyers who remain at risk for deportation under current federal policies are in no different position than any practitioner who is suddenly incapable of practicing law due to unexpected emergency. There is no need for a succession planning in Rule 15-103, if Rule 16-119 is amended as planned.

The decision to admit someone to practice in New Mexico should be based upon merit, not upon immigration status or conditioned upon work authorization. Therefore, we urge you to amend the rule as proposed.

Sincerely,

/s/

Sovereign Hager and William Townley
NM Center on Law and Poverty

APR 11 2018

Dear Rule Committee Members,



I write in full support of the proposed rule change. I am currently a law student and I believe this rule revision will benefit the people and communities of New Mexico. This rule change gives qualified individuals the opportunity to practice law and to give back to the people and communities of New Mexico.

Many of the comments in opposition to this rule discuss the notion that someone who has violated a law should not be allowed to practice the law. However, this is not the standard, and if it were, there would be numerous practicing attorneys who would have never been admitted to the State Bar. People make mistakes, and sometimes those mistakes are associated with criminal consequences. However, those acts do not, and should not, define a person. If you have a DWI, should you not be allowed to practice law? What about a speeding ticket?

Furthermore, many of the undocumented immigrants in the United States were brought here when they were children. Undocumented immigrants looking to be admitted to the New Mexico State Bar are not "illegals", and they are not "criminals". They are purely individuals who want to help their communities and offer legal services to the people of New Mexico. They are people who deserve to have their whole personhood looked at when applying to the State Bar, and not just their immigration status.

It is not easy to become a lawyer. People, regardless of their immigration status, work incredibly hard before law school, in law school, and after law school to be able to become a lawyer. This rule change does not mean that undocumented immigrants will be automatically accepted to the State Bar, and it does not mean that the laws of New Mexico or of the United States do not matter. It simply means that being accepted to the New Mexico State Bar should be about more than just immigration status. Just like being accepted to the State Bar should not be contingent upon your race, gender, religion, or sexual orientation.

This rule change will do nothing more than allow qualified, talented, passionate, and hardworking people to practice law in New Mexico. The New Mexico Bar should be made up of a diverse pool of individuals dedicated to practicing law. Therefore, New Mexico's focus when admitting people to the State Bar should not be on a person's race, religion, gender, sexual orientation or immigration status. The focus should be on admitting qualified and hardworking individuals who will adequately and passionately serve the communities and the people of New Mexico.

Elizabeth Bates
Juris Doctor Candidate, Class of 2019
University of New Mexico School of Law
Vice President- Immigration Law Student Association

STUART M. BLUESTONE, ESQ.

1330 CERRO GORDO ROAD
SANTA FE, NEW MEXICO 87501

April 11, 2018

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

BY EMAIL TO:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.o. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov



Re: Comments in Support of Proposed Amendment to Rule 15-103(B)(7)

To the Honorable Chief Justice and Justices of the New Mexico Supreme Court:

I respectfully submit these comments in support of the proposed amendment to Rule 15-103(B)(7) regarding qualifications for admission to the New Mexico Bar. I do so in my individual capacity as a retired lawyer. I have been a lawyer in New Mexico for 34 years, including service at the New Mexico Attorney General's Office and the NM Legislative Council Service.

The foundation of my support is based on the basic principles of Justice and Fairness. In applying the fundamental precepts of due process and equal protection under our State Constitution, which you as the New Mexico Supreme Court are the final arbiter of, the legal community in our State should not discriminate against innocent children and other immigrants in New Mexico who want to contribute to our society as fully trained and qualified lawyers, regardless of their country of origin or immigration status.

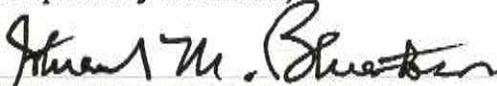
As you know full well, the New Mexico Supreme Court has found different and more expansive rights under our State Constitution than the U.S. Supreme Court and other States have found in interpreting the federal and other State Constitutions in other contexts. Similarly here, so should you do so now - regardless of how the U.S. Supreme Court and other States may apply their rules - in interpreting and applying fundamental notions of fairness, liberty, due process and equal protection of the law to recognize and protect an immigrant's right to practice law in New Mexico.

In addition, as a matter of public policy, we in New Mexico should be doing all we can to address the grave injustice of federal immigration courts not recognizing a right to counsel for all immigrants, including unaccompanied minors, in immigration deportation cases. To the extent this new Rule can help provide committed lawyers who can correct this injustice by serving as needed lawyers for children and others in immigration cases, the Rule represents sound judgment and should be adopted.

Furthermore, the proposed rule change will make the New Mexico Bar more inclusive of all New Mexicans, regardless of immigration status. This change is thus a welcome continuation of our State's long and proud history of recognizing and protecting the civil rights of all our residents, and I wholeheartedly support it.

Thank you for your consideration.

Respectfully submitted,



STUART M. BLUESTONE, ESQ.

NM Bar No. 1060

1330 Cerro Gordo Rd.

Santa Fe, NM 87501

Email: smb1946@aol.com

Phone: 505-660-0583

Your Name
Mesa Lindgren

Phone Number
5053494661

Email
mesa.lindgren@lopdm.us

Proposal Number
2018-006

Comment

I am writing in vehement support of Proposal 2018-006. As a currently practicing attorney I have personally witnessed the zealous representation of clients by an undocumented attorney. It would be absurd to deprive our community of such representation based upon the outcomes of outdated and cruel immigration system. New Mexico has long been a champion of immigrants rights and should continue to do so by passing Proposal 2018-006.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'J.M.', is written over the date stamp.

April 10, 2018

Rules Committee
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



Dear Rules Committee Members:

I am writing to you to express my support for the proposed amendment to Rule 15-103(B)(7) NMRA. The amendment would permit individuals who have grown up in this country and who have gained an education to be admitted and to practice law in the State of New Mexico.

In 2005, our State became a champion by passing Senate Bill 582, which allowed undocumented students to qualify for in-state tuition and gain admission to any college or university regardless of immigration status. Since its passage many other states across the country have followed the same path. Our State made history by allowing undocumented students to earn their college education. New Mexico continues to be a national leader by providing access to undocumented students to the lottery scholarship. In 2014, the state of California made history when it allowed the Sergio C. Garcia to become the first undocumented lawyer to be admitted into the state bar. Many other states have followed California's ruling. New Mexico has always been a champion when it comes to immigration and now it is the time to join California and the many other states who have allowed undocumented students to practice law.

In 2013, I was admitted to the University of New Mexico School of Law as an undocumented student. There is no question that law school is challenging but knowing that you may not be able to practice after graduating is a high burden to have.

I know that the process to be admitted into the State Bar is rigorous and each and every applicant is held to the same standard. Being undocumented does not make a person less of a lawyer just because they don't have status. I grew up in New Mexico and like thousands of students I am a proud New Mexican who will make a difference in our state. As a recently admitted member of the New Mexico State Bar and as an undocumented student when I was accepted into the University of New Mexico School of Law I urge you to adopt this rule.

Sincerely,


Luisa Mabel Arellanes Serrano
Assistant Trial Attorney

Your Name
Isabella A. Pacheco

Phone Number
5754916747

Email
isabellapacheco1@gmail.com

Proposal Number
2018-006

Comment

As a proud member of the New Mexico Bar, I support the proposed rule change. I believe that this represents a change for the better for New Mexico. Under this rule, applicants who pass stringent requirements will be allowed to practice law and serve our communities.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'IPA', is written over the date stamp.

Your Name
Kate Thompson

Phone Number
5056900290

Email
kthompson@rothsteinlaw.com

Proposal Number
2018-006

Comment

I strongly support the proposed changes to Rule 15-103. These changes reflect our state's values as well as those of our profession. It would defy those values as well as reason to deny someone who is otherwise qualified from becoming licensed to practice law merely because of their place of birth. Concerns that someone should not be licensed based upon not being "lawfully in the United States" do not comport with the following section of 15-103, which provides for further inquiry into one's character, not outright disqualification from licensure, for such wrongful actions as unlawful conduct. Such an arbitrary distinction should not bar someone from practicing law. Especially in the case of DACA students who have lived in the US their entire lives with no path to citizenship or legal residency, it is not fair or reasonable to prevent them from practicing law because of their immigration status.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'KAT' followed by a horizontal line.

APR 11 2018

Memorandum



To: Joey D. Moya, Clerk of the New Mexico Supreme Court
From: Michael B. Browde
Date: April 10, 2018
Re: Proposed Amendment to Rule 15-107(B)(7)

I write in support of the above-referenced proposed amendment to the Rules governing Admission to the Bar, because I believe the proposed amendment falls squarely within the exclusive and lawful authority of this Court, provides fair and humane treatment to deserving applicants who meet its requirements, is consistent with the social and communitarian ethic of our state, and represents sound policy in the best interests of the profession and its service to the State.

Most of those values are addressed more capably than I could in a number of the supportive comments the Court has already received. As someone who focused his teaching career on Federal and State Constitutional Law I believe passage of this amendment is thoroughly consistent with applicable federal law, and the special powers of this Court under our own New Mexico constitution.

We all understand and appreciate that the federal government has special authority with respect to immigration and in many instances, the statutory expression of that authority may have preemptive effect with respect to state law and regulations. *See Arizona v. United States*, 132 S. Ct. 2492 (2012). Such comprehensive preemption cannot apply here, however, where the applicable federal statute expressly allows for “state authority to provide for eligibility of illegal aliens for State and local public benefits.” 8 U.S.C. § 1621(d). Indeed, the federal statutory opt-out provision for states, has special significance in the present context where the regulatory control over the practice of law is exclusively within the authority of the courts of the sovereign states. *See, e.g., Bates v. State Bar of Ariz*, 433 U.S. 350, 360 (1997) (the state court is the “ultimate body wielding the State’s power over the practice of law.”).

As the UNM Law School Deans have pointed out in their comments in support of the proposed amendment, there are a growing number of states that have exercised the opt-

out prerogative through various expressions of state law. See *In re Garcia*, 315 P.3d 113 (Cal. 2014); *In re Vargas*, 10 N.Y.S. 3d 579, 594-96 (App. Div. 2015).

The New York appellate division of the supreme court, in upholding the judicial power to satisfy the opt-out requirement, engaged in a careful and nuanced analysis of the Supreme Court's anti-commandeering principle, rooted in the 10th Amendment. See *In re Vargas*, 10 N.Y.S. 3d at 594-96. The Tenth Amendment issue had special cogency in the New York context—where, the court's authority over the practice of law was a power delegated to the New York high court by statute. It must have even greater force in the New Mexico context, where our Supreme Court derives its authority from the New Mexico Constitution, and where state legislative attempts to regulate in the area could work “an unconstitutional invasion of the judicial power,” *Application of Sedillo*, 1959-NMSC-095, ¶ 16, 66 N.M. 267, 347 P.2d 162, by invading the Court's “exclusive constitutional prerogative to “regulate the practice of law.” *State ex rel. Novell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, ¶ 26, 85 N.M. 521, 314 P.2d 40.

APR 11 2018



Your Name
Sarah Pepin

Phone Number
5053693577

Email
sarah.pepin@lopdm.us

Proposal Number
Proposal 2018-006 - Immigration status of bar applicants [Rule 15-103 NMRA]

Comment

I strongly support this proposed change to the rule.

In my experience, attorneys who are immigrants - documented or not - are some of the strongest advocates for both their clients and their communities, no matter what type of law they choose to practice. I am proud to have them as colleagues. If someone is willing to claw their way through the gauntlet of college and law school and the bar exam without any sort of guarantee they will even be allowed to practice, the least we can do as a profession is admit them. By that point, they have already shown the mix of commitment, dedication and risk-taking that make a great attorney.

Yes, attorneys who are undocumented risk deportation. Attorneys of all stripes risk emergencies, foreseen and unforeseen, that could render them incapable of practicing. Requiring a contingency plan in case of deportation is fair.

I am eager to see this rule change enacted, because it represents the best of who we are as a state and as a profession.

April 11, 2018

SUPREME COURT OF NEW MEXICO
FILED

Joey D. Moya
Clerk of the Court
New Mexico Supreme Court

APR 11 2018



POSTED TO WEBSITE AS PDF

RE: Comment on Proposal 2018-006

Dear Mr. Moya:

I write to submit my comment to Proposal 2018-006 (“Immigration Status of Bar Applicants”). I fully support and endorse the proposed change, for the reasons that follow.

Rule 15-103 governs the professional qualifications of lawyers in New Mexico. Immigration status has no bearing on those qualifications, nor even any relation to the other criteria enumerated by the Court, such as age, moral character, and education. Simply put, there is no rational basis to exclude from the bar undocumented persons who otherwise qualify to practice—particularly as many of those individuals were brought here as infants or children through no fault of their own.

The practice of law is in essence a study of the human condition. Qualities like empathy and experience are what separate great lawyers from the merely competent, as the former are able to understand, and then translate for those who may not, the situations and struggles of their clients. There are millions of undocumented persons living and working in the United States. Because of their lack of immigration status, undocumented people are targets for exploitation, and therefore in dire need of legal services. While many attorneys are perfectly well-qualified to provide such services, lawyers who share the experiences and concerns of the people they serve are often uniquely positioned to represent those clients; the same is true of judges, as Supreme Court Justice Sonya Sotomayor famously noted. Attorneys who identify with their clients in this way can unlock and present additional levels of legal nuance in their arguments, which might go unnoticed by other practitioners. This is particularly true in the field of civil rights litigation and immigration, where the need for the highest caliber of representation for undocumented persons is especially great.

As the experiences of New York, California, and other States have already shown, allowing undocumented immigrants to practice law poses no threat to the integrity of the profession. Rather, it enhances the bar and uplifts the quality of representation by all attorneys by introducing new and important perspectives. I cannot support this initiative strongly enough.

Sincerely,

Graham F. Dumas, Esq.
Admitted New York (2012)
And New Mexico (2018)

Your Name
Alexandria Allen

Phone Number
5053505845

Email
ap.allen@hotmail.com

Proposal Number
2018-006

Comment

I am writing in my support of proposal 2018-006 to allow individuals otherwise qualified to practice law, but cannot be admitted because they are undocumented. These individuals have put in the hard work, time, dedication, and commitment to their legal education and should not be prohibited from being admitted simply because of their status. They have demonstrated they are qualified to practice law, and are dedicated to the legal field. Our state has a rich immigration history that has given us the diverse and special place we call home. I would be proud to practice alongside anyone else who has shown his or her commitment to the state of New Mexico. Please approve this proposal so that our state can welcome a group of dedicated and qualified people to our bar.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'AP' followed by a horizontal line.



MARTINEZ | HART | THOMPSON | SANCHEZ

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

April 11, 2018

VIA EMAIL – nmsupremecourtclerk@nmcourts.gov

& VIA FAX – (505) 827-4837

Joey D. Moya, Clerk

New Mexico Supreme Court

P.O. Box 848

Santa Fe, New Mexico 87504-0848

Dear Mr. Moya:

Below are my comments on Proposed Amended Rule 15-103(B)(7) being considered by the New Mexico Supreme Court. Please kindly forward the following correspondence to the Justices of the New Mexico Supreme Court.

Dear Chief Justice and Honorable Justices of the New Mexico Supreme Court:

I write in support of the proposed amendment to Rule 15-103(B)(7) NMRA as a lawyer admitted to practice law in New Mexico and as a colleague and friend to many Dreamers and undocumented immigrants who would benefit from the proposed amendments.

The proposed amendments adhere to the important truths that the framers of our New Mexico Constitution proudly recognized 107 years ago:

All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.

N.M. Const. art. II, § 4. It is important to note that unlike the Federal Constitution, the framers of the New Mexico Constitution purposefully placed these truths at the beginning of our Constitution to help guide us in the promulgation, interpretation,

and application of New Mexico rules and laws. New Mexico courts have a longstanding history of recognizing the inherent rights *all persons* possess, even during times of racial and civil tensions when exclusion has been more widely accepted than inclusion. *See, e.g., United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422 (recognizing “Indians” as United States citizens entitled to “life, liberty, and property” long before any other state court in the United States recognized this natural, inherent, and inalienable right); *Gonzalez v. Performance Painting, Inc.*, 2013-NMSC-021, 303 P.3d 802 (reversing the denial of benefits to an undocumented worker by holding an employer cannot rely exclusively on their workers’ undocumented status as a defense to continue payment of modifier benefits under the New Mexico Workers’ Compensation Act); *Torres v. Sierra*, 1976-NMCA-064, ¶ 79, 89 N.M. 441 (holding that an undocumented immigrant possesses the right to pursue a personal injury claim and recover damages); *Gonzalez v. Health & Social Servs.*, 1977-NMCA-140, ¶ 20, 91 N.M. 334 (holding that New Mexico extended special medical benefits to all residents, regardless of immigration status). Our resolve to recognize *all persons’* natural, inherent, and inalienable rights at times when the majority of states would oppose such recognitions is not only supported by basic federalism principles, but also finds support once again from the framers of the New Mexico Constitution. *See* N.M. Const. art. II, § 3 (“The people of the state have the sole exclusive right to govern themselves as a free, sovereign and independent state.”); N.M. Const. art. II, § 5 (“The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.”). The Court’s adoption of the proposed amendments to Rule 15-103 would simply reaffirm the guiding principles found in our State Constitution and case law that have consistently recognized the rights of *all persons*.

In addition to the legal basis for why I support the proposed amendments to Rule 15-103, I have had the distinct privilege throughout my life of knowing, mentoring, and working alongside undocumented immigrants who would benefit from the proposed amendments. I have had the privilege of relating to undocumented immigrants, in part, because I myself am the child of immigrants. I benefited from the American Dream because I won the birth lottery; I was born on United States soil. I have always been aware of our brothers and sisters throughout this country who, through no fault of their own, were not as lucky.

For example, in May 2011, I found myself the next-door neighbor to an immigrant family. The eldest of the three children came to the United States with his parents

when he was a toddler. When I met him he was preparing to graduate from eighth grade onto high school. He dreaded this next stage in his life not because he disliked school—he is an incredibly gifted student—but because he did not see any real career opportunities after he graduated from high school or college due to his immigration status. During that time, a federal DREAM Act would fail later that month and the current Deferred Action for Childhood Arrivals (DACA) was still over one year away from becoming a reality for undocumented children like my next-door neighbor.

Unlike most of us, who have taken college and professional careers as a certainty, this fourteen-year old was asking himself, “What is the point of going to high school if, at the end of the day, I will never have a legitimate opportunity to study at college or pursue a professional career of my choice?” He simply could not even begin to imagine any possibility where, for example, he could one day seek admission to practice law. Although he did not see it in himself yet, I saw a determined, intelligent, kind person accomplishing great things in his life *if only* he was given the opportunity to succeed. When DACA became a reality one year later in 2012, I saw a change in him: he was finally permitted to exhale the anxiety he carried with him about his future. He had a real opportunity to go live the life the majority of us take for granted: go to college and work your way towards your dream career. He applied this renewed excitement to studying, preparing for his future, and, for those rare moments, living the normal life of a teenager. He did all that and more; he aced all of the Advanced Placement courses and tests during high school. By the time he graduated from high school, he was effectively a junior in college.

Many undocumented students like my next-door neighbor who grasped onto this chance at the American Dream are now approaching the third and fourth years of their college educations and preparing for the next step in their professional careers. The proposed amendments to Rule 15-103 can be the beacon of hope to those Dreamers seeking to pursue legal careers in New Mexico, and it will serve as a valuable guiding example to every other licensed profession in this State.

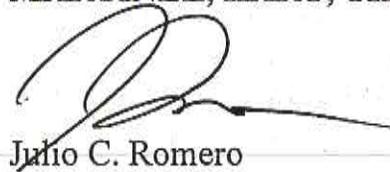
Undocumented immigrants would not be the only beneficiaries of the proposed amendments to Rule 15-103. Clients, attorneys, victims, and anyone and everyone who comes in contact with the courts and the legal system in our State are due to benefit from those given the opportunity to practice law pursuant to the proposed amendments to Rule 15-103. It would be a privilege and honor to practice law alongside undocumented lawyers who equally possess the natural, inherent and

inalienable right to enjoy and defend life and liberty and of seeking and obtaining safety and happiness through this noble profession.

I am confident that the Court's adoption of the proposed amendment to Rule 15-103(B)(7) will benefit our State Bar and our legal community as a whole. For the foregoing reasons, I support the Court's adoption of the proposed amendment to Rule 15-103(B)(7).

Respectfully submitted,

MARTINEZ, HART, THOMPSON, & SANCHEZ, P.C.

A handwritten signature in black ink, appearing to read 'Julio C. Romero', with a long horizontal flourish extending to the right.

Julio C. Romero

As an attorney who has been admitted to the bars of New Mexico, New York, and Massachusetts, I support the proposed amendment to Rule 15-103(B)(7) NMRA.

People who have been convicted of crimes may still become members of the bar. See Rules 15-103(C) and (D) NMRA.

When an individual is "not lawfully present in the United States," Rule 15-103(B)(7) (as proposed), this is not a crime, but reflects a status offense which is not necessarily a result of any unlawful conduct, dishonesty, or other malfeasance which could present a barrier to bar admission. See 15-103(C)(3). This status may, and often does, result from an individual's circumstances of birth or other reasons over which the person has or had no control.

To those who oppose the proposed amendment, I would say: Your good fortune in having been born into a physical location you like, even love, does not give you the moral (or any other) authority to condemn those born elsewhere on that basis alone.

There is no good reason that those who simply lack a certain status should be tarred with the stigma they already face, let alone excluded from bar membership.

Nathaniel Puffer
nathanielpuffer@gmail.com
505-750-3272

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'RMA', is written over the date stamp.

Your Name
Raymond Maestas

Phone Number
5056885946

Email
raymondmaestas@yahoo.com

Proposal Number
Proposal 2018-006 - Immigration status of bar applicants [Rule 15-103 NMRA]

Comment

I write to adamantly support this amendment. We all came from somewhere else--no matter who you are or where you came from, except for Native Americans. I don't give any weight to those who think otherwise--they are just white noise, in my humble opinion.

Good for our Supreme Court to lead rather than to follow!

I am strongly in favor of this proposed amendment. I believe it reflects the progressive spirit of inclusiveness that should govern all of our interactions: with lawyers, with clients and with the general public. I urge the Court to adopt the amendment.

Linda G. Hemphill, Esq.
The Hemphill Firm, P.C.
P. O. Box 33136
Santa Fe, NM 87594
Voice (505) 986-8515
Fax (505) 986-1132
linda@hemphillfirm.com
www.hemphillfirm.com_

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'LGH', is written over the date stamp.

APR 11 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
Sent via email to: nmsupremecourtclerk@nmcourts.gov



April 10, 2018

Re: In favor of changes in Proposal 2018-006

Dear Chief Justice and Esteemed Members of the New Mexico Supreme Court,

We are writing on behalf of the Santa Fe Dreamers Project in Santa Fe, New Mexico (www.santafedreamersproject.org). Our program's mission is to represent every qualified immigrant who walks through our doors, and make every effort to overcome the barriers that prevent immigrant families in our community from accessing legal representation. Our services are designed to overcome those barriers. Our collective experience working with immigrants and asylees spans many years, and has been acquired in various places along our region's border with Mexico, primarily in Santa Fe, which is home to a large number of both authorized and unauthorized immigrants.

We are writing in support of Proposal 2018-006, "Proposed Revisions to the Rules Governing Admission to the Bar", because the proposed change to Rule 15-103 NMRA would allow otherwise qualified undocumented candidates to be admitted to the New Mexico State Bar.

This rule change represents a forward-thinking and common-sense policy that would make professional law practice licensure in our state accessible to those who have proven themselves worthy and diligent in the pursuit of careers in law in New Mexico regardless of their immigration status. The path to U.S. citizenship can be long and winding – immigration lawyers are very aware that most individuals' immigration statuses are not reducible to checkboxes of "legal" or "illegal" but instead very nuanced. Many who would be eligible to be admitted to the State Bar under this rule change have already availed themselves to the fullest extent of our nation's immigration laws, and are nonetheless in a virtual line, waiting for years before they can be granted work authorization or be eligible to apply for a Social Security number.

For example, immigrants who are victims of particular crimes in the U.S. and who have cooperated or been willing to cooperate with law enforcement in the prosecution of said crime are eligible to apply for a U visa. The grant of a U visa leads eventually to an individual's path to

citizenship, but only after more than a decade of waiting and complying with our nation's laws. However, those applying for a U visa today for the first time will not receive even a provisional decision for three to four years. These individuals should not be excluded from the practice of law in New Mexico on that basis, and under the proposed rule change, they no longer would be.

Processing times for lawful immigration status in many categories is expected to increase, because of the current trend of directing resources away from affirmative immigration benefits in order to increase resources for immigration detention and enforcement. This delay in processing affects even those who already have work authorization. When they apply to renew their work authorization, some people's work authorizations may lapse during the time that they are waiting for renewals to be processed. It would not be in the best interests of our state or the individual attorneys to jeopardize their bar licensures for such an administrative delay, and the proposed rule change resolves this.

Finally, New Mexico stands to benefit by admitting immigrant lawyers to our State Bar. Immigrants are job creators, entrepreneurs, and taxpayers in New Mexico. ("*New Americans*", 2017, a collaboration of the Santa Fe Dreamers Project, Santa Fe Art Institute, and the Design Corps of Santa Fe). Almost 24,000 New Mexicans are employed at immigrant-owned businesses and nearly 12,000 immigrants are self-employed. Id (citing the Stanford Immigration Policy Lab). Finally, immigrants contribute \$327.1 million to our state's economy. Id (citing the Renew Our Economy Report 2016). With access to professional bar licensure in New Mexico, all of these figures can be expected to increase thanks to immigrant lawyers who employ more New Mexicans, create new businesses and pay taxes to our state.

Qualified individuals seeking admission to the New Mexico State Bar under this proposed rule will have lived many variations of the American experience before they can achieve the American dream of becoming U.S. citizens. They deserve our highest admiration for the obstacles that many of them have already overcome by the time they commence their law careers, and they deserve our support, in the form access to admission to the New Mexico State Bar.

Respectfully Submitted,



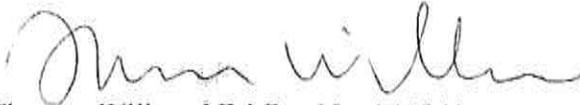
Allegra Love,

Founder and Executive Director of the Santa Fe Dreamers' Project, NM Bar No 142951

& Staff Attorneys:



Emma O'Sullivan, NM Bar No. 149503



Theresa Wilkes, NM Bar No. 141941

APR 11 2018

Joey D. Moya, Clerk
New Mexico Supreme Court



Comments in Support of Amended Rule 15-103(B)(7)

We are both professors at the University of New Mexico School of Law as well as practicing members of the New Mexico Bar, and we write in support of the proposed Amended Rule.

New Mexico has made the decision, as a state, to require state educational institutions to admit students without regard to their immigration status. Here at the law school, we have welcomed all students who we believe will succeed in our rigorous educational program, including some students who are undocumented or who currently have DACA. We know some these students; they are an important part of our law school community. And we have heard from them about their situations vis-à-vis membership in the bar and their ability to use the degree that we will confer on them.

From the standpoint of fairness, it is unfair and illogical to impose an immigration-related requirement on any applicant to our Bar. Students who have been admitted to UNM School of Law should have a reasonable expectation of being allowed to join our Bar. To do otherwise—to allow students to attend our law school, accruing debts and foregoing other opportunities, and then deny them the ability to implement what we have taught them—is unreasonable and inconsistent with ideas of fairness and logic. It is would also be unethical of us as a state to have an official policy of admitting students of any immigration status to our law school, but only allow certain students to continue on to practicing law. As a community of lawyers in New Mexico, we owe it to these students to provide a path that will allow them to utilize their legal training here in New Mexico.

Excluding lawyers from practice based on immigration status also does a personal disservice to our students. Law students have a hard enough time dealing with the stress of our academic program and the uncertainty looming in the form of the bar exam. Students who are undocumented or who have DACA should not be forced to face additional uncertainty about their admission to the bar and their future ability to practice law. We have seen close up the toll this can take on a law student. They deserve better than this. And we should do a better job of protecting the investment we are making as a state and a profession in the futures of these students.

As a self-regulating profession, we have chosen to base decisions about membership in our community on a case-by-case investigation of every single applicant. This flexible but powerful tool is adequate to protect the bar and the public that we serve. By removing the existing bar that is based on status rather than character, morals or learning, we allow ourselves to consider membership from a broader pool of lawyers able to work to help the people of New Mexico. This is especially important because many of those who are currently excluded based on immigration status would be uniquely qualified to serve vulnerable immigrant communities in our state.

We welcome this proposed Amended Rule, to do the right thing for admitted law students, to alleviate the current uncertainty and to allow the Bar to make case-by-case determinations of moral fitness, rather than impose a rule that bears no rational connection to an applicant's ability to practice law in New Mexico.

Sincerely,

Serge Martinez
Associate Professor of Law
University of New Mexico School of Law

Sarah Steadman
Assistant Professor of Law
University of New Mexico School of Law

APR 11 2018

Dear Mr. Moya:



I strongly support the proposed amendments. New Mexico has a long and judicially sanctioned history of recognizing that immigrants are assets to our community and culture. Nick Davis, Tex Quesada and I wrote an article in 2015 for the New Mexico Law Review that addressed this history. Please see NMLR Vol 45, No. 3, Summer 2015 at 712 – 727.

Sincerely yours,

F. Michael Hart

F. Michael Hart
MikeH@Osolawfirm.com

1801 Rio Grande Blvd, NW
Albuquerque, NM 87104
Phone: (505) 343-1776
Fax: (505) 344-7709
www.osolawfirm.com

A QUESTION OF EXCLUDING IMMIGRATION STATUS IN CIVIL COURT: WHY *TORRES* GOT IT RIGHT

Nicholas T. Davis,⁺ F. Michael Hart^{**}
and George (Tex) Quesada^{***}

INTRODUCTION

New Mexico's connection with immigrants is written in its history, constitution, and case law. The state has long accepted the reality that persons of all types pass through, live in, and make large contributions to this land. Based on these social and economic connections, it is apparent that evidence regarding a party's immigration status should be excluded by New Mexico courts in civil cases as prejudicial and irrelevant. The New Mexico Supreme Court addressed the issue of immigration status in civil cases in *Torres v. Sierra* and concluded that immigration status was not a relevant factor in calculating damages for purposes of New Mexico's Wrongful Death Act.¹ This Article argues that the holding of *Torres* should be extended to all situations in which a party wishes to introduce evidence regarding an individual's immigration status and that such a framework of exclusion works equally well within the federal immigration debate and can be a model of policy in other jurisdictions.

This Article addresses the issue of New Mexico's treatment of immigration status in four parts. Part I explores the history of New Mexico. From its earliest days New Mexico demonstrated an acceptance of immigrants into society. Many New Mexico laws grant rights to residents of the state regardless of immigration status, and as a result, undocumented immigrants have become large contributors to the state's economy. Part II discusses New Mexico's approach to issues involving a party's immigration status. Although New Mexico has not explicitly prohibited the introduction of a party's immigration status, case law suggests New Mexico courts would deny such evidence on the basis of prejudice or lack of rele-

⁺ Nicholas T. Davis is a graduate of the University of New Mexico School of Law and a practicing attorney in Albuquerque, NM.

^{**} F. Michael Hart is a graduate of the University of New Mexico School of Law and a practicing attorney in Albuquerque, NM.

^{***} Mr. Quesada is a graduate of Baylor University School of Law and a practicing attorney in Dallas, TX. Special thanks to Hailey Fox for her assistance.

1. *Torres v. Sierra*, 1976-NMCA-064, ¶ 24, 89 N.M. 441.

vancy. Part III introduces precedent and arguments from other jurisdictions throughout the United States. Finally, Part IV explains why New Mexico's current approach to immigration status is correct and argues that the prejudicial effect of a party's immigration status outweighs its probative value. Part IV also suggests that New Mexico courts should either exclude evidence of immigration status on the basis of prejudice or lack of relevancy or follow the restrictive approaches of other jurisdictions that require defendants to prove the probability of a plaintiff's deportation before they may introduce evidence of the plaintiff's immigration status.

I. HISTORY OF NEW MEXICO: TIES TO IMMIGRATION AND ACCEPTANCE OF IMMIGRANTS

A. *The Origins of New Mexico*

Present day New Mexico draws its roots from Spanish, Mexican and American influences.² Spanish conquistador Francisco Vázquez de Coronado led the first explorations by Europeans of the land that would become the state of New Mexico in 1540. Despite claims by explorer Álvar Núñez Cabeza de Vaca that the state contained the mythical Seven Cities of Cibola (fabled cities of splendor and riches), Coronado and his men found no such cities and returned to New Spain (present day Mexico).³ Several decades later, Spanish explorers returned to New Mexico and established the first permanent settlements.⁴ In these colonial settlements, the Spanish settlers constructed missions, built churches, and developed artwork, establishing the State's aesthetics. Spanish rule was finally solidified in 1706, after centuries of settlement efforts, and the cities of Albuquerque and Santa Fe became focal points of the state.

Despite the area's population increase under Spanish reign, settlers in New Mexico suffered several invasions due to the lack of Spanish protection. The settlers encountered intrusions by French traders, attacks by Apache and Comanche tribes, and invasions by United States citizens. Of these invasions, United States Army Lieutenant Zebulon Montgomery Pike's expedition in 1807 was the most significant. Even though Spanish officials detained Pike, they failed to suppress the migration that followed

2. See Robert Torrez, *Early Spanish Explorers of the Southwest*, NEWMEXICOHISTORY.ORG, <http://www.newmexicohistory.org/people/early-spanish-explorers-of-the-southwest> (last visited May 4, 2015).

3. *Id.*; see also *Seven Cities of Cibola*, ENCYCLOPEDIA BRITANNICA.COM, <http://www.britannica.com/EBchecked/topic/117524/Seven-Cities-of-Cibola> (last visited May 4, 2015).

4. Torrez, *supra* note 2.

his departure. Pike wrote about the state's promising economy, and in turn, these writings attracted American fur trappers and traders to the state. To accommodate the increasing trade activity, New Mexican settlers established the Santa Fe Trail for international trade.

While New Mexico grew economically, tensions developed in Mexico.⁵ Seeking to end Spain's 300-year rule, Mexican-born Spaniards, Mestizos and Mexican Natives declared war against Spain. In 1821, after a two-decade war, Mexico obtained independence from Spain. Along with its independence, Mexico also gained power over territories formerly controlled by Spain, including New Mexico.⁶ The new nation continued to develop New Mexico's economy through trade and land grants, but Mexico's authority over New Mexico was short-lived.

With the increasing presence of United States citizens in Mexican territory and the United States' annexation of Texas, conflict soon developed between the United States and the Mexican Republic.⁷ Finally, on May 13, 1846, the United States declared war on Mexico. On August 18, 1846, United States General Stephen Watts Kearny reached New Mexico and declared the United States' dominion over the state. In front of residents of Santa Fe, he announced:

We come as friends to better your condition and make you part of the Republic of the United States. We mean not to murder you or rob you of your property. Your families shall be free of molestation; your women secure from violence. My soldiers shall take nothing from you but what they pay for. . . . [W]e do not mean to take away . . . your religion. . . . I do hereby proclaim that . . . [y]ou are no longer Mexican subjects; you are now American citizens⁸

Notwithstanding such promises, some New Mexicans refused to accept the United States' takeover. They initiated insurrections and riots in parts of the state, but found their protests quickly extinguished by the United States military. Meanwhile, the Mexican Republic continued to lose control of its territories. Seeking to avoid further loss, it decided to enter into negotiations with the United States. Finally, in 1848, these negotiations lead to the signing of the Treaty of Guadalupe Hidalgo. The Treaty docu-

5. *Struggle for Mexican Independence*, HISTORY.COM, <http://www.history.com/topics/mexico/struggle-for-mexican-independence> (last visited May 4, 2015).

6. *Id.*

7. *Mexican Period*, NEWMEXICOHISTORY.ORG, <http://newmexicohistory.org/historical-events-and-timeline/mexican> (last visited May 4, 2015).

8. RALPH EMERSON TWITCHELL, *OLD SANTA FE: THE STORY OF NEW MEXICO'S ANCIENT CAPITAL 264-65* (Sunstone Press 2007) (1925).

mented Mexico's cession of New Mexico to the United States and guaranteed that New Mexicans retained their existing property. Despite the treaty, the political stability in New Mexico was tenuous at best.⁹ Tensions with the high-sighted Territory of Texas, who wished to annex most of now-New Mexico, helped develop cohesion within the new territory.¹⁰

In 1912, New Mexico became an official state of the United States. New Mexico was one of the last states accepted into the Union, and had nearly three-quarters of a century to consider the language of the federal and other state constitutions. More than a century has passed since the United States' annexation of New Mexico, but New Mexicans continue to maintain the many traditions and influences of Spanish culture. This embrace of New Mexico's diverse history is reflected by the state's acceptance of immigrants in society and particular choice of language regarding citizens in its own constitution.

B. Person vs. Citizen: The Language of New Mexico's Constitution

More than sixty years passed from the time that New Mexico became a territory of the United States until it passed a constitution and became a state. In those 60 years, the Civil War erupted, the first railway crossed the country, and sixteen other states joined the union. New Mexico had time to study the language of constitutions.¹¹ New Mexico's adoption of the term "person" throughout its constitution, instead of "citizen," is informative. The difference in language is specific, intentional, and key in understanding the framers' choice to depart from the language used by other states and in the U.S. Constitution, in order to demonstrate broader acceptance of non-citizens in New Mexico.

The New Mexico Bill of Rights uses the term "citizen" exactly, and only twice. According to the New Mexico Constitution, only citizens have the right to bear arms and the right to serve on a grand jury.¹² Curiously, the term is absent from the federal counterparts.¹³ In fact, the federal Bill of Rights does not use the term "citizen" at all.¹⁴ This fact, in and of itself, may not reveal a great deal, but when it is coupled with other significant differences between the two documents, the word choices show that the adoption of the New Mexico Constitution was not merely an adoption of

9. See generally FURGUS M. BORDEWICH, *AMERICA'S GREAT DEBATE* (2012).

10. *Id.* at 40.

11. See generally ROBERT W. LARSON, *NEW MEXICO'S QUEST FOR STATEHOOD 1846-1912* (1968).

12. N.M. Const. art. II, §§ 6, 14.

13. See U.S. CONST. amends. II, V.

14. See U.S. CONST. amends. I-X.

the U.S. Constitution, and the two documents should be interpreted differently.

The fact that both "person" and "citizen" are used in New Mexico's Bill of Rights shows that the frequent use of the terms "person" or "people" is purposeful. The framers of the New Mexico Constitution obviously knew how to narrow the application of specific provisions. Again, this is evidenced by the narrowed application of the right to bear arms, as it only applies to citizens. The absence of such narrowing of other provisions suggests a much broader application of those other provisions.

Further, the fact that both terms are used shows that they have, and are meant to have, quite different meanings. This is most evident in the grand jury provision of the New Mexico Constitution.¹⁵ The grand jury clause uses both terms. The provision requires persons to be indicted by grand juries but limits participation on them to citizens.¹⁶ This shows that the two different terms have intentionally distinct meanings within the New Mexico Constitution. The specificity of the use of each term also shows that the term person or people is meant to be a broader term, with broader application than "citizen". The requirement that one must be indicted by a grand jury is a protection from the arbitrary abuses of government. All people are afforded this protection regardless of their citizenship status. In contrast, the right to serve on a grand jury is a right to participate in the mechanics of government. Under no circumstances in a representative democracy would the right to participate in government be available to more people than the right to be protected from that government. Therefore, the term person is shown to have broader application than the term citizen.

The grand jury provision is evidence that the framers of the New Mexico Constitution knew the word "citizen," sought a specific usage of that word, and deliberately chose not to use it through most of the document. As noted above, New Mexicans were initially reluctant to be claimed by the United States, and acceptance came with a refusal to relinquish old traditions. When looked at through the lens of its historical con-

15. N.M. Const. art. II, § 14.

16. *Id.* ("No person shall be held to answer for a capital, felonious or infamous crime unless on a presentment or indictment of a grand jury or information filed by a district attorney or attorney general or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination. A grand jury shall be composed of such number, not less than twelve, as may be prescribed by law. Citizens only, residing in the county for which a grand jury may be convened and qualified as prescribed by law, may serve on a grand jury.").

text, one realizes that not only did the framers of the New Mexico Constitution want a greater application of that constitution; a greater application was necessary for the continued peace and prosperity of this new state.

The refusal to relinquish old traditions as New Mexico's orbit drew toward that of the United States started with the signing of the Treaty of Guadalupe-Hidalgo in 1848. The treaty ended the Mexican-American War and resulted in the annexation of most of what is now the modern day state of New Mexico to the United States. Out of concern for its now-former citizens, the Mexican negotiators inserted provisions ensuring that all of the rights, liberties, and property gained under the Mexican government would be maintained once the now-conquered people were assimilated into the United States.¹⁷

The territorial courts of the newly formed New Mexico Territory quickly recognized those provisions the Mexican negotiators had secured. In *United States v. Lucero*,¹⁸ the territorial supreme court became the first court in the United States to recognize "Indians" as United States citizens. The court's decision was entirely based on the treaty and the fact that the Mexican government had recognized the Pueblo peoples of New Mexico as citizens. Since the treaty required the recognition of all rights provided under the Mexican government, not just rights acquired by those of European descent, the court was required to recognize the citizenship of the Pueblo people.

What makes the *Lucero* decision so remarkable is how progressive it was for its time. Indians all over the country were still being forced onto reservations, with the rounding up and forced removal still firmly the U.S. government policy toward those who had inhabited the continent for millennia before the Europeans. The *Lucero* decision was only a generation removed from the infamous Trail of Tears, where thousands of peaceful American Indians living in the eastern United States were forced to march from their ancestral homeland to what is now modern day Oklahoma. In fact, no U.S. court had even recognized Indians as people, let alone citizens. It was not until the case of *United States ex rel Standing Bear v. Crook*¹⁹ in 1879 that Indians were first recognized as people outside of New Mexico.

The moral victory that *Lucero* signaled for those considered different by many in the rest of the country was short-lived. Just seven years

17. Treaty of Peace, Friendship, Limits, and Settlement, U.S.-Mex., art. VIII-IX, Feb. 2-July 4, 1848, 9 Stat. 922.

18. 1869-NMSC-003, ¶ 16, 1 N.M. 422.

19. F.Cas. 695, 697 (C.C.D.Neb. 1879) (holding that Indians are "persons" with a right to "sue out and maintain a writ of habeus corpus").

later in *United States v. Joseph*, the United States Supreme Court refused to recognize the ruling of the New Mexico Territorial Supreme Court.²⁰ While not explicitly overruling *Lucero*, the United States Supreme Court made it clear that the issue was not resolved, and certainly did not endorse the view taken by the territorial court. The issue continued in limbo until the Indian Citizenship Act of 1924.²¹

This lays the historical and legal foundation for the adoption of the New Mexico Constitution in 1911. At that time 8,000 Pueblo Indians resided in New Mexico, and their status was wholly unknown. Those within New Mexico knew that Indian people (they had at least status as “people” by this point) posed no threat and deserved the full rights and benefits of citizenship.²² However, Pueblo Indians had no real, definitive legal status. They were no longer “Indians” according to *United States v. Joseph*²³ and *United States v. Sandoval*,²⁴ but they weren’t citizens either. It was against this backdrop that the framers carefully crafted the state constitution of New Mexico.

In the period between becoming a territory and entering as a state with its own constitution, New Mexico witnessed the Civil War on its own soil, survived an annexation attempt by Texas, and attempted to define the status rights of its own inhabitants before being rebuffed by the United States Supreme Court. The use of the word “person” is significant in the New Mexico Constitution. The word “person” was used in order to ensure that the New Mexico Constitution would apply to those who had no other legal status -- to every human being living in New Mexico.

C. New Mexico's Laws: Access to Rights Regardless of Immigration Status

Although some states implement policies that target undocumented immigrants or deny state benefits for these persons, New Mexico takes an opposite approach.²⁵ New Mexico grants rights to all of its residents, re-

20. 94 U.S. 614, 618 (1876).

21. See *U.S. v. Sandoval*, 231 U.S. 28, 39 (1913) (stating “it remains an open question whether they have become citizens of the United States”).

22. See C.M. CHASE, *THE EDITOR'S RUN IN NEW MEXICO AND COLORADO* 76 (1882).

23. 94 U.S. 614, 616–17 (1877) (holding that Pueblo Indians had obtained a level of civilization above that of other Indians, and thus hold land rights in a different way than other Indians).

24. 231 U.S. 38 (1913). Though decided after adoption of the New Mexico Constitution, the Court looks generally at the history and status of Pueblo Indians as different than that of other Indians.

25. See, e.g., NMSA 1978, § 21-1-4.6 (2005); NMSA 1978, § 30-52-2 (2013); NMSA 1978, § 66-5-9 (2011).

ardless of their immigration status. This is demonstrated in several New Mexico statutes, which explicitly order that a person's immigration status not be considered when determining benefit eligibility. One example is Section 21-1-4.6 which governs post-secondary education institutions.²⁶ The act requires a non-discriminatory policy for admission to any qualifying institution, stating "[a] public post-secondary educational institution shall *not deny admission to a student on account of the student's immigration status.*"²⁷ It also proscribes discrimination in determining a student's eligibility for educational benefits and the granting of an in-state tuition rate and state-funded financial aid to all New Mexico residents "*regardless of immigration status, [provided that they have] attended a secondary educational institution in New Mexico for at least one year and have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico.*"²⁸

New Mexico also refuses to consider a person's immigration status with respect to crime victims. For example, New Mexico offers services and benefits to victims of human trafficking.²⁹ Section 30-52-2 states that "[b]enefits and services shall be provided to eligible human trafficking victims . . . *regardless of immigration status.*"³⁰ Of the many benefits given to the undocumented crime victims, this section also allows these victims to obtain health care, job placement assistance and post-employment ser-

26. NMSA 1978, § 21-1-4.6(A), (B) (2005).

27. NMSA 1978, § 21-1-4.6(A) (2005) (emphasis added) ("A public post-secondary educational institution shall not deny admission to a student on account of the student's immigration status.").

28. NMSA 1978, § 21-1-4.6(B) (2005) (emphasis added) ("Any tuition rate or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico.").

29. NMSA 1978, § 30-52-2(A) (2013) ("Human trafficking victims found in the state shall be eligible for benefits and services from the state until the victim qualifies for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000; provided that the victim cooperates in the investigation or prosecution of the person charged with the crime of human trafficking. Benefits and services shall be provided to eligible human trafficking victims regardless of immigration status and may include: (1) case management; (2) emergency temporary housing; (3) health care; (4) mental health counseling; (5) drug addiction screening and treatment; (6) language interpretation, translation services and English language instruction; (7) job training, job placement assistance and post-employment services for job retention; . . . (12) services to assist the victim and the victim's family members; and (13) other general assistance services and benefits as determined by the children, youth and families department or the human services department.").

30. *Id.* (emphasis added).

vices for job retention.³¹ Although the statute requires that undocumented victims qualify for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000, the New Mexico statute departs from the approach taken by many other states that refuse services to unauthorized immigrants.³²

Of the New Mexico statutes which explicitly reject consideration of a person's immigration status, the New Mexico's Operators' and Chauffeurs' License statute has sparked the most controversy.³³ This statute allows a foreign national to obtain a driver's license regardless of immigration status, provided that the applicant provides an individual taxpayer identification number as a substitute for a social security number.³⁴ The statute also authorizes the Secretary "to establish by regulation other documents that may be accepted as a substitute for a social security number."³⁵ Efforts to repeal the statute gained momentum after a bill was introduced in the House of Representatives that attempted to revoke the law.³⁶ The sponsoring representative gained the support of New Mexico Governor Susana Martinez who called for the revocation of the statute, claiming that "New Mexico [was] becoming a magnet for those who want to receive a valid United States ID and travel freely around the

31. *Id.*

32. *Id.*

33. See Stephanie Simon, *Driver's License Fight to Be Renewed*, WALL ST. J., June 6, 2011, http://online.wsj.com/article/SB10001424052702304563104576355672309458308.html?mod=WSJ_Election_LEFTSecondStories; see also NMSA 1978, § 66-5-9 (2011).

34. NMSA 1978, § 66-5-9(B) ("An application shall contain the full name, social security number or individual tax identification number, date of birth, sex and New Mexico residence address of the applicant and briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal. For foreign nationals applying for driver's licenses the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status. The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number.").

35. *Id.*

36. Matthew Reichbach, *Martinez vows to push on in driver's license battle*, THE NEW MEXICO INDEPENDENT, Mar. 23, 2011, <http://web.archive.org/web/20110325233000/http://newmexicoindependent.com/69338/martinez-vows-to-push-on-in-drivers-license-battle> ("Rep. Andy Nuñez, I-Hatch, carried the legislation supported by Martinez in the House but it was substantially changed in the Senate. The two chambers were unable to come up with compromise legislation before the legislative session ended Saturday.").

country.’”³⁷ The State Senate, lead by a Democratic Party majority, amended the bill to include language allowing undocumented immigrants to receive driver’s licenses, but with stricter requirements.³⁸ In response, the State House voted against the Senate’s amendment.³⁹ Since the State Senate refused to withdraw its changes and a conference committee failed to reach a compromise on the bill’s language, the bill died. Ultimately, Democratic legislators’ view that the bill fostered anti-immigration sentiment contributed to the bill’s failure.⁴⁰ The legislators recognized that the issue of immigration is a difficult and divisive one.⁴¹ Despite significant surges of anti-immigration hysteria,⁴² all subsequent bills introduced to overturn and modify the statute have died.⁴³

37. Simon, *supra* note 33.

38. Matthew Reichbach, *Senate passes immigrant driver’s license bill*, THE NEW MEXICO INDEPENDENT, Mar. 10, 2011, <http://web.archive.org/web/20111105223329/http://newmexicoindependent.com/69223/senates-passes-immigrant-drivers-license-bill> (“The New Mexico Senate passed a bill Wednesday night that would still allow undocumented immigrants to receive driver’s licenses, but stiffened some restrictions on provisions made by the Senate Judiciary Committee. . . . Sen. Tim Jennings, D-Roswell, had three amendments clear the Senate. One was to make sure that undocumented immigrants serving in the military would still be able to get driver’s licenses in New Mexico. The other would change the time required to be in the state to receive a driver’s license from three months to six months. The third amendment would require foreign nationals to be fingerprinted to receive a license.”).

39. Matthew Reichbach, *Time runs out on legislation*, THE NEW MEXICO INDEPENDENT, March 21, 2011, <http://web.archive.org/web/20110322175302/http://newmexicoindependent.com/69315/time-runs-out-on-legislation> (“After the House voted against concurring with the Senate’s changes, and when the Senate did not recede from its amendments, the bill went to conference committee. The committee, which featured three legislators from each chamber, failed to come up with a compromise in the dying hours of the legislative session.”).

40. Simon, *supra* note 33 (“Supporters of the current system argue—without providing specific numbers—that most illegal immigrants who seek licenses are longtime residents of New Mexico, who need to drive to work and school. Denying them driver’s licenses would condemn families to ‘life in the shadows, where they can be exploited’”).

41. Reichbach, *supra* note 38 (“‘My amendments were offered in good faith in addressing concerns about security issues,’ said [Democratic Representative] Jennings in a statement. ‘On an issue as difficult, emotional, and divisive as this one is it is important to keep our minds open to compromise.’”).

42. Simon, *supra* note 33 (“‘We should not allow ourselves to be caught up in the hysteria,’ said state Rep. Eleanor Chavez.”).

43. See H.B. 103, 50th Leg., 2d Sess. (N.M. 2012); H.B. 171, 50th Leg., 2d Sess. (N.M. 2012); H.B. 244, 50th Leg., 2d Sess. (N.M. 2012); S.B. 235, 50th Leg., 2d Sess. (N.M. 2012); H.B. 132, 51st Leg., 1st Sess. (N.M. 2013); S.B. 521, 51st Leg., 1st Sess. (N.M. 2013); H.B. 127, 51st Leg., 2d Sess. (N.M. 2014); H.B. 32, 52d Leg., 1st Sess. (N.M. 2015); S.B. 653, 52d Leg., 1st Sess. (N.M. 2015).

Consistent with the legislature's equal treatment of all immigrants, the state's courts have also found that several statutes implicitly disregard consideration of a person's immigration status. For instance, in *Perez v. Health & Social Services*, the New Mexico Court of Appeals held that the state extended special medical benefits to all residents, regardless of immigration status.⁴⁴ In that case, Rio Arriba County denied Ruben Perez, an undocumented immigrant, benefits under New Mexico's Special Needs Act because of his immigration status.⁴⁵ After the Executive Director of the Health and Social Services Department denied Perez's claim, Perez appealed to the New Mexico Court of Appeals.⁴⁶

The court of appeals found citizenship was not a requirement to receive benefits under the Special Needs Act.⁴⁷ The Special Needs Act granted medical care to any "person" who was a "resident" of New Mexico.⁴⁸ The person had to be "*physically present in New Mexico* on the date of application or final determination of eligibility [for benefits] and have demonstrated [an] *intent to remain in the State.*"⁴⁹ The court reasoned "the word 'person' in [other statutes] included a non-resident alien who was present illegally in the state."⁵⁰ The court further reasoned that previous legislation defined the term "resident" as including undocumented immigrants and the term "residence" as meaning any place where one actually lives.⁵¹ The court held that New Mexico "assumed the responsibility of financing health care for illegal aliens" and Perez qualified for medical care under the Special Needs Act.⁵² Although the legislature replaced the Special Needs Act⁵³ with the Special Medical Needs Act,⁵⁴ *Perez's* holding applies to the current statute. Under the Special Medical Needs Act, a *person* may qualify for medical care if the applicant proves that she or he is a *resident* of New Mexico.⁵⁵ The New Mexico legislature added no lan-

44. *Perez v. Health & Social Servs.*, 1977-NMCA-140, ¶ 20, 91 N.M. 334.

45. *Id.* ¶ 2.

46. *Id.*

47. *Id.* ¶ 16.

48. *Id.* ¶¶ 4-5.

49. *Id.* ¶ 4 (emphasis added).

50. *Id.* ¶ 7.

51. *Id.* ¶ 10.

52. *Id.* ¶ 20.

53. NMSA 1978, §§ 13-15-1 to -5 (repealed 1973).

54. NMSA 1978, §§ 27-4-1 to -5 (1973).

55. NMSA 1978, § 27-4-5 (1975) (emphasis added) ("A *person* is eligible for medical care under the Special Medical Needs Act if: A. pursuant to Section 27-4-4 NMSA 1978, the total amount of his nonexempt income is less than the applicable standard of need; and B. nonexempt specific and total resources are less than the level of maximum permissible resources established by the board; and C. he meets all qualifications for persons with special needs, pursuant to Section 27-4-3 NMSA 1978; and

guage in the new statute to overrule *Perez's* holding, and as such, implicitly upheld the conclusion that undocumented immigrants may seek medical services under the Special Medical Needs Act.⁵⁶

Courts also found undocumented immigrants eligible for benefits under New Mexico's Workers' Compensation Act.⁵⁷ In *Gonzalez v. Performance Painting, Inc.*, Jesus Gonzalez, an undocumented immigrant, was injured while working for Performance Painting, Inc.⁵⁸ After one-and-a-half years, Gonzalez returned to his employment and worked in a modified capacity. He eventually left Performance Painting, Inc. due to his inability to perform certain tasks and filed a complaint seeking workers' compensation. Following Gonzalez's departure, Performance Painting, Inc. sent a return to work letter to Gonzalez offering him a position. Despite the letter, Performance Painting, Inc. personnel advised Gonzalez that there were no available positions. Gonzalez decided to fill out an employment application anyway and was asked for his social security and driver's license. Having initially given a false social security number, Gonzalez left. Gonzalez then filed another complaint seeking modifier benefits pursuant to Section 52-1-26 of New Mexico's Workers' Compensation Act. Gonzalez claimed that Performance Painting, Inc. refused to rehire him.⁵⁹ After a workers' compensation judge found Gonzalez ineligible for modifier benefits, Gonzalez appealed to the New Mexico Court of Appeals. The court reversed, holding that the statute denied modifier

D. within two years immediately prior to the filing of an application for assistance, he has not made an assignment or transfer of real property unless he has received a reasonable return for the real property; or, if he has not received such reasonable return, he is willing to attempt to obtain such return and, if such attempt proves futile, he is willing to attempt to regain title to the property; and E. he is not an inmate of any public nonmedical institution at the time of receiving assistance; and F. he is a resident of New Mexico.").

56. *See id.*

57. *See Gonzalez v. Performance Painting, Inc.*, 2011-NMCA-025, 150 N.M. 306, *rev'd*, 2013-NMSC-021, 303 P.3d 802.

58. *Id.* ¶ 27.

59. *See id.* ¶ 6; *see also* NMSA 1978, § 52-1-26(C), (D) (1990) ("C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by his age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent. D. If, on or after the date of maximum medical improvement, an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage, the worker's permanent partial disability rating shall be equal to his impairment and shall not be subject to the modifications calculated pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978.").

benefits to an undocumented worker, but allowed Gonzalez to claim disability payments.⁶⁰ The court reasoned that federal laws forbid employers from hiring undocumented persons. As such, the court concluded that it was not the legislature's intent to extend modifier benefits to undocumented persons; and therefore, Gonzalez was precluded from receiving modified benefits.⁶¹ However, the court noted that nothing in the Workers' Compensation Act "prohibit[ed] or exclude[d] undocumented workers from receiving benefits."⁶² Comparable to New Mexico's Special Needs Act, the Workers' Compensation Act allowed benefits to "*any person* who has entered into the employment of or work[ed] under contract"⁶³ The court found that the legislature deleted language that prevented undocumented persons from recovering disability benefits under the Workers' Compensation Act in 1984.⁶⁴ Accordingly, New Mexico law allowed Gonzalez's disability payments.

Courts have also disregarded a person's immigration status in the granting of workers' compensation benefits in other contexts. For example, in *Gallup American Coal Co. v. Lira*, J. Trinidad Lira's widow and minor child sought to recover workers' compensation benefits after her husband's work related death.⁶⁵ Although Mrs. Lira once resided in the

60. *Gonzalez*, 2011-NMCA-025, ¶ 9. The New Mexico Supreme Court later reversed the New Mexico Court of Appeals' holding that modifier benefits were not available to undocumented workers. *Gonzalez v. Performance Painting, Inc.*, 2013-NMSC-021, ¶¶ 20–22, 303 P.3d 802.

61. *Id.* ¶ 15.

62. *Id.*; see NMSA 1978, § 52-1-9 (1973) (emphasis added) ("The right to the compensation provided for in this act, in lieu of any other liability whatsoever, to any and *all persons* whomsoever, for any personal injury accidentally sustained or death resulting therefrom, shall obtain in all cases where the following conditions occur: A. at the time of the accident, the employer has complied with the provisions thereof regarding insurance; B. at the time of the accident, the employee is performing service arising out of and in the course of his employment; and C. the injury or death is proximately caused by accident arising out of and in the course of his employment and is not intentionally self-inflicted."); NMSA 1978, § 52-1-16(A) (1989) (emphasis added) ("As used in the Workers' Compensation Act, unless the context otherwise requires, 'worker' means *any person* who has entered into the employment of or works under contract of service or apprenticeship with an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business.").

63. *Gonzalez*, 2011-NMCA-025, ¶ 15 (emphasis added).

64. *Id.*; see NMSA 1978, § 52-1-52 (1989) ("Compensation benefits shall be exempt from claims of creditors and from any attachment, garnishment or execution and shall be paid only to such worker or his personal representative or such other persons as the court may, under the terms hereof, appoint to receive or collect compensation benefits.").

65. *Gallup Am. Coal Co. v. Lira*, 1935-NMSC-071, ¶ 1, 39 N.M. 496.

United States with her husband, at the time of his death, Mrs. Lira was living in Mexico. Gallup American Coal Company claimed that Mrs. Lira was ineligible for benefits under the act because she was not a United States resident at the time of her husband's death. Despite Ms. Lira's status, the lower court held that she and her children were residents and were entitled to receive the benefits. The New Mexico Court of Appeals affirmed.⁶⁶

The New Mexico Supreme Court also affirmed, despite the statute which stated that "[n]o claim or judgment for compensation . . . shall accrue to or be recovered by relatives or dependents not residents of the United States at the time of the injury of such workman."⁶⁷ The court concluded that the terms "residence" and "resident" embodied various interpretations. Regarding relatives of undocumented workers, the court reasoned that "[t]he Legislature evidently intended that dependents of alien laborers who had never lived in the United States or, who having been domiciled here, had permanently left this country, should not be beneficiaries under this act;⁶⁸ but those dependents who are domiciled in the United States should be beneficiaries thereunder" because they are considered residents under the act.⁶⁹ As such, dependents of alien laborers, who leave the United States with no intent of terminating their domicile in the United States, remained residents for purposes of the Workers' Compensation Act. In Mrs. Lira's case, the court found that she never established residency in Mexico, but only lived there temporarily while caring for a relative. Mrs. Lira had planned to return to the United States upon her husband's request. The court held that Mrs. Lira was a resident under the Workers' Compensation Act, and she qualified for the act's benefits.⁷⁰ Section 52-1-52 of the Workers' Compensation Act replaced the statute relied upon in *Gallup American Coal Co.*, but it includes no language to overrule *Gallup's* holding.⁷¹ New Mexico's approach of granting people rights, despite their immigration status, demonstrates its history of integrating these persons into greater society.

66. *Id.* ¶ 3.

67. *Id.*

68. *Id.* ¶ 18; *See also* Kent Nowlin Constr. Co. v. Gutierrez, 1982-NMSC-123, ¶ 20, 99 N.M. 389 (finding that relatives of undocumented workers residing outside of the United States at the time of the accident are barred recovery to worker's compensation).

69. *Gallup*, 1935-NMSC-071, ¶ 18.

70. *Id.* ¶¶ 19, 23.

71. *See* NMSA 1978, § 52-1-52 (1989).

D. Undocumented Immigrants as Contributors to the Country's and New Mexico's Growth

As of 2012, approximately 11.4 million unauthorized immigrants reside in the United States.⁷² Although undocumented immigrants live in all parts of this nation, the South and SOUTHWEST regions of the United States are home to many of these immigrants.⁷³ For instance, in 2012, the Department of Homeland Security found that about 2.8 million undocumented persons lived in California, 1.8 million lived in Texas, and 730,000 lived in Florida.⁷⁴ With such large populations, undocumented immigrants have made their presence felt within these states and other border states. The Pew Hispanic Center found that, as of March 2010, an estimated 8 million undocumented immigrants partook in the nation's labor force.⁷⁵ Of these workers, 1.85 million worked in California, 1.1 million were employed in Texas, and 600,000 worked in Florida.⁷⁶ Consequently, these states, and the United States as a whole, have benefited from their work. A study done by The Perryman Group found that removing undocumented immigrants from the nation's labor force would result in an immediate loss of \$1.757 trillion in annual spending, \$651.511 billion in annual output, and 8.1 million jobs.⁷⁷

72. BRYAN BAKER & NANCY RYTINA, U.S. DEP'T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2012 1 (2012), available at http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.

73. See *id.* at 5 (listing the ten states with the largest unauthorized immigrant population in 2012); see also PEW HISPANIC CTR., UNAUTHORIZED IMMIGRATION POPULATION: NATIONAL AND STATE TRENDS, 2010 14 (2011), available at <http://pewhispanic.org/files/reports/133.pdf> (providing similar data for 2010). The Pew Hispanic Center is a nonpartisan organization, which provides information about the United States Hispanic population.

74. BAKER & RYTINA, *supra* note 72, at 5; cf. PEW HISPANIC CTR., *supra* note 73, at 14 (finding that 2.5 million undocumented persons lived in California, 1.65 million resided in Texas and 825,000 lived in Florida in 2010).

75. PEW HISPANIC CTR., *supra* note 73, at 17.

76. *Id.* at 21.

77. THE PERRYMAN GROUP, AN ESSENTIAL RESOURCE: AN ANALYSIS OF THE ECONOMIC IMPACT OF UNDOCUMENTED WORKERS ON BUSINESS ACTIVITY IN THE US WITH ESTIMATED EFFECTS BY STATE AND BY INDUSTRY 40 (2008), available at <http://www.immigrationresearch-info.org/report/perryman-group/essential-resource-analysis-economic-impact-undocumented-workers-business-acti> (finding a loss of spending, output, and income to border states if undocumented immigrants are removed from the market). The Perryman Group is an economic and financial analysis firm. The firm prepared this report for Americans for Immigration Reform. The report assessed the impact of undocumented immigrants on the labor force, as well as the nation's economy.

Despite these immigrants' contributions, there exists fear and animosity toward undocumented persons. The phrase "illegal alien" alone can invoke certain emotions and mental images for the listener.⁷⁸ For that reason, state courts have questioned whether to allow evidence of a party's unauthorized status in a civil case. Even though New Mexico's neighboring states have confronted this issue, New Mexico has yet to tackle this question directly in the civil context. Still, New Mexico has acknowledged unauthorized immigrants within its jurisdiction and their rights in personal injury cases. In *Torres v. Sierra*, the New Mexico Court of Appeals found that an undocumented immigrant held the right to pursue a personal injury claim and recover damages.⁷⁹ The court reasoned that unauthorized immigrants are human beings and they should be able to seek relief and recover damages to compensate their injuries caused by others. As such, the court found that "[a]n illegal alien in the United States is entitled to the same rights to damages that a citizen has under the tort laws of the state and federal government."⁸⁰

Even though New Mexico's history may contribute to its desire to integrate and involve undocumented immigrants in the State's society, the continuation of this integration may be fiscally necessary for New Mexico. Data from 2010 indicate that 85,000 undocumented immigrants live in New Mexico.⁸¹ Of those 85,000, an estimated 50,000 partook in New Mexico's labor force, making New Mexico among those states with the largest share of unauthorized immigrants in the labor force.⁸² As a result, New Mexico depends on the income and the tax revenue that undocumented immigrants contribute to the State. The Immigration Policy Center found that, in 2010, undocumented immigrants in New Mexico contributed approximately \$86.7 million in sales, income, and property taxes.⁸³ The Perryman Group further found that if undocumented immigrants are removed from the state New Mexico would suffer a loss of \$1.8 billion in economic activity, \$809.1 million in gross state product, and lose more than twelve thousand jobs.⁸⁴ As such, New Mexico and this country

78. Kevin R. Johnson, "Aliens" and *The U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263, 267 (1996-97) (noting that the term "alien" has negative connotation).

79. *Torres v. Sierra*, 1976-NMCA-064, ¶ 14, 89 N.M. 441.

80. *Id.* ¶ 24.

81. PEW HISPANIC CTR., *supra* note 73, at 15.

82. *Id.* at 21.

83. IMMIGRATION POLICY CENTER, *NEW AMERICANS IN NEW MEXICO: THE POLITICAL AND ECONOMIC POWER OF IMMIGRANTS, LATINOS, AND ASIANS IN THE LAND OF ENCHANTMENT STATE 2* (2013), available at http://www.immigrationpolicy.org/sites/default/files/docs/new_americans_in_new_mexico_2013_3.pdf.

84. THE PERRYMAN GROUP, *supra* note 77, at 67.

rely on undocumented immigrants and can ill-afford to alienate such critical contributors.⁸⁵

II. NEW MEXICO'S APPROACH TO IMMIGRATION STATUS IN CIVIL AND CRIMINAL CASES

A. *What is at Stake? The Consequences of Trial Evidence of Immigration Status*

The authors assert, for purposes of this paper, that bias and prejudice regarding a litigant's immigration status exists in America and affects jurors' decisions at trials. This presumption -- that the presence of undocumented immigrants will likely impact some jurors in their contemplation of the facts, and determinations of fairness, flows from numerous scholarly works and research efforts of many sociologists, psychologists, and others who have addressed the issue since long before enactment of the Civil Rights Act of 1875.⁸⁶ Scholars and jurists addressing the issue have uniformly and overwhelmingly recognized that such prejudice and discrimination about immigration status in the courtroom challenges fundamental concepts of freedom and liberty, as it flows from powerful perceptions of whether undocumented immigrants should be entitled to the benefits of an unbiased legal system in a country where they have illegally lived and worked.⁸⁷ Accordingly, whether the court allows the information to be considered in a trial is a decision likely to have a significant impact on the trial outcome.⁸⁸

B. *New Mexico's Consideration of Immigration Status in the Civil Context: Torres v. Sierra*

In 1976, the New Mexico Court of Appeals in *Torres v. Sierra* considered immigration status when calculating damages.⁸⁹ Ignacio Torres, an undocumented immigrant and national of Mexico, died after his car col-

85. IMMIGRATION POLICY CENTER, *supra* note 83, at 1.

86. See, e.g., Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149 (2010).

87. See, e.g., Benny Agosto, Jr. et al., "But Your Honor, He's an Illegal!" -- Ruled Inadmissible and Prejudicial[:] Can the Undocumented Worker's Alien Status Be Introduced at Trial?, 17 TEX. HISP. J. L. & POL'Y 27 (2011); Elizabeth L. Earle, *Banishing the Thirteenth Juror: An Approach to the Identification of Prosecutorial Racism*, 92 COLUM. L. REV. 1212 (1992).

88. Benny Agosto Jr. & Jason B. Ostrom, *Can the Injured Migrant Worker's Alien Status Be Introduced at Trial?*, 30 T. MARSHALL L. REV. 383 (2005).

89. See *Torres v. Sierra*, 1976-NMCA-064, ¶ 10, 89 N.M. 441.

lided with John Owens' vehicle. Torres' father brought a suit pursuant to New Mexico's Wrongful Death Act against Sierra, the administrator of Owens' estate. After the trial court entered a verdict in favor of Torres, Sierra appealed the decision to the New Mexico Court of Appeals. Sierra claimed that he was entitled to judgment because Torres was an undocumented immigrant at the time of the accident, and as such, Torres did not have a claim.⁹⁰ Sierra also argued that, even if Torres held a personal injury claim as an undocumented immigrant, the court erred in allowing Torres' expert witness to measure damages for future lost wages based upon a work life expectancy in the United States.⁹¹

The New Mexico Court of Appeals affirmed the trial court's holding. The court reasoned that New Mexico's Wrongful Death Act defined liability for damages in a very broad manner and did not limit recovery to only United States citizens.⁹² The court found that, when the legislature wanted to restrict certain benefits to undocumented immigrants, it made clear its intention.⁹³ In the case of the Wrongful Death Act, the court noted that the legislature made no such restriction, and instead, allowed recovery to all persons, regardless of immigration status.⁹⁴ The court further reasoned that, as a matter of New Mexico's public policy, the word "person" in the Wrongful Death Act necessarily included unauthorized immigrants.⁹⁵ Torres was allowed to pursue a suit under New Mexico's Wrongful Death Act.

Further, the court held that an undocumented immigrant could recover the same elements of damages as United States citizens. The court concluded that "[a]n illegal alien in the United States is *entitled to the same rights to damages* that a citizen has under the tort laws of the state and federal government."⁹⁶ As such, Torres had the right to seek wrongful death damages. With the right to seek damages, the Wrongful Death Act also granted the right to an instruction on damages comparable to any other plaintiff. Torres could recover damages based upon an "American working a lifetime."⁹⁷

90. *Id.* ¶ 8.

91. *Id.* ¶ 24.

92. *Id.* ¶¶ 10-11.

93. *Id.* ¶ 11 (finding that previous New Mexico statutes limited alcoholic licenses to United States citizen's only and required undocumented immigrants to reside in the state for at least 90 days before becoming eligible for a hunting and fishing license).

94. *Id.* ¶ 12.

95. *Id.*

96. *Id.* ¶ 24 (emphasis added).

97. *Id.*

Although New Mexico's Wrongful Death Act has changed from Section 22-20-1 to Section 42-2-1 since the *Torres* holding, the language remains the same.⁹⁸ The Act states that "[w]henever the death of a person shall be caused by the wrongful act, neglect or default of another, . . . and the act, or neglect, or default, is such as would, *if death had not ensued*, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who . . . would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured."⁹⁹ The New Mexico legislature had the opportunity to restrict benefits from undocumented immigrants following the *Torres* holding, but instead it preserved the language of the statute as analyzed by *Torres*.

Along with the ability to restrict the type of persons who may recover under the statute, the New Mexico legislature also had the chance to limit the amount a person may recover pursuant to a wrongful death claim. In other words, the legislature could have stated that damages for an undocumented immigrant would be calculated based on the working lifetime of a person living in the immigrant's native country. Nonetheless, the legislature took no such steps.

The legislature's decision to maintain the statute's same language years after the *Torres* holding is significant. Even though the *Torres* decision may mirror that of *Gallup American Coal Co.* concerning the Workers' Compensation Act, *Torres* went beyond acknowledging unauthorized immigrants' rights under New Mexico's Wrongful Death Act. The *Torres* court specifically ruled that "[a]n illegal alien in the United States is entitled to the same rights to damages that a citizen has under the tort laws of the state and federal government."¹⁰⁰ As such, the legislature's decision to use the identical language in subsequent Wrongful Death Acts lends support to the conclusion that the legislature agreed with *Torres'* holding. In turn, the legislature's implicit support of *Torres* provides a platform from which to advocate the exclusion of a party's immigration status in a civil proceeding.

98. See NMSA 1978, § 41-2-1 (1978) ("Whenever the death of a person shall be caused by the wrongful act, neglect or default of another, although such death shall have been caused under such circumstances as amount in law to a felony, and the act, or neglect, or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.").

99. *Id.* (emphasis added).

100. *Torres*, 1976-NMCA-064, ¶ 24 (emphasis added).

*C. Introduction of Immigration Status in New Mexico Criminal Cases:
State v. Williams*

While New Mexico has not explicitly prohibited the introduction of someone's immigration status in a civil proceeding, the courts have touched on the issue in the criminal context. In *State v. Williams*, Phillip Williams was convicted of second-degree murder and tampering with evidence after stabbing Josephine Chacon.¹⁰¹ On appeal, Williams alleged that the lower court erred in preventing him from cross-examining the State's witness, Javier Espinoza, regarding his immigration status.¹⁰² Williams alleged that the witness lied about his status in a pretrial interview.¹⁰³ Williams reasoned that Espinoza's immigration status was relevant to his showing that Espinoza lacked credibility.¹⁰⁴

The New Mexico Court of Appeals disagreed with Williams. The court found that, before trial, Williams requested the lower court to allow the introduction of evidence concerning Espinoza's immigration status. Williams made the request because Espinoza stated that he resided in the United States on a work permit, but failed to pay taxes. The lower court denied Williams' request and found the evidence irrelevant to the case.¹⁰⁵ The New Mexico Court of Appeals agreed with this reasoning.¹⁰⁶ The court found no evidence to support the conclusion that Espinoza lied about his status and that Espinoza's failure to pay taxes was not conclusive evidence of his immigration status.¹⁰⁷ The court held that Espinoza's immigration status was irrelevant. Although the New Mexico Court of Appeals did not entirely reject the introduction of immigration status in criminal proceedings, the court did place a burden to demonstrate relevance on the party seeking to introduce this evidence. Other state courts recognize that "[t]he only context in which courts have widely accepted using [evidence of immigration status] for impeachment is in criminal trials where a government witness's immigration status may indicate bias."¹⁰⁸

101. *State v. Williams*, No. 28,131, 2010 N.M. App. Unpub. LEXIS 51, at *1-3 (N.M. Ct. App. Jan. 13, 2010).

102. *Id.* at *27.

103. *Id.*

104. *Id.*

105. *Id.* at *28.

106. *Id.*

107. *Id.*

108. *TXI Transportation Co. v. Hughes*, 306 S.W.3d. 230, 244 (Tex. 2010).

III. INTRODUCTION OF A PARTY'S IMMIGRATION STATUS IN OTHER JURISDICTIONS

A. *South/Southwest Region*

Other states have also considered whether or not to allow evidence of a party's immigration status in civil cases. As a general rule, some other border states¹⁰⁹ allow the introduction of such evidence in civil proceedings, but require the moving party to first demonstrate the immigrant's deportability. Further, such courts typically limit the information for the purposes of determining future lost wages.

1. California

In *Rodriguez v. Kline*, Jesus Rodriguez, an undocumented immigrant and Mexican national, sued Samuel Kline for injuries sustained in a motor vehicle collision.¹¹⁰ During the trial, the lower court allowed information regarding Rodriguez's immigration status and projected earnings in Mexico. The trial court charged the jury that Kline bore a burden of showing both the possibility and probability of Rodriguez's deportation, instructing if they found "that [Rodriguez] *is subjected to deportation*, [they] *may find that any future loss of earning must be governed by those earnings he could be capable of earning in the country of his origin.*"¹¹¹ Following this instruction, the jury returned a verdict in favor of Rodriguez for \$99,000.

The court of appeals reversed, reasoning that questions of citizenship or lawful residence are legal issues to be decided exclusively by a court outside the presence of a jury.¹¹² The court concluded that, "whenever a plaintiff whose citizenship is challenged seeks to recover for loss of future earnings," a court must conduct a preliminary factual hearing to determine the plaintiff's citizenship.¹¹³ During the hearing, the defendant must establish that the plaintiff is in fact an alien subject to deportation.¹¹⁴ Upon this showing, the court then shifts the burden to the plaintiff to prove that he or she has taken steps to alter his or her immigration status.¹¹⁵ If the judge finds that the plaintiff met this burden, the judge should exclude all evidence regarding the plaintiff's immigration status.

109. The term "border state," as used in this article, refers to the United States/Mexico border.

110. *Rodriguez v. Kline*, 186 Cal. App. 3d 1145, 1147-48 (1986).

111. *Id.* at 1149-50.

112. *Id.* at 1148.

113. *Id.* at 1149.

114. *Id.*

115. *Id.*

Further, the jury should calculate the plaintiff's future earnings based on projected income within the United States. Conversely, if the judge finds that the plaintiff failed to meet the burden, the jury should determine future earnings based on the plaintiff's earning potential in the country of origin. Even with proof that Rodriguez resided in the United States without authorization, the court found that he might have met his burden of proof had the court conducted the proper inquiry.¹¹⁶ For instance, Rodriguez demonstrated that he lived in the United States for 20 years, was hard working, and was of high moral character. Further, Rodriguez paid his income taxes and once owned a business (until his accident with Kline). All these attributes might have made him eligible for suspension of deportation. Concluding that the lower court erred in its instructions to the jury, the appellate court reversed and remanded for further proceedings.¹¹⁷

After this holding, the California Court of Appeals clarified the rule set out in *Rodriguez*. In *Hernandez v. Paicius*, Miguel Hernandez sustained an on-the-job injury that required him to undergo two surgeries.¹¹⁸ Following his surgeries, Hernandez experienced pain and sleep disturbances. To aid him with the pain, Hernandez's physician referred him to an anesthesiologist who administered injections on Hernandez's throat near his larynx. Subsequently, Hernandez's voice became hoarse, and Hernandez sued the physician for negligence. Hernandez alleged that the anesthesiologist caused laryngeal nerve damage, administered injections without informed consent, and further deviated from the requisite standard of care. Prior to trial, Hernandez requested the court to exclude evidence relating to his immigration status.¹¹⁹ Hernandez alleged that his immigration status was irrelevant and was highly prejudicial because he did not seek future lost wages.¹²⁰ The lower court agreed that evidence of Hernandez's immigration status was prejudicial, but stated:

There's a lot of jurors unfortunately . . . as you may find out sadly at the end of this trial, [who] feel that anyone that comes into this fine country illegally, even for the motive of working, to come in illegally and then try to take advantage of our system for legal setup for legal resident, that we all pay money to support, pay their salaries, pay the buildings, yada, yada. If those people come in illegally, get caught up in the system, and then go through the

116. *Id.*

117. *Id.* at 1150.

118. *Hernandez v. Paicius*, 109 Cal. App. 4th 452, 455-59 (2003), *overruled on other grounds by* *People v. Freeman* 47 Cal. 4th 993 (2010).

119. *Id.* at 456-57.

120. *Id.* at 457.

system as if they are legal by phoneying up an I.D. or social security number, lying and getting treatment here, getting education here, whatever it is, here illegally, it's like forfeited *ab initio*. It's just without any claims, without any pity. It's too bad this poor gentleman hurt his foot, hand, whatever, but he came here to work illegally. So he's running the risk of getting injuries. He's running a risk of getting injured on any job if he is injured and outside the system. Tough. That's your problem. . . . So if this jury is going to hear a story about a guy who's been damaged, can't work, and they're going to have to believe him about -- and I noticed he dropped some of the claims so he might have been fudging on those -- faking it as it were, that if he's here claiming this hoarseness has impacted his life so much he's entitled [to] a ton of money from this good doctor they have to believe him. If they don't believe him he gets nada.¹²¹

Despite Hernandez's assertion that California's Evidence Code prohibited evidence regarding a character trait based on prior bad acts, the court found the evidence admissible. Upon hearing all the evidence, including the immigration status, the jury found against Hernandez.

The California Court of Appeals reversed the judgment. The court found that the plaintiff's immigration status was irrelevant because of the refusal to seek future lost wages¹²² and held that the lower court "absolutely should have granted [Hernandez's] motion to exclude reference to his residency status."¹²³ Furthermore, the court found that the mention of Hernandez's immigration status at trial was highly inflammatory.¹²⁴ Although the lower court allowed the prejudicial evidence on the basis that "bad actions" may be introduced, the court found that such evidence was inadmissible.¹²⁵ Finally, the court reasoned that the judge's comments, which "condemn[ed] and impugn[ed] the character of undocumented immigrants, including [Hernandez]," sufficed to show clear judicial bias and unfairness.¹²⁶ The case was remanded for a new trial.¹²⁷

On January 30, 2015, the court of appeals decided *Velasquez v. Centrome*.¹²⁸ In that case, the plaintiff was alleging injury from inhaling chemicals while working for a food-flavoring company. He sued a variety of the companies in the supply chain under a negligence theory.

121. *Id.* at 457-58.

122. *Id.* at 460.

123. *Id.*

124. *Id.*

125. *Id.* at 460-61.

126. *Id.* at 461-63.

127. *Id.* at 463.

128. *Velasquez v. Centrome, Inc.*, 233 Cal. App. 4th 1191 (2015).

Before trial, the plaintiff filed a motion in limine to exclude any and all testimony about his immigration status. Defendant responded that plaintiff's immigration status was relevant in that it was used to calculate the possibility of seeking a lung transplant in the future, a damage that the plaintiff was seeking. The trial court held off on a ruling until after voir dire of the medical experts that were going to testify. Following the questioning, the trial court judge denied the motion and let the evidence in.

The court of appeals reversed the judgment. The court cited to *Rodriguez*, stating, "[w]hen an undocumented immigrant plaintiff files a personal injury action, but does not claim damages for lost earnings capacity, evidence of his or her immigration status is irrelevant."¹²⁹ The court went on to further hold that immigration status is irrelevant to the determination of past special damages, liability, general damages, and credibility.¹³⁰ However, this ruling left open the possibility of immigration status as being relevant to the future special damages at issue. Looking at the record of the voir dire of the medical experts, the court found that immigration was not shown to be a factor in determining the likelihood of a person receiving a lung transplant. In fact, the medical expert specifically stated that immigration status cannot be considered.

This case seems to solidify the general rule from *Rodriguez* that immigration status is irrelevant to much of the civil case. Admission of immigration status, it could be argued, has been foreclosed for purposes of showing past special damages, liability, general damages, or credibility. The court holds open the possibility that immigration status may be relevant for proving future special damages. However, it seems to be the burden of party advocating for admission to show the relevance to rebut a presumption of inadmissibility.

2. Texas

In *TXI Transportation Company v. Hughes*, members of the Hughes family died after colliding with a gravel truck driven by Ricardo Rodriguez, an undocumented employee of a trucking company.¹³¹ The family sued the driver's employer, TXI Transportation Company ("TXI") on a negligent entrustment theory, asserting wrongful death and survival damages.¹³² During trial, TXI objected to the admission of evidence concerning Rodriguez's immigration status as irrelevant and unduly prejudicial.¹³³

129. *Id.* at 1212.

130. *Id.*

131. 306 S.W.3d 230, 233-34 (Tex. 2010).

132. *Id.* at 233.

133. *Id.* at 234.

The lower court overruled the objection and allowed evidence of the driver's status. The jury heard of Rodriguez's previous deportation and misrepresentations regarding his immigration status.¹³⁴ The jury also heard mention of Rodriguez's immigration status no fewer than forty times—thirty-five of which referred to him as an "illegal immigrant."¹³⁵ At the end of the trial, the jury found that Rodriguez's and TXI's negligence proximately caused the collision. TXI appealed, but the court of appeals affirmed the lower court's holding.¹³⁶ As such, TXI petitioned the Texas Supreme Court and argued that the trial court erred in allowing evidence of Rodriguez's immigration status and misrepresentations. TXI claimed that the admission of this evidence prejudiced its defense and denied it a fair trial. The court agreed.

After examining the record, the court found that Rodriguez's status "did not cause the collision, and was not relevant to the negligent entrustment or hiring claims"¹³⁷ The court reasoned that, in a negligent hiring claim, a party must demonstrate that the negligent hiring proximately caused the injuries.¹³⁸ Since Rodriguez's hiring was not the proximate cause of the accident, the court concluded that Rodriguez's immigrant status and misrepresentations served no probative value.¹³⁹ The court also found that the Hughes family's constant reference to Rodriguez's immigration status served only to draw attention away from any weakness in the case. The court reasoned that "[s]uch appeals to racial and ethnic prejudices, whether 'explicit and brazen' or 'veiled and subtle,' cannot be tolerated because they undermine the very basis of our judicial process."¹⁴⁰ Since it found the evidence prejudicial and irrelevant, the court reversed the lower court's holding and remanded the case for a new trial.¹⁴¹

Following *TXI Transportation Company*, the Texas Court of Appeals expanded the supreme court's ruling. In *Republic Waste Services v. Martinez*, Elida Martinez sued Republic Waste Services Company ("Republic") after its employee ran over her husband, Alfredo Gomez.¹⁴² Before trial, Martinez filed a motion in limine requesting the judge to

134. *Id.* at 243.

135. *Id.*

136. *Id.* at 234.

137. *Id.* at 241.

138. *Id.*

139. *Id.*

140. *Id.* at 245.

141. *Id.*

142. *Republic Waste Servs. v. Martinez*, 335 S.W.3d 401, 401-04 (Tex. Ct. App. 2011).

exclude any evidence regarding Gomez's undocumented status.¹⁴³ In her motion, Martinez claimed that Gomez's status lacked relevance to the case and was highly prejudicial. Republic disagreed, alleging that the evidence was relevant to Martinez's claim for future lost financial support from her husband.¹⁴⁴ Republic planned to introduce evidence showing that immigration officials had conducted raids at its facilities. The raids occurred only a few weeks after Gomez's death and resulted in the arrest of other undocumented workers.¹⁴⁵ As such, Republic alleged that immigration officials would have arrested Gomez, as well. According to Republic, Gomez's potential earning capacity in his native El Salvador was only \$1,000 per year.¹⁴⁶ Despite Republic's claims, the trial court found that the contentions regarding Gomez's deportability constituted "gross speculation" and granted Martinez's motion in limine.¹⁴⁷ At the conclusion of the trial, the court rendered a judgment in favor of Martinez.

On appeal, Republic claimed that the trial court erred in excluding evidence concerning Gomez's immigration status. The court of appeals agreed that a claimant's immigration status was potentially relevant in calculating future lost wages.¹⁴⁸ Nevertheless, citing *TXI Transportation Company*, the court found that the evidence's prejudicial effect outweighed its probative value and upheld the exclusion.¹⁴⁹ In order to use the evidence of immigration status, the defendant must demonstrate the *likelihood* of the plaintiff's deportation, or else the jury would be forced "to engage in conjecture and speculation regarding whether [plaintiff] will be deported, when he will be deported, and, if deported, whether he will return to the United States to work."¹⁵⁰ In this case, the court concluded that Republic's evidence about the raids failed to establish the likelihood of Gomez's deportation.¹⁵¹ Based on all the findings, the court concluded that "the probative value of the ICE raid, as well Gomez's illegal immigrant status, was slight given the . . . ample evidence that was admitted about Gomez's immigration status."¹⁵² The appeals court held that the trial court correctly excluded the evidence.¹⁵³

143. *Id.* at 403.

144. *Id.*

145. *Id.*

146. *Id.* at 404.

147. *Id.*

148. *Id.* at 408.

149. *See id.* at 408-09.

150. *Id.* at 409.

151. *Id.* at 410.

152. *Id.* at 411. "ICE" is an acronym for United States Immigration and Customs Enforcement.

153. *Id.*

3. Florida

In *O'Neil v. Gilbert*, Jasmine Gilbert sued Synergy Gas Corporation ("Synergy") and her landlord, Michael O'Neil, for negligence after she sustained burns from an explosion caused by a defective stove in her apartment.¹⁵⁴ During the trial, Gilbert introduced extensive evidence regarding the immigration status of Synergy's witness. Among the evidence introduced was testimony by an immigration attorney who suggested that the witness was undocumented and made misrepresentations to officials to obtain permanent residency. Gilbert argued that the evidence showed the witness's bias in favor of Synergy's positions.¹⁵⁵ Specifically, Gilbert claimed that the witness's status influenced her decision to testify out of fear that Synergy would report her to immigration authorities. The jury returned a verdict for Gilbert, and Synergy appealed.¹⁵⁶

The Florida Court of Appeals (3d District) reversed and remanded for a new trial.¹⁵⁷ While there was evidence of Synergy's liability, the court held it was improper to allow admission of the witness's immigration status for impeachment.¹⁵⁸ The court found no evidence to suggest that Synergy knew about the witness's status or that it would report the witness if she refused to testify. As such, the evidence proved no bias on the witness's part and served only to disparage her character.¹⁵⁹ The court concluded that, "[w]hile evidence of a witness's bias or prejudice is of course pertinent and admissible as reflecting upon his credibility in a particular case, . . . [an] immigration issue does not qualify under this rule."¹⁶⁰

In 2006, the Florida Court of Appeals (4th District) distinguished *O'Neil v. Gilbert* in *Liotta v. State*.¹⁶¹ In *Liotta*, the prosecution cross-examined defendant Ralph Liotta's witness about his immigration status and argued that Liotta's status as the witness's visa sponsor should be admitted as evidence of the witness's bias.¹⁶² The court found this proper because the close relationship between the witness and Liotta, including

154. *O'Neil v. Gilbert*, 625 So. 2d 982, 982–83 (Fla. Dist. Ct. App. 1993).

155. *Id.* at 983.

156. *Id.* at 982.

157. *Id.*

158. *Id.*

159. *Id.* at 983.

160. *Id.* (internal citation omitted).

161. 939 So. 2d 333 (Fla. Dist. Ct. App. 2006). The *O'Neil* court found that immigration status was improperly admitted because there were no facts that linked the immigration issue to the witness's credibility. This seems to be consistent with California's findings that immigration status is irrelevant to credibility.

162. *Id.* at 334.

the visa sponsorship, went to show a possible bias and did not call into question the witness's credibility.¹⁶³ This criminal case should be viewed as a limited departure from the traditional rule that immigration status should not be admitted.

In *Maldonado v. Allstate Insurance Company*, the Florida Court of Appeals (2d District) concluded that an undocumented immigrant may recover damages pursuant to Florida's Motor Vehicle No-Fault Law.¹⁶⁴ Vicente Maldonado, an undocumented immigrant and Mexican national, was struck by a motorist insured by Allstate Insurance Company ("Allstate"). Maldonado sued Allstate for injuries he sustained and sought benefits under the Allstate policy. At trial, Allstate presented evidence regarding Maldonado's immigration status and stated that Maldonado "'crossed over the river [illegally] between Mexico and the United States.'"¹⁶⁵ Allstate also cross-examined Maldonado about his use of a false social security number and his intent to work in Florida without authorization. During closing arguments, Allstate framed the question to the jury: "'[C]an a person be subject to deportation and be a resident of the State of Florida? Can a resident be deported?'"¹⁶⁶ Although the trial court sustained Maldonado's objections to such rhetoric, the court allowed the evidence of his immigration status for the purpose of determining whether Maldonado was a resident of Florida.¹⁶⁷ The jury found that Maldonado failed to maintain residency in Florida at the time of the accident, and therefore, he could not obtain Personal Injury Protection ("PIP") benefits under Florida's Motor Vehicle No-Fault Law. Maldonado appealed.

Florida's No-Fault Law required insurance companies to provide PIP benefits to "'persons struck by such [insured] motor vehicle.'"¹⁶⁸ The court of appeals held that the person seeking the benefits must establish that he or she was a Florida resident at the time of the incident or was an occupant of a Florida vehicle.¹⁶⁹ The court concluded that the "residency" requirement demanded "pure" residency, not domicile or citizenship.¹⁷⁰ As such, an undocumented immigrant may obtain PIP benefits upon

163. *Id.* at 334-35 (distinguishing the *O'Neil* holding that a witnesses immigration status was irrelevant).

164. *Maldonado v. Allstate Ins. Co.*, 789 So. 2d 464, 464-66 (Fla. Dist. Ct. App. 2001).

165. *Id.* at 466.

166. *Id.*

167. *See id.* at 466-67.

168. *Id.* at 468.

169. *Id.* at 469.

170. *Id.* at 470.

showing that he established residency in Florida. In Maldonado's case, the court concluded that the claimant demonstrated that he intended to stay in Florida. There was no evidence that "Maldonado was an itinerant bicyclist yearning to return to his Mexican homeland."¹⁷¹ Furthermore, the court concluded that the evidence was "unfairly prejudicial because it made Mr. Maldonado's alien status, rather than his residency, the focus of the jury's attention."¹⁷² As the prejudice Maldonado faced outweighed any probative value held by evidence of his immigration status, the court reversed the trial court's holding and remanded the case with instructions to provide the jury with an accurate definition of the term "resident."¹⁷³

4. Arizona

Although it addressed the issue in the context of a criminal proceeding, Arizona courts hold that the prejudicial impact of introducing a witness's immigration status outweighs its relevancy. In *State v. Abdi*, Abdulkadri Abdi was arrested and charged with aggravated assault against victim L.¹⁷⁴ On cross-examination, Abdi questioned L. about his immigration status, but the state objected on the basis of relevance. In response, Abdi's counsel asserted that L. was in fact the aggressor, but he claimed to be the victim because his immigration status would be in jeopardy.¹⁷⁵ The trial court rejected Abdi's arguments and sustained the state's objection. The jury ultimately found Abdi guilty and sentenced him to 9.5 years incarceration.

On appeal, Abdi argued that the trial court erred in prohibiting the introduction of L.'s immigration status. Abdi claimed that L.'s immigration status remained relevant to his showing that L. had a motive to accuse Abdi of stabbing him.¹⁷⁶ Abdi also argued that the trial court's denial violated his constitutional due process "'right to present a complete defense.'"¹⁷⁷ The Arizona Court of Appeals disagreed with Abdi, finding nothing to suggest that L.'s immigration status was in jeopardy. The court further concluded that the status constituted a collateral issue which may potentially confuse the jury.¹⁷⁸ Finally, the court reasoned that the jury heard enough testimony to conclude that "L. may have had a motive to

171. *Id.*

172. *Id.*

173. *Id.*

174. *State v. Abdi*, 248 P.3d 209, 211 (Ariz. Ct. App. 2011).

175. *Id.* at 214–215.

176. *Id.* at 214.

177. *Id.* at 215.

178. *Id.*

be untruthful."¹⁷⁹ Since any reference to L.'s immigration status would have been cumulative, the lower court's ruling was upheld.¹⁸⁰

Following *Abdi*, the court continued to deny admission of immigration status as overly prejudicial. In *State v. Buccheri-Bianca*, the defendant lived in the same apartment as a family with five minor children.¹⁸¹ Three of the children testified that they had been molested. The defendant attempted to introduce the immigration status of the family during trial to show a motive for fabricating the story. The victims had applied for U-visas after the charges were filed, and the defendant argued that the charges were fabricated to qualify for the U-visa.¹⁸²

The Arizona Court of Appeals ruled that it was proper to "preclude evidence of immigration status if it is 'collateral to the issues at trial and would potentially confuse the jury.'"¹⁸³ However, the court did look to the record to see if there was any merit to the defendant's claims. No evidence was shown that the family knew about U-visas until after the charges were filed.¹⁸⁴ The court also noted that U-visas do not require an unauthorized immigration status for application, so it was ultimately irrelevant.¹⁸⁵

Using the language and ideas set forth in *Abdi*, the court held that a "trial court could implicitly conclude, as argued by the state, that any probative value would have been outweighed by the risk of unfair prejudice and confusion of the issues stemming from a collateral mini-trial on the victims' immigration status."¹⁸⁶

B. Non-Border States

1. New York

Like states within the South/Southwest Region of the United States, other states whose undocumented populations rank among the largest in the nation¹⁸⁷ also exclude evidence regarding immigration status when future lost wages are not sought. States with smaller unauthorized popula-

179. *Id.*

180. *Id.*

181. *State v. Buccheri-Bianca*, 312 P.3d 123, 126 (Ariz. Ct. App. 2013).

182. *Id.* at 127.

183. *Id.* (citing *Abdi*, 248 P.3d at 215).

184. *Id.*

185. *Id.*

186. *Id.*

187. In 2010 the Pew Hispanic Center found that 625,000 undocumented immigrants lived in New York, 525,000 lived in Illinois, and 230,000 lived in Washington. PEW HISPANIC CTR., *supra* note 73, at 23.

tions¹⁸⁸ tend to allow this evidence at trial more liberally. However, all states require the moving party to prove the immigrant's deportability.

In *Klapa v. O & Y Liberty Plaza Co.*, a district court decision, a worker was injured in a fall from scaffolding while working on a construction site owned by O & Y Liberty Plaza Company.¹⁸⁹ The injured worker, Janusz Klapa, brought suit against the defendants, and as part of his claim for damages, sought future lost wages. Klapa filed a motion in limine asking the court to prevent O & Y Liberty Plaza Company from referring to his immigration status, arguing that his status was irrelevant to his claim for future lost wages.¹⁹⁰ Further, Klapa claimed that admitting evidence of his status would be highly prejudicial to his case. In response, the defendants claimed that New York case law permitted the introduction of a plaintiff's immigration status when the plaintiff sought future lost wages.¹⁹¹ The defendants alleged that the evidence allowed the jury to determine Klapa's deportability, and as such, limit the amount of future wages recoverable.

After examining the record, the court granted Klapa's motion. The court found that a plaintiff's undocumented status, "in and of itself, cannot be used to rebut a claim for future lost wages."¹⁹² The court reasoned that "[w]hatever probative value illegal alien status may have is far outweighed by its prejudicial impact."¹⁹³ As such, the court concluded that the defendant must first present enough evidence proving the likelihood of the plaintiff's deportability.¹⁹⁴ Because the court found that the defendants failed to demonstrate Klapa's deportability, the court granted the motion and precluded the defendants from presenting evidence regarding Klapa's immigration status.¹⁹⁵

2. Colorado

Silva v. Wilcox arose out of a motor vehicle collision.¹⁹⁶ Plaintiff Luis Silva sued for damages related to his injuries sustained in the wreck and filed a motion in limine to exclude information regarding his immigration status and any reference to his Mexican driver's license.¹⁹⁷ Silva alleged

188. In 2010, the Pew Hispanic Center found that 180,000 undocumented immigrants lived in Colorado, and 15,000 lived in New Hampshire. *Id.*

189. *Klapa v. O & Y Liberty Plaza Co.*, 645 N.Y.S.2d 281, 281 (N.Y. Sup. Ct. 1996).

190. *Id.*

191. *Id.* at 281–82.

192. *Id.* at 282.

193. *Id.*

194. *Id.*

195. *Id.* at 283.

196. *Silva v. Wilcox*, 223 P.3d 127, 130 (Colo. Ct. App. 2009).

197. *Id.* at 131.

that the evidence only served to create prejudice against him and such prejudice outweighed any probative value. Without conducting an evidentiary hearing, the lower court granted the motion and excluded the evidence. After two trials, the jury returned a verdict in favor of Silva and awarded him economic damages, including future lost wages. The defendant appealed and argued that the court's refusal to allow evidence regarding Silva's immigration status was an error because the claim was for future lost wages.¹⁹⁸

The Colorado Court of Appeals agreed that where a claimant seeks to recover lost future wages as damages, "the inquiry into his right as an immigrant to earn such wages is relevant."¹⁹⁹ The defendant's burden is to show that the plaintiff resides in the United States illegally and that he or she is *unlikely to continue residing in the United States during the time for which future lost earnings are sought*.²⁰⁰ Only then may the defendant present evidence regarding the plaintiff's immigration status to the jury to consider in determining future lost wages.²⁰¹ The court remanded the case with instructions to conduct a hearing to determine Silva's immigration status and the likelihood of Silva remaining in the United States throughout the period of claimed lost future wages.²⁰²

3. Illinois

In *Diaz v. Archer Daniels Midland Co.*, an undocumented immigrant employed by Archer Daniels Midland Company ("ADM") died after an explosion caused him to be burned over 90 percent of his body.²⁰³ Laura Diaz, administrator of the decedent's estate, brought a wrongful death and survival suit against ADM.²⁰⁴ Before the start of the trial, Diaz sought to exclude any evidence regarding the decedent's immigration status.²⁰⁵ The trial court granted the motion to exclude, and the jury returned a verdict in favor of Diaz.

On appeal, ADM claimed that the trial court erred in prohibiting evidence regarding the decedent's immigration status. The company alleged that the evidence was relevant to Diaz's claims for damages. ADM

198. *Id.*

199. *Id.* at 131-32.

200. *Id.* at 132 (emphasis added).

201. *Id.* at 133.

202. *Id.* at 133-34.

203. *Diaz v. Archer Daniels Midland Co.*, No. 4-10-0028, 2011 Ill. App. Unpub. LEXIS 1543, at *3-4 (Ill. App. Ct. June 28, 2011).

204. See 740 ILL. COMP. STAT. 180/1 (1995) (emphasis added) (providing without reference to immigration status that a cause of action arises "[w]hensoever the death of a person shall be caused by wrongful act . . .").

205. See *Diaz*, 2011 Ill. App. Unpub. LEXIS 1543, at *5.

further alleged that the evidence served to establish the decedent's character traits and family relationship. Despite ADM's contentions, the court of appeals affirmed the trial court's decision to exclude the evidence.²⁰⁶ While agreeing that a plaintiff's immigration status may be admissible, the court found that ADM failed to provide information that established the decedent's status.²⁰⁷ ADM presented no evidence demonstrating that the decedent was under investigation or at risk of deportation. Moreover, the court found that Diaz never requested damages for future lost wages.²⁰⁸ As such, the court concluded that "[t]he suggestion [that the] decedent was an illegal immigrant would have been extremely prejudicial . . . [and t]he prejudice resulting from such a suggestion far outweighed its limited relevance."²⁰⁹

4. New Hampshire

In *Rosa v. Partners in Progress*, Wudson Rosa, a Brazilian citizen and employee of one of the defendants, suffered an injury while at work.²¹⁰ Rosa sued for damages and lost earning capacity. The defendants requested that the court to dismiss or limit Rosa's claims for future wage loss. Rosa sought to exclude evidence regarding his immigration status on the grounds that its probative value was outweighed by prejudicial effect.

On interlocutory appeal, the New Hampshire Supreme Court concluded that a plaintiff's immigration status was irrelevant to the issue of liability.²¹¹ The court reasoned that refusing recovery against employers would provide incentive to hire more undocumented persons and exploit them.²¹² However, the court found the evidence relevant in cases in which a plaintiff sought future lost United States earnings²¹³ despite its prejudice. The court held that an employer may be liable for the lost United States earnings if the employer "knew or should have known of

206. *Id.* at *8.

207. *Id.* at *8-9.

208. *Id.* at *11.

209. *Id.* at *10-11.

210. *Rosa v. Partners in Progress, Inc.*, 868 A.2d 994, 996 (N.H. 2005).

211. *Id.* at 1002.

212. *See id.* at 1000 ("To refuse to allow recovery against a person responsible for an illegal alien's employment who knew or should have known of the illegal alien's status would provide an incentive for such persons to target illegal aliens for employment in the most dangerous jobs or to provide illegal aliens with substandard working conditions. It would allow such persons to treat illegal aliens as disposable commodities who may be replaced the moment they are damaged. Such a result is incompatible with tort deterrence principles.").

213. "United States earnings" are calculated at the rate earned by the employee in the United States.

that illegal alien's status."²¹⁴ The case was remanded to determine whether the defendant knew or should have known plaintiff was undocumented.²¹⁵

5. Washington

In *Salas v. Hi-Tech Erectors*, Alex Salas slipped from a ladder erected by Hi-Tech Erectors, severely injuring himself.²¹⁶ Salas brought suit against Hi-Tech Erectors for negligence. After Salas' undocumented status was revealed, he filed a motion in limine to exclude all evidence referring to his immigration status. The trial judge allowed the evidence despite his fear "that some jurors might be 'so hung up on the immigration issue that they would really take it out on him.'"²¹⁷ The evidence was allowed because it was relevant to Salas' claim for future lost wages.²¹⁸ The trial returned a verdict in favor of Hi-Tech Erectors. The Washington Court of Appeals affirmed the trial court's rules, and Salas appealed to the state supreme court.

The Washington Supreme Court reversed and remanded the case,²¹⁹ finding that there was no evidence showing that Salas was subject to deportation.²²⁰ The court recognized that authorities fail to apprehend most undocumented immigrants, and those apprehended may find ways to avoid deportation.²²¹ As such, the court concluded that a plaintiff's immigration status fails as a reliable indicator of deportability. Furthermore, the court found that the prejudicial effect of introducing the plaintiff's

214. See *Rosa*, 868 A.2d at 1000.

215. *Id.* at 1002. See also *Affordable Hous. Found., Inc. v. Silva*, 469 F.3d 219, 248 (2006) (internal citations and quotation marks omitted) (citing *Rosa*) ("[W]hen, as in this case, both the illegal employment relationship and the personal injury are attributable to the wrongful conduct of persons other than the undocumented worker, a denial of lost earnings compensation, like a denial of workers' compensation is more apt to subvert both federal and state law than a grant of such compensation is apt to place the two in direct and positive conflict with one another. As the New Hampshire Court of Appeals observed in recently rejecting a *Hoffman Plastic*-based challenge to its state law allowing an undocumented worker to recover lost United States earnings for workplace injuries: To refuse to allow recovery against a person responsible for an illegal alien's employment who knew or should have known of the illegal alien's status would provide an incentive for such persons to target illegal aliens for employment in the most dangerous jobs or to provide illegal aliens with substandard working conditions.").

216. *Salas v. Hi-Tech Erectors*, 230 P.3d 583, 584 (Wash. 2010).

217. *Id.*

218. *Id.* at 585.

219. *Id.* at 587.

220. *Id.* at 585.

221. *Id.*

immigration status outweighed its minimal relevancy. The court reasoned that “[i]ssues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder’s duty to engage in reasoned deliberation.”²²² The court held that Salas was entitled to a new trial that excluded reference to his status.²²³

6. Maryland

Finally, in *Ayala v. Lee*, evidence of immigration status was introduced in the context of lost future wages.²²⁴ Defendants argued that, if deported, the plaintiff would have much lower earnings in their native country, and therefore, the jury should award a lower sum. The question was posed to the appellate court for consideration before trial.

The Maryland Court of Appeals noted that the chance of prejudice often far outweighs the minimal legitimate value that was gained and that the mere chance of deportation is rarely sufficient for introduction of immigration-related evidence.²²⁵ It was up to the defendant to show a likelihood of deportation. Ultimately the court ruled that the trial judge should watch closely and monitor the testimony given to ensure that any questions regarding the future income do not become too prejudicial.²²⁶

IV. WHY NEW MEXICO SHOULD CONTINUE ITS CURRENT PATH

A. *The National Debate Indicates Bias Against Immigrants*

Immigration is a highly charged and emotional issue throughout our country as demonstrated by the passage of, and subsequent litigation related to, Arizona Senate Bill 1070.²²⁷ Alabama, Georgia, South Carolina, Tennessee and Florida all considered or passed similar legislation, imposing criminal penalties on illegal immigrants and those who employ or aid

222. *Id.* at 586.

223. *Id.* at 587.

224. *Ayala v. Lee*, 81 A.3d 584 (Md. Ct. Spec. App. 2012).

225. *Id.* at 597–98.

226. *Id.* at 599.

227. Named the “Support Our Law Enforcement and Safe Neighborhoods Act,” SB 1070 made it a crime for “illegal” immigrants to be in the state without papers, allowed local law enforcement to enforce federal immigration law, and targeted those interacting with immigrants. *See generally* 2010 Ariz. Legis. Serv. ch. 113 (West). Passage of the bill brought debates ranging from safety to racial profiling. In *Arizona v. United States*, 132 S. Ct. 2492 (2012), the Court upheld the provision allowing law enforcement to pursue federal immigration law and struck down all others as unconstitutional.

them.²²⁸ A 2013 Gallup poll found 35 percent of Americans believed immigration levels should be decreased, while 40 percent were satisfied with the current levels.²²⁹ The most recent iteration of the poll shows movement indicating negative sentiment about immigration.²³⁰ Truly, immigration is a fractured issue in America. A significant piece of legislation aimed at education and helping youth, despite their immigration status, the Development, Relief, and Education for Minors Act (DREAM Act), stalled out in a Senate filibuster and has not been seriously debated since.²³¹

On November 20, 2014, President Obama announced sweeping executive action on immigration.²³² The Order, among other issues, revised removal priorities for adults and children, expanded waivers for spouses and children of lawful permanent residents and extended deferment actions to parents of Americans and lawful permanent residents.²³³ The measures would have extended work permits and legal protections to hundreds of thousands of undocumented immigrants,²³⁴ but before the measures were implemented, twenty-six states sued to halt enforcement of the executive order.²³⁵ Two days before it would take effect, a United States District Judge ruled that President Obama had overstepped his authority and ordered the executive action stayed.²³⁶ Executive action in the face of congressional inaction, as well as subsequent state reaction, indicate that the national debate related to immigration rages on.²³⁷ More

228. See Danielle Renwick & Brianna Lee, *The U.S. Immigration Debate*, COUNCIL ON FOREIGN RELATIONS (Feb. 26, 2015) <http://www.cfr.org/immigration/us-immigration-debate/p11149#p2>.

229. *Immigration*, GALLUP, <http://www.gallup.com/poll/1660/Immigration.aspx> (last visited May 6, 2015).

230. *Id.* The most recent poll conducted in June of 2014 shows 41 percent in favor of decreasing immigration levels and 33 percent satisfied with the current level.

231. Renwick & Lee, *supra* note 228.

232. *Executive Actions on Immigration*, U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Apr. 15, 2015), <http://www.uscis.gov/immigrationaction>.

233. *Id.*

234. Michael D. Shear & Julia Preston, *Dealt Setback, Obama Puts Off Immigrant Plan*, N.Y. TIMES (Feb. 17, 2015), http://www.nytimes.com/2015/02/18/us/obama-immigration-policy-halted-by-federal-judge-in-texas.html?_r=0.

235. *Id.*

236. *Id.*

237. A February 12-15, 2015, CNN/ORC poll taken of 1,027 adults nationwide, the response was split 49%/49% as to whether immigration should be handled with paths to legal residency for immigrants who are already employed, or stopping immigration and deporting immigrants already here. *Immigration*, POLLINGREPORT.COM, <http://www.pollingreport.com/immigration.htm> (last visited May 6, 2015).

importantly (for the purposes of this Article), the tone of the national debate indicates a substantial percentage of the population harbors strong bias against the immigrant population and that introduction of evidence related to immigration status at trial would likely impact the administration of justice in our court system.

B. Prejudicial Effect Outweighs Any Probative Value

While border states and others with large undocumented populations agree that evidence of a party's immigration status may be relevant, these states also recognize that this evidence carries with it a highly prejudicial impact. For instance, the California Court of Appeals in *Rodriguez* found that "evidence relating to citizenship and liability to deportation almost surely would be prejudicial to the party whose status was in question."²³⁸ Agreeing with *Rodriguez*, the *Hernandez* court also found that the introduction of a party's immigration status is highly inflammatory.²³⁹

Texas courts follow a similar reasoning. The Texas Supreme Court in *TXI Transportation Company* held that the potential prejudice resulting from a party's immigration status substantially outweighs its relevance.²⁴⁰ The court found that "[e]ven in instances where immigration status may have limited probative value as to credibility, courts have held that such evidence is properly excluded for undue prejudice under Rule 403" of the Texas Evidence Code.²⁴¹ Similarly, the *Republic Waste Services* court held that, pursuant to Rule 403 of the Texas Evidence Code, relevant evidence may be excluded if the prejudicial effect outweighs its probative value.²⁴² In the context of immigration status, the court found that "the issue of immigration is a highly charged area of political debate. . . . [T]he probative value of evidence concerning a plaintiff's illegal immigrant status is low, while the prejudicial effect of this evidence is high."²⁴³

Comparably, the Florida Court of Appeals held in *O'Neil* that Section 90.403 of the Florida Evidence Statute may bar admission of evidence of a witness's bias if it is unfairly prejudicial.²⁴⁴ The court may exclude evidence of a witness's immigration status if the court concludes

238. *Rodriguez v. Kline*, 186 Cal. App. 3d 1145, 1148 (Cal. Ct. App. 1986).

239. *Hernandez v. Paicius*, 109 Cal. App. 4th 452, 460 (2003), *overruled on other grounds by* *People v. Freeman* 47 Cal. 4th 993 (2010).

240. *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 244 (Tex. 2010).

241. *Id.*

242. *Republic Waste Servs. Ltd. v. Martinez*, 335 S.W.3d 401, 409–10 (Tex. Ct. App. 2011).

243. *Id.* at 409.

244. *O'Neil v. Gilbert*, 625 So. 2d 982, 983 (Fla. Dist. Ct. App. 1993).

that information creates a bias disparaging the witness's character.²⁴⁵ The Florida Court of Appeals in *Maldonado* ruled that it also may exclude a party's immigration status (under Section 90.403) from a civil proceeding when its limited probative value is outweighed by its prejudicial effect.²⁴⁶

Other states join border states in this view. For example, in *Klapa*, the court concluded that "whatever probative value illegal alien status may have is far outweighed by its prejudicial impact."²⁴⁷ The Illinois Court of Appeals in *Diaz* also found that "[t]he prejudice resulting from such a suggestion far outweighed its limited relevance."²⁴⁸ Finally, the Washington Supreme Court found that "immigration is a politically sensitive issue. . . . In light of the low probative value of immigration status with regard to lost future earnings, the risk of unfair prejudice brought about by the admission of a plaintiff's immigration status is too great."²⁴⁹

C. Probability or Possibility of Deportation: The Standard Required in Order to Introduce a Party's Immigration Status

Recognizing the highly prejudicial effect of a party's immigration status, most states require not only actual proof of the individual's immigration status, but the likelihood that the party will be deported. For instance, in *Klapa*, the court found that a defendant may rebut a plaintiff's claim for future lost wages by introducing evidence establishing the plaintiff's deportability.²⁵⁰ Nonetheless, the court reasoned that the defendant "must be prepared to demonstrate something more than just the mere fact that the plaintiff resides in the United States illegally."²⁵¹ Ultimately, the defendant failed to meet its burden and offered no evidence indicating that immigration officials placed *Klapa* in deportation proceedings or that those officials even contemplated proceedings.²⁵² Accordingly, the court barred the defendant from introducing evidence of immigration status.²⁵³

Similarly, Texas courts hold that a defendant must provide evidence supporting the contention that a plaintiff is deportable.²⁵⁴ In *Republic*

245. *See id.*

246. *Maldonado v. Allstate Ins. Co.*, 789 So. 2d 464, 470 (Fla. Dist. Ct. App. 2001).

247. *Klapa v. O & Y Liberty Plaza Co.*, 645 N.Y.S.2d 281, 282 (N.Y. Sup. Ct. 1996).

248. *Diaz v. Archer Daniels Midland Co.*, No. 4-10-0028, 2011 Ill. App. Unpub. LEXIS 1543, at *11 (Ill. App. Ct. June 28, 2011).

249. *Salas v. Hi-Tech Erectors*, 230 P.3d 583, 586-87 (Wash. 2010).

250. *Klapa*, 645 N.Y.S.2d at 282.

251. *Id.*

252. *Id.*

253. *Id.* at 283.

254. *Republic Waste Servs. Ltd. v. Martinez*, 335 S.W.3d 401, 409-10 (Tex. Ct. App. 2011).

Waste Services, the Texas Court of Appeals found that immigration raids at the defendant's facilities constituted no more than speculative evidence.²⁵⁵ The court held:

[T]estimony that 50 to 55 employees were detained by federal authorities, due to 'mismatched' paperwork, offers little to guide the jury to find that, had he lived, Gomez also would have been detained. . . . [H]ad evidence been presented at trial showing that Gomez was the subject of a deportation proceeding or had been detected by federal immigration authorities, the probative value of the illegal status evidence may have outweighed its prejudicial effect.²⁵⁶

Specific, predictive evidence about Gomez's immigration future is required. Proof that some of the employer's other workers were deported is not sufficient. Due to the defendant's inability to demonstrate some concrete evidence proving Gomez's deportability, the court excluded any reference to Gomez's immigration status.²⁵⁷

The Illinois Court of Appeals agrees. In *Diaz*, the court found that defendant provided nothing more than speculative evidence,²⁵⁸ because it "presented no evidence [showing that the] decedent was under investigation by immigration officials or was at risk for deportation in the future."²⁵⁹ Again, specific evidence about the claimant's probability of deportation is necessary.

The Washington appellate courts take a similar stance. In *Salas*, the Washington Court of Appeals noted that the Department of Homeland Security found an estimated 11.6 million undocumented immigrants resided in the United States.²⁶⁰ Despite these large numbers, the court recognized that immigration officials apprehended less than one percent of these undocumented immigrants.²⁶¹ Further, the court found that, even if officials apprehend an undocumented person, the immigrant may suspend deportation proceedings. As the defendant only presented evidence of Salas' immigration status and "no evidence of pending removal proceedings or a deportation order," the court held that the lower court abused its discretion in allowing evidence of Salas' immigration status.²⁶²

255. *Id.* at 410.

256. *Id.*

257. *Id.*

258. *Diaz v. Archer Daniels Midland Co.*, No. 4-10-0028, 2011 Ill. App. Unpub. LEXIS 1543, at *11 (Ill. App. Ct. June 28, 2011).

259. *Id.*

260. *Salas v. Hi-Tech Erectors*, 230 P.3d 583, 585 (Wash. 2010).

261. *Id.*

262. *Id.* at 585, 587.

Even Colorado has required that a defendant prove the probability of a plaintiff's deportation.²⁶³ The state requires the defendant to demonstrate the plaintiff is undocumented, but is *unlikely* to remain in the country during the period for which future lost wages are sought. In other words, the defendant must prove the plaintiff will *likely* be deported.²⁶⁴

In each of the cases discussed above, the party attempting to admit the evidence must prove more than the mere possibility of deportation. These courts ask the moving party to not only present evidence establishing the immigration status, but to couple such evidence with proof of removal proceedings or immigration investigations. These cases thus demonstrate that the defendant would bear the burden of establishing the *probability* of deportation before she or he may present evidence regarding the plaintiff's immigration status.²⁶⁵

263. *Silva v. Wilcox*, 223 P.3d 127, 131-32 (Colo. Ct. App. 2009).

264. "Likely" means "having a *high probability* of occurring or being true." MERIAM-WEBSTER DICTIONARY, available at <http://www.merriam-webster.com/dictionary/likely> (last visited May 6, 2015) (emphasis added).

265. On June 17, 2011, the Department of Homeland Security released a memorandum to all of its field office directors, special agents, and chief counsels, issuing guidance on how immigration officials should exercise their prosecutorial discretion. See Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011) (unpublished memorandum), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>. The memorandum instructs immigration officials to review immigration charges, detention and deportations on a case-by-case basis. It is an attempt to prioritize, it also identifies certain classes of individuals that warrant positive care (such as aliens with long-term residency, those who have been present since childhood, veterans, and victims of crimes) and certain classes of persons who should likely be prosecuted (individuals who pose a clear risk to national security, serious criminals, known gang members who pose a clear danger to society, and individuals with an egregious record of immigration violations). Most notably, the memorandum states that "it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended . . ." *Id.* at 5. The memorandum is insignificant in a civil proceeding where a defendant moves to admit evidence regarding a plaintiff's immigration status. If the defendant is required to prove the probability of a plaintiff's deportation, the defendant would need to demonstrate that the plaintiff is amongst those persons likely to be prosecuted by immigration officials. Even if the defendant presents evidence that the plaintiff is in deportation proceedings, the plaintiff may be able to rebut this by showing evidence that immigration officials may dismiss proceedings because of his or her positive attributes.

D. Proposed Approach for New Mexico

Torres v. Silva recognized that New Mexico law entitles undocumented immigrants to the same rights to recover damages that United States citizens hold under its tort laws, including the right to future lost wages. Forty years have passed since *Torres*, but this decision remains good law. Although *Torres* may appear to be a sharp departure from other states' holdings, a New Mexico court, following *Torres*' reasoning, need go no further than our Rules of Evidence to exclude evidence of immigration status. New Mexico Rule of Evidence 11-401 states that evidence is relevant if it has the "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."²⁶⁶ Rule 11-402 allows courts to find all evidence not falling within this meaning irrelevant and inadmissible in trial.²⁶⁷ *Torres* allows an undocumented immigrant the same recovery opportunities as a United States citizen, without reduction to future lost earnings. A party's immigration status should be of no consequence to the fact finder's determination, and the evidence is irrelevant to any fact at issue. Based upon the intersection of *Torres* and the New Mexico Rules of Evidence, our courts should exclude this evidence for lack of relevancy.

Even if future New Mexico courts find this evidence could be relevant outside the context of damages, courts should, nonetheless, exclude the evidence. As recognized by the above-mentioned states, immigration is a highly charged political and social issue in our community²⁶⁸ that triggers a wide range of deeply held emotions among persons, including jurors. Regrettably, some jurors may be as powerless to check these emotions at the courthouse door as other deeply held beliefs, and as a result may allow their prejudices against immigrants to influence their decisions. Many states, especially those along the border, recognize that this possibility is a genuine concern to a judicial system seeking fairness in the courtroom, and exclude this evidence altogether because its prejudi-

266. Rule 11-401 NMRA.

267. Rule 11-402 NMRA ("Relevant evidence is admissible unless any of the following provides otherwise: the United States or New Mexico constitution, a statute, these rules, or other rules prescribed by the Court. Irrelevant evidence is not admissible.").

268. Immigration reform was a central theme in President Obama's 2012 inaugural address, and candidates likely to run for president in 2016 have identified the political rift immigration debate causes in the electorate as a primary issue to be exploited in during the campaign. See Jonathan Easley, *Likely 2016 GOP hopefuls recast immigration views*, THE HILL (Mar. 5, 2015), <http://thehill.com/homenews/campaign/234678-likely-2016-gop-hopefuls-recast-immigration-views>.

cial effect outweighs its probative value. Rule 11-403 of New Mexico's Rules of Evidence permits New Mexico to do the same. Rule 11-403 states that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."²⁶⁹ The scenario to be avoided is this: a court allows the introduction of evidence related to immigration status for purposes not related to damages, and the jury then uses that information to reduce the party's recovery. This outcome is contrary to the spirit of the *Torres* holding. To maintain the integrity of *Torres*, and more importantly, to maintain New Mexico's long recognition that immigration status should never be used to stigmatize or devalue any person's status before the law, the court should exclude this evidence under Rule 11-403. As a matter of law, and as a matter of sound public policy, the courts should recognize that the prejudicial effect of such evidence outweighs its relevancy.

Finally, if New Mexico decides to allow evidence regarding a party's immigration status, its courts should take a restrictive approach. Like other state courts, New Mexico courts should grant preliminary hearings before a trial to determine a party's immigration status if, and only when, the immigrant requests future lost wages. At the preliminary hearings, the courts should also require defendants to prove the probability of the plaintiff's deportation. By following this approach, courts avoid undue prejudice against unauthorized immigrant parties.

CONCLUSION

Although these procedural steps are feasible, as evidenced by other courts, they should not be necessary. *Torres* remains good law, and courts may enforce *Torres* by using our Rules of Evidence in the same manner as other courts have. Therefore, when confronted with the issue of whether or not to allow evidence concerning a party's immigration status, New Mexico has nothing more to do, but to continue on its current path.

269. Rule 11-403 NMRA.



NOBLE & VRAPL

Immigration Law

James V. Noble, Jr.
Olsi Vrapl
Amber L. Weeks
Jessica K. Miles
Kaitlin A. Alley
Monica J. Newcomer Miller
Sarah S. Thomas
Lauren L. Armstrong
Eunice Herrera
Andrés Santiago

www.noblelawfirm.com

April 11, 18

**SUPREME COURT OF NEW MEXICO
FILED**

Rules Committee
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504
Via Email: nmsupremecourtclerk@nmcourts.gov

APR 11 2018

Dear Rules Committee Members,

Noble & Vrapl, P.A. is the leading immigration law firm serving New Mexico and West Texas. We write in strong support of the proposed Rule 15-103(B)(7) amendment. We are of the opinion that the Court should make decisions about entrance to the bar on the basis of the merit of those seeking admission, to which immigration status holds no meaningful relation.

We agree with others in the community who have pointed to the exclusive power of the Supreme Court in devising the rules governing bar licensure, embedded in the New Mexico Constitution. We encourage the Supreme Court to empower the New Mexico Bar to admit well-qualified and deserving applicants, regardless of immigration status. The rule amendment is consistent with the prevailing values of New Mexico's legal community. Passing this rule would strengthen our state's immigration bar by providing professional insight from those most affected by immigration law.

Respectfully submitted,

Olsi Vrapl
Managing Partner

5931 Jefferson St. NE
Suite A
Albuquerque, NM 87109
505-352-6660

4470 Rodeo Rd.
Santa Fe, NM 87507
505-466-5600

221 N. Kansas St.
Suite 1207
El Paso, TX 79901
915-228-2300

277 E. Armador Ave.
Suite 309
Las Cruces, NM 88001
575-201-3332

SUPREME COURT OF NEW MEXICO
FILED

April 11, 2018

APR 11 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov



Dear Rules Committee Members:

We are writing in support of the proposed amendment to Rule 15-103(B)(7). Some of the comments on this proposed rule change raise concerns about the fitness of someone to practice law who is “breaking the law.” Many—if not all—of the people this rule change would impact are people who were brought to this country as children, people who had no knowledge that they may have been brought here without proper documentation, people who did not consciously break any law. The DACA recipients we have had the pleasure of knowing are some of the most upstanding, moral, and brave people that we have ever met. Further, we implore you to find an attorney in this state that has not broken the law in some form or another, be it by running a stop sign, driving after a few too many drinks, or even more serious criminal offenses. If anything, having the courage to put oneself through law school—without federal financial aid—and to apply for admission to the bar—knowing that this could potentially raise questions about legal status—demonstrates a commitment to the legal profession that is astonishingly rare.

Not very long ago, women were not allowed to vote in this country. What is law if not something to be changed to reflect our changing society? This proposed rule change marks a great step forward for equality and justice in New Mexico, and we fully support its passage.

Thank you,

Riley Masse, Esq.
Cassie Fleming, Esq.
Julia Petrucelli, Esq.
Mari Kempton, Esq.
Thomas Prettyman, Esq.

Proposal 2018-006 - Immigration status of bar applicants [Rule 15-103 NMRA], (Proposal 2018-027)

Good Morning,

I believe that qualified applicants who have no legal immigration status should be admitted to the State Bar if their career will be in Immigration Law. This is because empathy for the client, in a criminal action, has to override empathy for immigrants who may be on the other side of the desk.

*Evalinda Nuñez-Davis
Law Offices of The Public Defenders Office
Metro Secretary Team A
503 Marquette Ave NE
Albuquerque, NM 87102
evalinda.nunez-davis@lpcdm.us
505-835-2256
505-796-4661 FAX*

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'E. Nuñez-Davis', written over the date stamp.



April 11, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87508-0848
nmsupremecourtclerk@nmcourts.gov

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

RE: Proposed Revision to Rule 15-307(B)(7) NMRA

Dear Honorable Justices:

New Mexico Immigrant Law Center supports the proposed amendment to the rule governing admission to the New Mexico State Bar to individuals who are residing in the United States regardless of their immigration status and who meet the other requirements for bar admission.

NMILC is a nonprofit organization whose mission is to advance justice and equity by empowering low-income immigrant communities in New Mexico through collaborative legal services, advocacy and education. One of the pillars of our work is to foster and support the next generation of social justice legal professionals, particularly from communities of color and immigrants. In a majority-minority state, it is imperative that our legal profession be reflective of its population.

Additionally, many New Mexicans are in dire need of legal services, especially for those living in poverty. For every 10,000 New Mexicans living in poverty, there are 0.47 legal aid lawyers, compared to the national average of 0.64.¹ Half of New Mexicans live in rural communities, but only one third of legal service providers are in rural areas.² This shortage of attorneys is exacerbated by “language barriers, great distances to the nearest courthouse, ineffective government agencies, and poor internet infrastructure.”³ This proposed amendment removes an obstacle for qualified individuals to enter our profession and help meet the need for legal services.

This proposed rule is also in line with the values of our state as exemplified by our statutes. New Mexico laws prohibits public post-secondary educational institutions from “deny[ing] admission to a student on account of the student’s immigration status.” NMSA 1978, § 21-1-4.6(A). Our state also prohibits discrimination based on immigration status in determining tuition rates and state-funded financial aid and provides drivers’ licenses to New Mexico residents regardless of immigration status. *See* NMSA 1978, § 21-1-4.6(B); NMSA 1978, § 66-5-9.

¹ “Access to Justice and Child Poverty in Rural New Mexico,” LAW PROFESSOR BLOGS NETWORK, (Dec. 6, 2017), http://lawprofessors.typepad.com/human_rights/2017/12/access-to-justice-and-child-poverty-in-rural-new-mexico.html.

² *Id.*

³ *Id.*



NEW MEXICO IMMIGRANT LAW CENTER
PO Box 7040 Albuquerque, NM 87194
(505) 247-1023 info@nmilc.org

This proposed rule is needed due to the current status quo regarding our nation's immigration laws. For example, some comments assert that immigrants can simply "work hard" to obtain an immigration status. However, federal law provides very limited, and at times narrow, avenues to obtain immigration relief regardless of how hard an individual works. Furthermore, the federal government has failed to enact comprehensive immigration reform for more than three decades leading former President Barack Obama to implement the Deferred Action for Childhood Arrivals program in 2012, which provided temporary relief from deportation to more than 6,000 New Mexican youth.⁴

Regardless of personal sentiments regarding unauthorized migration, this proposed rule is neither contrary to federal law nor does it condone unlawful behavior. Through Resolution 108, the American Bar Association adopted the principle that bar admission should not be denied solely based on immigration status and it affirmed that state courts are "vested with exclusive authority to regulate admission to the bar."⁵ Furthermore, the ABA has determined that such rules are not in violation of federal law, in particular 8 U.S.C. § 1621, which limits professional licenses issued by an agency of a state or by appropriated funds of a state.⁶ The ABA also highlighted the constitutional concerns of applying 8 U.S.C. § 1621 to a state's independent judiciary.

An individual's lack of immigration status does not *per se* bar them from showing that they have the requisite character and fitness to practice law. "As a general rule, it is not a crime for a removable [immigrant] to remain present in the United States." *Arizona v. United States*, 567 U.S. 387, 403-4, citing *INS v. Lopez-Mendez*, 468 U.S. 1032, 1038. Additionally, 15-103(c) NMRA already establishes an avenue for balancing an individual's past conduct with the applicant's fitness to practice law. It is important to note that immigration law itself does not incorporate unlawful presence as an issue regarding good moral character to obtain an immigration benefit. See 8 U.S.C. § 1101(f).

NMILC envisions a New Mexico where all people—regardless of their immigration status—can achieve their full potential and are treated with dignity and respect. This proposed rule moves our state closer to that vision and thus, we support this proposed amendment.

Sincerely,

Adriel D. Orozco, Esq.
on behalf of the staff at NMILC

⁴ See "Remarks by the President on Immigration," THE WHITE HOUSE: OFFICE OF THE PRESS SECRETARY, June 15, 2012, available at <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>; see also "Approximate Active DACA Recipients: As of March 31, 2018," USCIS, available at [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA Expiration Data Mar 31 2018.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA%20Expiration%20Data%20Mar%2031%202018.pdf).

⁵ House of Delegates Resolutions: Adopted Resolution 108, AMERICAN BAR ASSOCIATION, available at https://www.americanbar.org/news/reporter_resources/annual-meeting-2017/house-of-delegates-resolutions/108.html.

⁶ *Id.*

The Devil's Dictionary is a satirical dictionary written by Ambrose Bierce in the late 19th and early 20th Centuries. In that cynically humorous work, “lawyer” is defined as “one skilled in circumvention of the law.” Proposal 2018-006 seeks to make that joke into a reality. If enacted, the proposed rule would celebrate the illegal status of bar members, thus further undermining the public's level of trust for our profession. How can one who by his or her very status is violating the law, purport to uphold the law? And if the legal profession in New Mexico chooses which laws are important or unimportant, why can't the general public do the same thing? What's next? A jury of one's “peers” made up of scofflaws? There are plenty of highly qualified potential attorneys who are United States citizens or lawful permanent residents.

Martin D. Soblick

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be the initials 'MD' followed by a horizontal line.



SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be "J. Moya", is written over the typed name of the clerk.

EXECUTIVE OFFICERS

April 11, 2018

President
Jessica Terrazas

Vice-President
Amber Macias-Mayo

Secretary
Verónica Gonzales-Zamora

Treasurer
Darren Cordova

Immediate Past President
Damian Lara

At-Large
Jazmine Ruiz

At-Large
Dynette Cordova

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

To Whom It May Concern:

We are the Board of Directors for the New Mexico Hispanic Bar Association (NMHBA), an organization of approximately 300 attorneys and students throughout New Mexico. Our vision is to promote a legacy of equality and empowerment for Hispanics in education, the community, and the legal profession throughout the state of New Mexico.

BOARD MEMBERS

Miguel Archuleta
Jacob Candelaria
Denise Chanez
Cristina Chavez Reyes
Rikki-Lee Chavez
Concepcion Flores
Larissa Lozano
Ramona Martinez
Devon Moody
Robert Sanchez
Alicia Santos
Marco Serna
Mary Torres
Ashlee Wright
Matthew Zamora

We write in strong support of Proposal 2018-006, proposing to amend Rule 15-103(B)(7) NMRA governing admission to the State Bar of New Mexico without regard to lawful presence.

I. Increased admissions, particularly from underrepresented groups such as undocumented individuals, can improve access to justice.

Access to justice is of paramount concern and a deep-rooted value of the legal profession and of New Mexico Courts. For example, the New Mexico Supreme Court established The NM Commission on Access to Justice, an "independent, statewide body dedicated to expanding and improving civil legal assistance in New Mexico." *See Supreme Court Order No. 04-8300 Establishing the NM Commission on Access to Justice (2004)*¹. There is no question that access to justice by immigrants is limited. *See ACLU's Written Statement Submitted to the Civil Society Consultation for the Universal Periodic Review of the United States of America Regarding Access to Justice in the U.S. Immigration System (2014)* ("Approximately 84% of immigration detainees are unrepresented in immigration court." (citation omitted)).² One reason for this may be the lack of diversity in the legal profession, generally. *See Presidential Initiative Comm'n on Diversity, ABA Diversity in the Legal Profession: The Next Steps 9-24 (2010)* (reporting that the legal profession remains less diverse than most other professions and that, in 2000, the legal

New Mexico Hispanic
Bar Association
c/o State Bar of New Mexico
P.O. Box 92860
Albuquerque, NM 87199

nmhispanicbar@gmail.com

<https://www.facebook.com/NewMexicoHispanicBar/>

¹ Available at <https://accesstojustice.nmcourts.gov/uploads/files/2004SupCtOrder.pdf>

² Available at <https://www.aclu.org/files/assets/140325%20UPR%20Access%20to%20Justice%20Final.pdf>

profession was still about 90% Caucasian without much progress since).³ Increasing the number of lawyers who are immigrants by approving proposed revisions to Rule 15-103(B)(7) can lead to increased access to justice by immigrants.

The NMHBA's long-standing mission is to increase diversity in legal education and the legal profession. When the legal profession mirrors the makeup of our community at-large, justice is more accessible. This is why, in part, the NMHBA programs and financial support awards (such as book and bar scholarships, law student mentorship, and summer law camp) do not take into account an applicant's immigration status.

The Supreme Court, as the gatekeeper of the State Bar, is also inherently the gatekeeper of the diversity of the State Bar. Because undocumented individuals are presently underrepresented in the State Bar due to barriers to admission, undocumented individuals seeking counsel also experience an additional, though somewhat preventable, barrier to accessing justice.

State bar associations, like NMHBA, and state courts, are not in the business of enforcing U.S. immigration laws. We recognize that applicants who are not lawfully present will still have to contend with federal immigration work restrictions and they will still be subject to removal whether or not they are granted a license to practice law. Nevertheless, at minimum, allowing admission will support the legal community's obligation to develop and support lawyers inclined to serve populations that have traditionally been underserved, including immigrants.

II. Consideration of undocumented, but otherwise qualified, individuals for admission to the State Bar should be based on individual circumstances rather than fundamental misconceptions.

First, we take issue with the fundamental misconception that a "path to citizenship" is available to any person or is practically achievable by any person. A path to citizenship is simply not available for millions of people, such as those individuals eligible for Deferred Action for Childhood Arrival (DACA). *See Memorandum on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* 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., *et al.* (2012).⁴ In some cases, a path to citizenship may simply not be practical where, for example, an unmarried, adult child of a legal permanent resident from Mexico has an average wait time of 17 years. *See Plyler Students at Work: The Case for Granting Law Licenses to Undocumented Immigrants*, 21 Wash. & Lee J. Civil Rts. & Soc Just 567, 571- 72 (2015).⁵

Second, we also reject the faulty assumptions that undocumented individuals are inherently morally deficient and cannot, for example, handle client finances, be an "officer of the court" or comply with an oath to uphold the state laws and Constitution. This stereotype cuts against the "facially neutral" origin of bar admission criteria. See

³ Available at <http://mldc.whs.mil/download/documents/Readings/Next%20Steps%20Final-Virtual%20Accessible%20042010.pdf>

⁴ Available at http://www.dhs.gov/xlibrary/assets/s_1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf

⁵ Available at <https://scholarlycommons.law.wlu.edu/crsj/vol21/iss2/11/>

Facing the Klieg Lights: Understanding the "Good Moral Character" Examination for Bar Applicants, 40 Akron L. Rev. 255, 255-56 (2007) (discussing the early 19th century origins of the good moral character standard for bar admission as a "facially neutral" means of excluding undesirable individuals from practicing law).⁶ There is no connection between lawful presence and one's ability to comply with a duty of candor to a court. See, e.g., Raffaelli v. Committee Of Bar Examiner, 7 Cal. 3d 288, 294 -301 (Cal. 1972) (ruling that citizenship requirement for state bar admission violated equal protection and rejecting argument that a lawyer, as an "officer of the court", must be a citizen because there was "no demonstrable nexus between that status and a requirement that every lawyer be a United States citizen").

The assumption also disregards important individual circumstances that are relevant to a determination of moral fitness. For instance, one might argue that choosing not to self-deport in order to comply with the law means an undocumented immigrant is unable to satisfy the good moral character requirement. See In re Haukebo, 352 N.W.2d 752, 754 (Minn. 1984) (citing Application of Gimbel, 533 P.2d 810 (Or. 1975)). However, "[r]eformation from past immoral acts can be shown by a subsequent history of good behavior." Id. See also ABA Sec. Legal Educ. and Admissions to Bar & Nat'l Conf. of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements*, at III.15. (2017) (unlawful conduct is considered with additional factors such as the applicant's age at the time of the conduct; recency of the conduct; evidence of rehabilitation; the applicant's positive social contributions since the conduct; etc.).⁷

Individual circumstances are important because a person can still be fit and capable of practicing law, notwithstanding unlawful presence in the United States. See, generally, Schwartz v. Board of Bar Exam. of N.M., 353 U.S. 232 (1957) (overturning denial of bar application on the basis of use of aliases, member of communist party, and criminal conduct because a "any qualification [such as good moral character or proficiency in its law, before it admits an applicant to the bar], must have a rational connection with the applicant's fitness or capacity to practice law."); In re Park, 484 P.2d 690 (Alaska 1971) (invalidating citizenship requirement for admission to the Alaska State Bar, because it was unrelated to an attorney's fitness and competency to practice law and rejecting 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.). In any event, because admission to the State Bar will subject undocumented individuals to the jurisdiction of the New Mexico courts and the Disciplinary Board, if necessary, admission will *enhance* protection of the public.

Third, we do not agree with the proposition that undocumented individuals will consume resources that ought to be preserved for citizens, such as financial aid. The opposite is true – financial aid is not available. See 8 U.S.C. Section 1621(a) – (d) (2012) (prohibiting state from providing public benefits to "illegal aliens and nonimmigrants"). Rather, evidence suggests that immigrants "underutilize public services, while contributing their labor to the local economy and tax money to the state." Plyer v. Doe, 457 U.S. 202, 228- 230 (1982) (holding that the Texas statute could not deny immigrant

⁶ Available at <https://www.uakron.edu/dotAsset/727978.pdf>

⁷ Available at

https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2017_comp_guide_web.authcheckdam.pdf

children free public education). “[E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.” *Id.* at 221. See also *In re Griffiths*, 413 U.S. 717, 722 (1973) (because noncitizens “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 when considering admission to the bar).

Legal skills and values are also tools that can lead to economically productive lives for undocumented individuals who will be subject to a character examination and the jurisdiction of the Disciplinary Board, like all other applicants. On the other hand, a blanket exclusion from admission based on citizenship, which disregards individual circumstances and immigration policies, is unfair and deprives New Mexico of the contributions of skilled professionals.

III. Equal access to the legal profession, and consequently equal access to justice, hinges on admission to the State Bar without regard to status.

Access to the legal profession is not meaningful if a person is permitted to go through every arduous step, except the final and most important step of gaining admission to the bar and an ability to practice law. See *ABA 2017-2018 Standards and Rules of Procedure for Approval of Law Schools*, Standard 206(a) at 12 (law schools “shall demonstrate by concrete action a commitment to providing full opportunities for the study of law and *entry into the profession* by members of underrepresented groups, particularly racial and ethnic minorities.” (emphasis added))⁸; See *In re Griffiths*, 413 U.S. 717 (1973) (state bar examiners must admit undocumented individuals to sit for the bar exam). Meaningful access requires entry into the legal profession via admission to the State Bar.

The issue of admission to the State Bar with or without consideration of lawful presence is not simply an access to professional practice issue, but is also a broader issue entangled in a complex, nationwide debate about immigration reform. Subjecting law applicants, law students, and bar exam takers to the constant vacillation of federal politics, rather than fundamental legal values like equal access, undermines the state and federal commitment to equal protections for all. See, e.g., *In re Griffiths*, 413 U.S. 717 (1973) (holding that conditioning eligibility to sit for bar exam on U.S. citizenship violated equal protection of laws); *Raffaelli v. Committee of Bar Examiner*, 7 Cal. 3d 288, 294 - 301 (Cal. 1972) (ruling that a citizenship requirement for state bar admission violated equal protection clause of the Fourteenth Amendment).

In the words of the New Mexico Supreme Court, “equal justice under law is not merely a caption on the façade of the Supreme Court building; it is fundamental that justice should be available....” *Supreme Court Order No. 04-8300 Establishing the NM Commission on Access to Justice* (2004). For the above reasons, we highly encourage approval of the proposed revisions to Rule 15-103(B)(7) NMRA.

⁸ Available at

https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_fi nal.authcheckdam.pdf

Sincerely,

The Board of Directors for the New Mexico Hispanic Bar Association, and the following individuals in support:

Verónica Gonzales-Zamora, Esq.

Matthew Zamora, Esq.

Damian Lara, Esq.

Amber Macias-Mayo, Esq.

Larissa Lozano, Esq.

Miguel Archuleta, Esq.

Mary Torres, Esq.

Jazmine Ruiz, Esq.

Jessica Terrazas, Esq.

Mabel Arellanes, Esq.

Robert Sanchez, Esq.

Ashlee Wright, Esq.

Darren Cordova, Esq.

Dynette Cordova, Esq.

Devon Moody, Esq.

Denise Chanez, Esq.

Zachary Quintero (J.D. Candidate)

Robert Desiderio, Esq.

Quiana Salazar-King, Esq.

Jorge Alvarado, Esq.

Jody Neal-Post, Esq.



201 Third Street NW, Suite 500, Albuquerque, New Mexico 87102
Telephone: (505) 944-9065 | Fax: (505) 944-9091 | e-mail: info@institutolegal.org

April 11, 2018

Via Electronic Mail

Joey D. Montoya
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504
nmsupremecourtclerk@nmcourts.gov

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

RE: Comment on Proposal 2018-006

Dear Honorable Justices of the New Mexico Supreme Court:

The Institute of Legal Training and Instruction (“Instituto Legal”) writes to strongly support the amendment to Rule 15-103(B)(7) NMRA, allowing undocumented applicants who meet the character and fitness requirements to be admitted to the New Mexico State Bar.

Since 2013, the UNM School of Law has consistently admitted undocumented students, recognizing that their contribution would diversify and meaningfully contribute to the law school and the legal profession in New Mexico. Bar admission for these students since 2013 remained ambiguous placing an undue burden on undocumented students as they completed their rigorous legal training and prepared for the profession.

Federal law establishes the right of free public education regardless of immigration status. *Plyler v. Doe*, 457 U.S. 202 (1982). New Mexico Constitution establishes the right of its Spanish-speaking residents to learn in its public schools. N.M. Const. art. XII, § 8. New Mexico state law mandates that public post-secondary educational institutions in the state “shall not deny admission to a student on account of the student’s immigration status.” NMSA 1978 § 21-1-4.6.

Individuals seeking to practice law in New Mexico should not be discriminated against based on their immigration status or lack of work authorization. This amendment would allow the NM Board of Bar Examiners (“the Board”) to assess each applicant for admission on the basis of their merits and their individual character and fitness, regardless of their undocumented status.



201 Third Street NW, Suite 500, Albuquerque, New Mexico 87102
Telephone: (505) 944-9065 | Fax: (505) 944-9091 | e-mail: info@institutolegal.org

This change is needed to relieve the Board, a volunteer board not trained in immigration law, from making bar admission determinations based on its interpretation of ambiguous immigration law and the immigration status of the applicant. An undocumented applicant in New Mexico does not demonstrate unfitness to practice law. An undocumented applicant who has graduated from elementary, secondary and post-secondary schools in New Mexico and is at-risk of not being admitted to its state bar in spite of his or her qualifications demonstrate the unjust effects of a broken immigration system. It is incumbent upon the New Mexico Supreme Court to use its constitutional authority to mitigate the negative effects that our broken federal immigration system has on the lives of our undocumented colleagues. *In Re: Application of Oppenheim, 2007-NMSC-022, ¶ 26* (ruling that “[t]his Court exercises its constitutional power of superintending control when it establishes and enforces standards of qualification for admission to the Bar.”); 8 U.S.C. § 1621(d) (providing that “[a] State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility”).

Students, faculty, community members, and attorneys in New Mexico have come together since 2013 to advocate for this needed revision to the current rule to accommodate undocumented lawyers in the profession. The process to revise the rule is thoughtful, carefully analyzed, and legally sound. Therefore, Instituto Legal affirms and strongly supports the process and the current amendment to Rule 12-103(B)(7) NMRA.

Sincerely,

Instituto Legal

/s/ Joel Cruz-Esparza

Attorney at Law
Executive Director

/s/ Joaquin Sanchez-Leal

Joaquin Sanchez-Leal
Attorney at Law
Director of Programs

/s/ Jazmin Coronel

Jazmin Coronel
Attorney at Law
Economic Development Program Manager

April 11, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
(505) 827-4837 (fax)

Dear Honorable & Esteemed Members of the NM Supreme Court,

Comments in Support of Proposed Amendment to Rule 15-103(B)(7)

I am writing in strong support of the proposed amendment to Rule 15-103(B)(7)—qualifications for admission to the NM Bar, which would expand admission to the NM Bar, regardless of immigration status. In many regards this proposed rule change is a long time in the making. I have only been a licensed attorney in New Mexico since 2011 and my work focuses mainly within the employment, civil rights and immigration law realm.

However, being an attorney is a second career for me. Prior to entering UNM, School of Law in 2007, I was a print journalist. My last post before law school was covering the NM Legislature for *The Albuquerque Journal*. I covered a number of controversial issues as a journalist—abolishing cock fighting, allowing for medical marijuana and the expansion of the NM Human Rights Act to include sexual orientation, for example.

Yet the one experience that stands out occurred in 2005. I was interviewing a conservative state senator from southeastern New Mexico just outside the NM Senate chambers when a group of young New Mexicans from Roswell surrounded the senator. Without hesitation, this group of high schoolers told the senator they are from his district, were quickly approaching graduation and their dream was to attend an in-state college or university, even though they had no social security number. Without that number, they would be forced to pay the international student fee—usually double the out-of-state fee; thus putting a college education out of reach.

That particular day was “Immigrant Day of Action” organized every year by the organization I currently work for and the goal for that day of action in 2005 was to make a college education attainable for all New Mexicans, regardless of immigration status. The senator was visibly stunned he had been approached in such a direct fashion, but these young New Mexicans knew what needed to change in order to go to college. Needless to say, SB 582 passed—now codified in NMSA 1978 §21-1-1.2—and those young lobbyists went to obtain their bachelor’s and advanced degrees.

Approval of the amendment is an issue of fairness, due process and equal access to justice. However, more importantly, New Mexicans have already petitioned their state government to allow for all New Mexicans to attend undergraduate, graduate and

professional schools. The natural next step is to allow them to fully realize the dream of putting their education to work, either as a lawyer, doctor, accountant or social worker. Thank you for your time.

Sincerely,
/S/ Gabriela Ibañez Guzmán//

Gabriela Ibañez Guzmán
Bar # 127048
1804 Espinacitas St.
Santa Fe, NM 87505
(505) 983-6247
gguzman.uwc@gmail.com

Good Afternoon Mr. Moya,

I am writing to support the proposed New Mexico Supreme Court rule amendment (2018-006) that would allow admission to the bar regardless of immigration status.

I had the distinct honor of attending and graduating from law school with several classmates whose immigration status currently prevents them from being admitted to the New Mexico bar. These individuals have already made incredible contributions to New Mexico and would make so many more if they could become licensed attorneys.

My classmates who would benefit from this rule amendment are some of the brightest, most motivated individuals I know. At every stage of their lives, they have had to work much harder than me and other citizen classmates solely because it is impossible for them to obtain a certain legal status in this country. They have jumped endless hoops since they entered kindergarten and yet have obtained a juris doctorate, one of the most prestigious and powerful degrees in our country. To graduate together, pass the bar together and then watch several very worthy classmates not get sworn in was both heartbreaking and unfair.

Hard work should be rewarded, and the rules regarding bar admission currently do not allow some of the smartest and hardest working New Mexicans into our profession. This is a grave injustice and truly a great loss for the legal profession in this state. I very much support this amendment.

Thank you for your consideration of my comment.

Sincerely,
Elena Rubinfeld, Esq.
Licensed to Practice in New Mexico
201 841 9142

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'E. Rubinfeld', written over the date stamp.

APR 11 2018

All:



I am opposed to this proposed rule change for the following reasons:

People who are not legally in the United States are pursuant to 8 USC 1342, subject to prosecution for a felony. See below.

Further, those who encourage or aid and abet such conduct are subject to felony prosecution. Perhaps the proposal and support of this rule change is prosecutable under 8 U.S. 1342.

Moreover, employing such persons under the circumstances set forth in the statute is punishable as a felony. Can you imagine the employment law conundrum that would be created if an alien was denied employment notwithstanding the fact that such person was admitted to the bar?

8 U.S. Code § 1324 - Bringing in and harboring certain aliens

[prev](#) | [next](#)

(a) Criminal penalties

(1)

(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) 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, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) 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, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(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

(v)

(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,
shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial

advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

(C) It is not a violation of clauses ⁽ⁱⁱ⁾ (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year.

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)

(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18 or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who—

(i) is an unauthorized alien (as defined in section 1324a (h)(3) of this title), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

- (A) the offense was part of an ongoing commercial organization or enterprise;
- (B) aliens were transported in groups of 10 or more; and
- (C)
 - (i) aliens were transported in a manner that endangered their lives; or
 - (ii) the aliens presented a life-threatening health risk to people in the United States.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a) of this section, the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18 relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations

In determining whether a violation of subsection (a) of this section has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) Authority to arrest

No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(d) Admissibility of videotaped witness testimony

Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) of this section who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(e) Outreach program

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

REVIEW & CITATIONS (Do Not Forward)

Philip Hamburger (Columbia Law School),
Is Administrative Law Unlawful?
(University of Chicago Press, 2014, 635 pages).

“Extralegal legislation comes in different forms. Much of it developed in the first half of the twentieth century, but it currently enjoys its authority under—or at least in the context of—the 1946 Administrative Procedure Act. Rather than establish a single model of administrative lawmaking, this statute opens up opportunities for a series of approaches, and after more than a half century of evolving practices, there now are multiple modes of administrative legislation.”

[The 1946 process of Notice of Proposed Rule, Public Hearing and Comments, and issuance of Final Rule—all based on expert determination of fact, reasonableness, and “best available (peer reviewed) science”—has proven to be extremely malleable through time, for instance by means of “Direct Final Rules.”]

“Administrative legislation has developed as a cascade of evasions—initially an evasion of law, but then a series of evasions within administrative lawmaking.

The development came after Americans learned from their German cousins to disdain constitutional formalities and to welcome administrative law. This bureaucratized version of the old absolute power held out the promise of addressing social problems with rational Germanic efficiency. At the same time, it shifted power from representative government to administrative experts and, more generally, the knowledge class, who thought they knew what was best for the people. On such grounds, large numbers of Americans welcomed administrative law, without pausing to consider that it was the very antithesis of law.”

[New Deal laws of the mid-1930s, along with Supreme Court decisions upholding them, are often cited as “the beginning of US Administrative Law,” but the development is much more general and longer term.]

“The result, today as in the distant past, is an alternate, parallel system of law, which is not law, but mere command, and which increasingly crowds out real law. Americans thus must live under

a dual system of government, one part established by the Constitution, and another circumventing it.

Administrative power systematically steps outside the Constitution's structures, thereby creating an entire anti-constitutional regime.

In support of its extralegal legislative and judicial power, the administrative regime demands judicial deference. Judges have an office or duty to exercise independent judgment in accord with the law of the land. Nonetheless, they defer to administrative lawmaking as if it were above the law, thus denying the supremacy of the law of the land. They also defer to administrative interpretation and fact-finding. In such ways, the judges deny parties their right to the independent judgment of regular judges and juries.

The Special Case of Waivers, as an Aspect of Administrative Law

Administrative waivers come from executive officers and usually are exercises of will. Indeed, they sometimes are candidly a method of making policy.

When administrators, however, issue waivers, they both make the rules and carve out the exceptions. They use waivers to adjust rules they themselves enacted. The waivers thus look less like equitable exceptions than like a power to dispense with legislation. Ultimately, the view that waivers are equitable exceptions from rules rests on a gross misunderstanding of Anglo-American equity.

Even more clearly than the English constitution, the U.S. Constitution establishes only three powers:

1. A legislative power to make law,
2. a judicial power to adjudicate cases in accord with law, and
3. an executive power to execute the lawful force of the government .

None of these powers includes any authority to excuse persons from law [as by means of a waiver]. The power to excuse from law was the old dispensing power [of Kings and other absolute monarchs], and it simply does not exist in the Constitution.

Nonetheless, agencies issue waivers.

Waivers offer relief from rules that concededly remain in effect.

Commentators sometimes say simply that waivers have congressional authorization. This often is true, but it amounts to a concession that waivers are not a type of legislative power. The power to waive compliance with law is evidently a fourth sort of power—one not granted by the Constitution to any part of government.

The resulting exclusion of waivers makes sense. In a government of laws there is no room for a power to excuse compliance with the law. And especially in a government limited to legislative, judicial, and executive powers, no amount of congressional authorization can constitutionalize this fourth, lawless power.

Waivers, however, allow the executive to preserve such legislation by offering relief to the most powerful of those who might demand repeal, thereby purchasing their nonresistance at the cost of other Americans. Waivers thus shift the cost of objectionable laws from the powerful to others, with the overall effect of entrenching oppressive laws.

Final Conclusion

Put more theoretically, administrative lawmaking is not a power exercised through law, but a power outside it. Indeed, it is a power above the law. But even when considered simply as a power outside the law, this extralegal regime revives what once was considered absolute power. Administrative law thus returns to the very sort of power that constitutions developed in order to prohibit.”

How can an person in knowing and contumacious violation of 8 U.S.C. 1324 be considered a person of “good moral character” as required by 15-103 B. (3)?

Is not a person in violation of 8 U.S.C. 1324 engaging in unlawful conduct which is contrary to Rule 15-103 C. (3) (a)?

Is not a person in violation of 8 U.S.C. 1324 in violation of Rule 15-103 C. (d) committing acts involving dishonesty etc.?

Is not a person in violation of 8 U.S.C. 1324 per se committing an ethical violation that should bar admission?

Just because some are in favor of something does not mean we can disregard the law and or pretend it doesn't exist. Otherwise we become ruled by man instead of law. MGR

Michael G. Rosenberg
Attorney At Law
Licensed in Colorado &
New Mexico
970-259-7501

mgr@lobo.net



UNM SCHOOL of LAW

SUPREME COURT OF NEW MEXICO
FILED

April 11, 2018

APR 11 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

Re: Proposal 2018-006

Dear Mr. Moya:

We write in strong support of the proposed revision to Rule 15-103(B)(7) regarding qualifications for admission to the practice of law regardless of immigration status. Sound public policy supports the adoption of Proposal 2018-006.

First, both state and federal law prohibit the University of New Mexico School of Law from denying admission based on immigration status. It is therefore manifestly unjust to deny licensure on this basis, particularly after such individuals have invested three years of tuition, time, and energy, often at great personal sacrifice to themselves and their families.

Second, denial of access to the profession is not only unconscionable, but also squanders precious state resources. As an office and an institution we invest tremendous time and resources to train all of our students to become excellent lawyers who enrich and serve our local, state, and tribal communities. Our collective investment in students who do not have legal status will be lost, likely to other jurisdictions that expressly permit licensure of these qualified professionals (e.g., California, Florida, Illinois, Nebraska and New York).

We believe the above reasons are sufficient to support adoption of Proposal 2018-006. Moreover, individuals without legal status are uniquely positioned to help solve New Mexico's legal community's most pressing needs: access to justice for the most vulnerable members of our community and countering the larger community's distrust of our profession. In our close work with these individuals, members of our office have found that these students uniformly embody the very characteristics that our institution, legal community, and profession seek to achieve. Often they have overcome significant financial, societal, and institutional challenges, while remaining committed to excellence and service.

It should not be lost that this challenge comes at a time when the value and esteem of our profession is in question. Inclusion of qualified individuals, regardless of immigration status, is not only an obligation, but an opportunity for our profession to ratify the very principles we seek to defend and the civility and integrity we should all aspire toward.

Respectfully,

The Office of Student & Career Services

Heather Harrigan, Assistant Dean for Student & Career Services
Nancy Huffstutler, Associate Director of Student Services
Beth Kaimowitz, Director of Academic Success
Desirae Ramirez, Program Coordinator
Quiana Salazar-King, Assistant Director of Career Services
James Simermeyer, Assistant Director of Diversity & Public Interest

WOMEN'S LAW CAUCUS

University of New Mexico School of Law | 1117 Stanford NE | MSC11 6070 | University of New Mexico
Albuquerque, NM 87131 | wlc@law.unm.edu

April 9, 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
(505) 827-4837 (fax)

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



Dear Mr. Moya,

Thank you for the opportunity to comment on the proposed amended Rule 15-103(B)(7). As members of the Executive Board of the Women's Law Caucus at the University of New Mexico School of Law, we write in strong support of this proposed rule. The Women's Law Caucus operates under a mission to promote an understanding of issues encountered by women in the community and in the law school environment, to foster law student involvement in the community, and to promote women's issues and needs in the field of law. As current law students who experience and witness daily the struggles of women, and specifically women of color, to rise up against blatant and subtle discrimination, we urge the adoption of this proposed rule in order to remove a significant barrier standing between many of our current and future peers and their dreams of serving as vital advocates in this vibrant community.

The Proposed Rule Change comports with the ABA Resolution 108, stating that "bar admission should not be denied based solely on immigration status," and urges Congressional action to recognize the rights of each state to permit undocumented individuals to practice law.¹ Moreover, New Mexico would not be the first state to consider such an amendment, as California, Florida, Illinois, Nebraska, and New York have expressly authorized that undocumented individuals who are otherwise qualified be admitted to the Bar.

Women entering the legal field already encounter boundaries in the form of pay inequity, a disproportionate lack of women in partnership positions at law firms, and the continued stigmatization of their aptitude and worth when compared with their male colleagues. The ramifications of these lingering (if sometimes subtle) forms of discrimination consistently impact women of color more severely than white women. We have an opportunity, in the adoption of this proposed amendment, to take a clear and unwavering step in equalizing access to the legal profession for women of color.

¹ American Bar Association [ABA], Resolution 108 (Aug. 14-15, 2018) <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/108.pdf>.

Approving this Proposed Rule Change will not compromise the strength and validity of the New Mexico State Bar. Rather, it will do just the opposite, while positioning New Mexico among many states spearheading the efforts of equality and dignity that will lead our local and national legal communities into a more just and fair future. The character and fitness requirements of the Bar act as a means to confirm that those entering the profession are honest, credible, and committed to upholding the tenets of justice. A person's immigration status speaks nothing of their character or capacity for honesty, capability, or commitment to justice.

There are many reasons why this Proposed Rule should be approved, but one reason rises above the rest in its significance: approving this rule is simply the right thing to do. Many deserving, committed, and prolific students who are our peers are currently undocumented, facing uncertain futures based on recent changes to the viability of the DACA program. Non-citizens deserve and require the same constitutional protections in this country as citizens. Any honorable, committed, and otherwise well-qualified applicants to the Bar deserve, and ought to require, the same protections afforded to them as any other applicant per the rules of this Court.

Sincerely,

The Women's Law Caucus Executive Board

Erin Phillips, President, Class of 2019

Sunderjeet Kaur, Vice President for Programs and Membership, Class of 2019

Janine Caller, Vice President for Community Outreach, Class of 2019

Anna Baecker, Secretary, Class of 2019

Sunnie Sartin, Treasurer, Class of 2019

Ariana Montez, 1L Representative, Class of 2020

Rameez Burney, 1L Representative, Class of 2020

To Whom It May Concern:

I am writing in support of the proposed amendments to Rule 15-103 NMRA. I am a member of the New Mexico Bar and I strongly support the proposed changes.

I believe that those admitted to the Bar of this state should be examined on the basis of their character, fitness and qualifications and not on the basis of where they were born or their immigration status. The immigration system in the U.S. is badly broken and should not be a factor in determining who can join the Bar of this state. Many immigrants were brought here as children and have made this country their home. To block the goals and contributions that certain individuals can make to our legal community based solely on arbitrary and archaic immigration laws is only furthering the broken system that exists today.

It is my sincere hope that the proposed amendments will be made to Rule 15-103 to not only include citizens and lawful permanent residents but also those residing in the United States. I also hope that we will all continue to work towards immigration reform which is at the root of the distinction deemed necessary in this Rule.

Monica Newcomer Miller

Attorney at Law

5931 Jefferson St. NE

Suite A

Albuquerque, NM 87109

Ph: 505.352.6660

monica@noblelawfirm.com

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



**NOBLE &
VRAPIL**

Immigration Law



DISCLAIMER: DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us immediately at (505) 352-6660 and ask to speak to the sender of the communication. Also, please e-mail the sender and notify the sender immediately that you have received the communication in error.

April 11, 2018

SUPREME COURT OF NEW MEXICO
FILED

Via Electronic Mail

APR 11 2018

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504
nmsupremecourtclerk@nmcourts.gov



RE: Comment on Proposal 2018-006

Dear Honorable Justices of the New Mexico Supreme Court:

I am writing to you today to express my strongest support for the amendment to Rule 15-103(B)(7) NMRA, allowing undocumented applicants who meet the character and fitness requirements to be admitted to the New Mexico State Bar.

During the last 5 years, the University of New Mexico School of Law has recognized the invaluable contributions of undocumented students, as a result of their unique experiences, and has allowed them admittance to their juris doctoral program. These students have excelled in their academics, most admirably, while facing significant institutional barriers and financial hardship without the assistance of financial aid. Moreover, these students continue to display resiliency despite the ultimate uncertainty: will their hard work and perseverance come to fruition as they seek to gain admittance to their governing board and practice in their professional field? In the face of this unjust uncertainty, students, faculty, community members, and attorneys in New Mexico have come together since 2013 to advocate for this needed revision to the current rule to accommodate undocumented lawyers in the profession.

It is no secret that under federal law, any person has the right to a free public education, regardless of immigration status. In New Mexico, state law further mandates that public post-secondary education institutions cannot deny any student admission on the basis of the student's immigration status. In accordance to these, the UNM SOL has rightfully allowed admittance to qualified undocumented applicants. This should now be taken a final step further.

Qualified individuals seeking to practice law in New Mexico should not be discriminated against based on their immigration status or lack of work authorization. This amendment would allow the NM Board of Bar Examiners ("the Board") to assess each applicant for admission on the basis of their merits and their individual character and fitness, regardless of documentation

status. In addition, it would remove the undue burden of interpreting ambiguous immigration law from the Board, who are not trained in immigration law.

In summary, it is necessary that the New Mexico Supreme Court act within their constitutional authority for the benefit of all New Mexican residents, including our tax-paying, undocumented neighbors. The process to revise the rule is thoughtful, carefully analyzed, and just. As a result, I would express my support for the process and the current amendment to Rule 12-103(B)(7) NMRA.

Respectfully,

Yazmin Irazoqui Ruiz
UNM School of Medicine | Class of 2020

Google Groups

Proposal 2018-006 - Immigration status of bar applicants [Rule 15-103 NMRA]

Julia Catron <juliacatron@gmail.com>
Posted in group: nmsupremecourtclerk

SUPREME COURT OF NEW MEXICO
FILED Apr 11, 2018 11:28 PM

APR 11 2018



Dear Mr. Moya,

I do not know if today's deadline was at 5:00 or not. In the hopes that it is midnight, I would like to submit the comment below regarding Proposal 2018-006.

Respectfully,

Julia

I write in general support of the proposed revisions to the rules governing admission to the Bar, Proposal 2018-006.

I firmly believe that the language added to this proposed rule allowing non-citizen residents of all types to become members of the New Mexico Bar is good language that will allow wonderful, intelligent community members to formally join the New Mexico legal community. I am in full support of all but the the additional language, with the exception of the final sentence in paragraph B(7).

The last sentence in paragraph B(7) could be clarified with different sentence structure or punctuation. It is not clear if the individuals will need a "contingent plan" in a form approved by the Lawyers Succession and Transition Committee, if they become unable to practice law, or if they will need a contingent plan if they are "unable to practice law in a form approved by the Lawyers Succession and Transaction Committee. "

I understand that there may be opposition to this rule because of concerns that a lawyer in violation of federal law, is potentially in breach of his ethical duty as a lawyer or in violation of the rules of professional conduct. Unfortunately, our federal immigration laws do not address the reality of our communities. The New Mexico State Bar should embrace all New Mexicans regardless of federal immigration status because The New Mexico State Bar serves all New Mexicans regardless of federal immigration status.

Anyone in the position to qualify to be admitted to the state bar under the proposed revisions to paragraph B(7) is competent to understand the legal constraints on what he can and cannot do as a licensed member of the bar, and to act accordingly. This individual can determine for himself whether or not the rules of professional conduct allow him to accept employment or volunteer in violation of federal law. And if this is the case, as it may be for a small subsection of those included under this language, but not all, an individual may still serve an important role as a licensed attorney in our legal community. Our community is often served well by licensed attorneys who do not practice.

In other words, if an individual is unable to accept lawful employment, or for humanitarian reasons may technically be in violation of federal immigration law, he should not be precluded from becoming a member of the New Mexico State Bar if in every other way he qualifies for admission.

APR 11 2018

Dear Mr. Moya and Justices of the New Mexico Supreme Court,



The Court should adopt proposed Amended Rule 15-103(B)(7) NMRA, which would allow undocumented lawyers—who have earned their law degrees and successfully passed the bar exam—to qualify for admission to the State Bar. As an attorney and member of the State Bar, I ask that the Court adopt the proposed amendment.

I attended law school with undocumented law students. My colleagues meaningfully contributed to the UNM School of Law, worked hard, as all law students do, and taught me a new perspective on the law—a perspective that has directly impacted my want to advocate for social justice. My undocumented colleagues deserve admission to the bar just as much as any other individuals who have received their law degrees and have successfully passed the bar exam. Our state will greatly benefit from a diverse bar composed of individuals with unique, enlightening, and forward-thinking perspectives on the law.

Many of the comments against the proposed rule amendment are motivated by hate and an overall misunderstanding of our immigration system. New Mexico is a diverse state that is rich in culture and made up of individuals from many backgrounds. Our State Bar should reflect the diversity of the clients that it serves. The overwhelming support for proposed Amended Rule 15-103(B)(7) makes clear that many members of the State Bar welcome the addition of our undocumented colleagues. Our legal system should not be motivated by archaic notions of “us versus them” or “well, they were not born here so they are not qualified to practice law here.” Applicants for admission to the State Bar are already thoroughly evaluated on their capability to practice law and must undergo extensive character and fitness vetting. Applicants should not be treated differently merely because of their immigration status. At the end of the day, current members of the State Bar share important traits with undocumented applicants: we have invested years’ worth of hard work to studying the law to help our clients navigate difficult legal issues, we have demonstrated a commitment to our legal system, and, importantly, we are all human.

For the foregoing reasons and the reasons set forth in other comments in support of the proposed rule amendment, the Court should adopt Amended Rule 15-103(B)(7).

Respectfully Submitted,



Patrick A. Coronel, Esq.

Your Name
Carlene Miller

Phone Number
7163484179

Email
carlenemiller192@gmail.com

Proposal Number
2018-006

Comment

As a member of the Bar, I strongly believe that immigration status should not affect Bar membership. Immigration status has nothing to do with the necessary character and fitness required of Bar members. If anything, the great majority of DREAMers and other young immigrants without status have shown themselves to have a great character, strength, and tenacity than the average Bar member. I literally cannot think of a single reason why an applicant should be denied Bar membership based on their immigration status. I work with a Bar member who is a DREAMer, and she is one of the best attorneys I know. She fights for the rights of US citizens every single day, despite not being a citizen herself. It would be a disgrace for the NM Bar and the Supreme Court to turn its backs on the exceptional applicants.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'C. Miller', written over the date stamp.

Your Name
David Standridge

Phone Number
5058808737

Email
dauids@justicelegalgroup.com

Proposal Number
2018-006

Comment

I write to voice my opposition to this proposed rule. The current rule requires compliance with child support obligations under a competent court order, but would allow for an attorney to practice law who is in violation of federal law? How, as an officer of the court, can this proposed rule give any assurances of the ongoing ethical and legal obligations of any attorney? You allow those who violate federal law to become licensed? This makes no sense. We take an oath to uphold the law, court orders and the Constitution of the United States. By allowing this rule change that oath is degraded. I urge you to reject this proposed change. Despite the emotional feelings associated with this hot topic, we do need to ensure our legal and ethical obligations as officers of the court. Thank you for your consideration.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'D. Standridge', written over the date stamp.

Your Name
Ignacio V. Gallegos

Phone Number
5054594470

Email
ivgallegos@gmail.com

Proposal Number
2018-006

Comment

I strongly support the proposed amendment to allow otherwise qualified immigrants not legally in this country the ability to practice law. There are "dreamers," or DACA recipients, working in law enforcement across the state, in medical professions across the state, and in many other areas of productive employment. It stands to reason that the legal profession would allow immigrants the opportunity to practice law. What better way to mobilize and effect a necessary change in immigration law?

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be the initials 'IVG' followed by a horizontal line.

Your Name
Travis Wagman

Phone Number
5058352246

Email
travis.wagman@lopdnm.us

Proposal Number
2018-006

Comment

I support the proposed change. Precluding an otherwise very eligible and capable person from practicing law simply because of something that occurred that is beyond their control is contrary to what is best for the people of New Mexico (specifically referring to persons brought here at a young age by their parents). Additionally, if those opposed to the change demand that these people just become citizens first, those people clearly do not understand the process to citizenship.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'T. Wagman', written over a horizontal line.

Your Name
Prof. Kenneth Bobroff

Phone Number
5054594227

Email
bobroff@law.unm.edu

Proposal Number
2018-006

Comment

I write in support of Proposal 2018-006 to allow immigrant applicants who do not otherwise have permission to work to become members of the bar. I am a visiting professor presently teaching in the Clinical Law Program at UNM School of Law. In recent years, I have had the privilege of teaching several DACA students. These are people we should be embracing and investing in, not pushing into the shadows and rejecting their talents, gifts, and commitment. Every single immigrant student I've taught in almost 15 years as a law professor has displayed the energy, grit, and resilience we expect of our best attorneys. They are responsible for no part of our broken immigration system and deserve to be full members of the legal community if they meet the necessary requirements. I urge you to adopt the proposed change.

Sincerely,
/s/ Kenneth Bobroff
Visiting Professor
UNM School of Law

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'K. Bobroff', written over a horizontal line.

Your Name
Javier Amaya

Phone Number
5058352247

Email
javier.amaya@lopdm.us

Proposal Number
2018-006

Comment

I migrated to this country when I was 15 years old and was very lucky to arrive with status and then later become a citizen. I worked very hard in undergraduate and later law school to become an attorney. Throughout the process, and even now in practice, it has not mattered in any way whether my classmates or colleagues have a specific legal status. Our duty as attorneys should focus primarily on the representation given to our clients and the quality of representation given, not on whether we have personal problems and others do not approve of them. A good attorney will always be a good attorney whether he/she has a specific legal status or not.

As a member of the State Bar of New Mexico I support Proposal 2018-006.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



Your Name
Rebecca Leibowitz

Phone Number
5053078997

Email
rebeccamaranleibowitz@gmail.com

Proposal Number
2018-006

Comment

I support the proposed amendment of Rule 15-103(B)(7).

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'R. Leibowitz', is written over the date stamp.

Your Name
Neoshia Roemer

Phone Number
3176509838

Email
roemerne@law.msu.edu

Proposal Number
2018-006

Comment

As a member of the New Mexico State Bar, I am in favor of this proposed rule change. If applicants are otherwise qualified, immigration status limbo shouldn't keep them out of the State Bar. If UNM is down with taking their money, undocumented people should be eligible to be admitted to the bar. It makes no sense to further profit off the backs of undocumented people, who are often extremely qualified, and then deny them the ability to work over immigration status. There's no telling when the federal government will fix its immigration policy. Further, admitting undocumented people to practice does not diminish our professional bar standards. For many, this bar license is simply the last hurdle to clear before practicing. Instructing attorneys to have a contingency plan for their clients is good enough to eliminate potential ethical issues here. However, I am concerned about how this information will be taken and maintained as an individual's immigration status is private information.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'DR' followed by a horizontal line.

Your Name
Ariel MacMillan Sanchez

Phone Number
5053852654

Email
macmilar@law.unm.edu

Proposal Number
Proposal 2018-006

Comment

I support this rule change. We should encourage the furthering of the education and careers of others no matter what their immigration status is.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'JPA', with a horizontal line extending to the right.

PRESIDENT:
Peter D. White, Santa Fe
PRESIDENT ELECT:
Richard J. Valle, Albuquerque
IMMEDIATE PAST PRESIDENT:
Gabrielle Valdez, Albuquerque
SECRETARY
Nancy Cronin, Albuquerque
TREASURER
Lori Bencoe, Albuquerque
AAJ GOVERNOR
Kathy Love, Albuquerque
David J. Jaramillo, Albuquerque
AAJ DELEGATES:
Theodore W. Barudin, Albuquerque
Maria "Mia" Touchet, Albuquerque
AAJ MINORITY DELEGATE
Adrian Vega, Albuquerque
EDITOR:
Tyler J. Atkins, Albuquerque
DIRECTORS:
Paul Abrams, Santa Fe
Esteban A. Aguilar, Jr., Albuquerque
Eva K. Blazejewski, Albuquerque
Kristina Bogardus, Albuquerque
Margaret Branch, Albuquerque
Cynthia A. Braun, Albuquerque
Allegra Carpenter, Albuquerque
Katie Curry, Albuquerque
Lisa K. Curtis, Albuquerque
Ben Davis, Albuquerque
Michael J. Doyle, Los Lunas
David Duhigg, Albuquerque
Michael G. Duran, Albuquerque
Katherine M. Ferlic, Santa Fe
David Fine, Albuquerque
David P. Garcia, Santa Fe
Matthew Garcia, Albuquerque
F. Michael Hart, Albuquerque
Dusti Harvey, Albuquerque
Rachel E. Higgins, Albuquerque
David M. Houliston, Albuquerque
Lee Hunt, Santa Fe
Tammy Jasionowski, Albuquerque
Justin R. Kaufman, Santa Fe
William Keeler, Gallup
Randy J. Knudson, Portales
Cherie LaCour, Albuquerque
Thomas E. Lilley, Roswell
Amalia Lucero, Albuquerque
A. Kevin Martinez, Albuquerque
David B. Martinez, Albuquerque
Randi McGinn, Albuquerque
Mollie C. McGraw, Las Cruces
A. Elicia Montoya, Albuquerque
Joel T. Newton, Las Cruces
Cristófor O'Cleireachain, Albuquerque
Erin B. O'Connell, Albuquerque
Bertrand Parnall, Albuquerque
Victor Poulos, Las Cruces
M. Terrence Revo, Albuquerque
Geoffrey R. Romero, Albuquerque
Angel L. Saenz, Las Cruces
Pia Salazar, Albuquerque
Kelly Stout Sanchez, Albuquerque
Joseph A. Sapien, Albuquerque
Robert L. Scott, Albuquerque
David J. Stout, Albuquerque
Patrick Sullivan, Albuquerque
James Tawney, Las Cruces
Bruce E. Thompson, Albuquerque
Victor Titus, Farmington
Denise M. Torres, Las Cruces
Rob Treinen, Albuquerque
David H. Urias, Albuquerque
Matthew A. Vance, Albuquerque
Ray M. Vargas, II, Albuquerque
Donald Vigil, Albuquerque
Scott Voorhees, Santa Fe
Samuel H. Walker, Albuquerque
Vincent J. Ward, Albuquerque
John Westerman, Farmington
Timothy White, Albuquerque
Joleen K. Youngers, Las Cruces
D. Diego Zamora, Santa Fe
EXECUTIVE DIRECTOR:
Peter Mallery
DEPUTY DIRECTOR
Gayle Lewis Bennett

April 9, 2018

New Mexico Supreme Court
237 Don Gaspar Ave. #104
Santa Fe, NM 87501

Greetings:

I am writing on behalf of the New Mexico Trial Lawyers' Association (NMTLA) to voice our support for the proposed amendment to Rule 15-103(B)(7) that adds a provision that would permit bar licensure for otherwise fully qualified undocumented immigrants. The proposed amendment to this rule includes a condition that a person licensed under the amendment is required to have a contingency plan approved by the Lawyers' Succession and Transition Committee in the event the applicant is otherwise unable to practice law.

Given the current uncertainty spanning our immigration laws, we believe that it is important for those law students who are otherwise qualified to practice law, to have the right to earn their licensure in the state of New Mexico. We believe that the proposed rule comports with New Mexico law and is also in line with public policy of New Mexico.

NMTLA strongly supports the proposed amendment to Rule 15-103(B)(7). First, immigration status is simply not relevant to the licensure of an individual who is otherwise fully qualified to practice law. These individuals have been encouraged by both New Mexico's tradition and environment of tolerance and our state laws that prohibit discrimination based on immigration status for purposes of admission to our institutions of higher education including law school. *See* NMSA 1978, § 21-1-4.6.

It is an ironic bait and switch for the state to on the one hand accept tuition dollars for a legal education and on the other deny licensure after an individual has completed a JD degree and passed the bar. Second, the proposed rule adequately addresses the legitimate concern, given the current political climate, that a licensed immigrant could be detained by federal authorities. Third, other jurisdictions around the country, notably California, New York and Florida have authorized the admission of individual without regard to immigration status and there are no reports of a negative impact on the public or any ill-effects on the bar. Finally, students who are currently studying law at the University of New Mexico want to stay here and practice law.

REPLY TO:
Post Office Box 27529
Albuquerque, New Mexico 87125-7529

STREET ADDRESS:
301 Edith NE Suite 110
Albuquerque, New Mexico 87102-3527

TELEPHONE: 505-243-6003
FACSIMILE: 505-243-6099
EMAIL: nmtla@nmtla.org

WEBSITE: www.nmtla.org



SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



PRESIDENT:
Peter D. White, Santa Fe

PRESIDENT ELECT:
Richard J. Valle, Albuquerque

IMMEDIATE PAST PRESIDENT:
Gabrielle Valdez, Albuquerque

SECRETARY
Nancy Cronin, Albuquerque

TREASURER
Lori Bencoe, Albuquerque

AAJ GOVERNOR
Kathy Love, Albuquerque
David J. Jaramillo, Albuquerque

AAJ DELEGATES:
Theodore W. Barudin, Albuquerque
Maria "Mia" Touchet, Albuquerque

AAJ MINORITY DELEGATE
Adrian Vega, Albuquerque

EDITOR:
Tyler J. Atkins, Albuquerque

DIRECTORS:
Paul Abrams, Santa Fe
Estepan A. Aguilar, Jr., Albuquerque
Eva K. Blazejewski, Albuquerque
Kristina Bogardus, Albuquerque
Margaret Branch, Albuquerque
Cynthia A. Braun, Albuquerque
Allegra Carpenter, Albuquerque
Katie Curry, Albuquerque
Lisa K. Curtis, Albuquerque
Ben Davis, Albuquerque
Michael J. Doyle, Los Lunas
David Duhigg, Albuquerque
Michael G. Duran, Albuquerque
Katherine M. Ferlic, Santa Fe
David Fine, Albuquerque
David P. Garcia, Santa Fe
Matthew Garcia, Albuquerque
F. Michael Hart, Albuquerque
Dusti Harvey, Albuquerque
Rachel E. Higgins, Albuquerque
David M. Houliston, Albuquerque
Lee Hunt, Santa Fe
Tammy Jasionowski, Albuquerque
Justin R. Kaufman, Santa Fe
William Keeler, Gallup
Randy J. Knudson, Portales
Cherie LaCour, Albuquerque
Thomas E. Lilley, Roswell
Amalia Lucero, Albuquerque
A. Kevin Martinez, Albuquerque
David B. Martinez, Albuquerque
Randi McGinn, Albuquerque
Mollie C. McGraw, Las Cruces
A. Elicia Montoya, Albuquerque
Joel T. Newton, Las Cruces
Cristoir O'Cleireachain, Albuquerque
Erin B. O'Connell, Albuquerque
Bertrand Parnall, Albuquerque
Victor Poulos, Las Cruces
M. Terrence Revo, Albuquerque
Geoffrey R. Romero, Albuquerque
Angel L. Saenz, Las Cruces
Pia Salazar, Albuquerque
Kelly Stout Sanchez, Albuquerque
Joseph A. Sapien, Albuquerque
Robert L. Scott, Albuquerque
David J. Stout, Albuquerque
Patrick Sullivan, Albuquerque
James Tawney, Las Cruces
Bruce E. Thompson, Albuquerque
Victor Titus, Farmington
Denise M. Torres, Las Cruces
Rob Treinen, Albuquerque
David H. Urias, Albuquerque
Matthew A. Vance, Albuquerque
Ray M. Vargas, II, Albuquerque
Donald Vigil, Albuquerque
Scott Voorhees, Santa Fe
Samuel H. Walker, Albuquerque
Vincent J. Ward, Albuquerque
John Westerman, Farmington
Timothy White, Albuquerque
Joleen K. Youngers, Las Cruces
D. Diego Zamora, Santa Fe

EXECUTIVE DIRECTOR:
Peter Mallery

DEPUTY DIRECTOR
Gayle Lewis Bennett

Many of these young men and women have overcome tremendous odds to achieve an education and a professional degree. They deserve to achieve their dream and become productive members of our practicing bar. Giving them opportunity is completely consistent with our history, our heritage and our culture. For the foregoing reasons we urge this Court to adopt the proposed amendment to Rule 15-103(B)(7).

Sincerely,

Peter D. White
President, NMTLA
(505) 995-0661

APR 11 2018

April 11, 2018

To whom it may concern,



I am writing in support of the proposed amendment to Rule 15-103(B)(7). Undocumented law students deserve the opportunity to be admitted as members of the New Mexico Bar.

It is important for people in our legal and broader Albuquerque community to understand that immigration law is administrative and not criminal; and to punish them for something outside their control would be cruel and unjust. Many of these students were brought to the United States as children, and had no choice in the matter. Everything that was within their power to control they did correctly.

Many of these young, dedicated, intelligent, hard-working individuals have prepared for the opportunity to practice law since high school. These students took the adequate pre-requisite college courses in order to be admitted to a reputable university. Then, successfully completed college with zero access to financial aid, payed for and took the LSAT, and payed every single law school application and CAS fee. Then they were successfully admitted to law school, payed for law school tuition again without access to financial aid, and successfully completed all of law school's academic courses and requirements. Then passed the MPRE, successfully and fully completed the NM Bar application, and successfully studied for the NM Bar Exam, and passed the bar to only be held back from being admitted to the New Mexico Bar because of something they had no control over - their place of birth. These students display good moral character and have met every single requirement except being a U.S. Legal Resident, U.S. Citizen, or being authorized to work in the United States.

In New Mexico, Immigrant business owners accounted for 15% of all self-employed New Mexico residents in 2015, and generated \$375.1 million in business income.¹ Immigrant entrepreneurs represent more than 1 in 7 business owners in New Mexico. As workers, business owners, taxpayers, and neighbors, immigrants are an integral part of New Mexico's diverse and thriving communities and make extensive contributions that benefit all.¹

Our legislative process has repeatedly failed undocumented youth in being able to pass comprehensive immigration reform to create a path for them to apply for legal residency. Further, our current immigration system is outdated, and is only passing policies that further restrict the already limited paths to residency and legal immigration to the U.S. It is only just that these undocumented law students have an opportunity to be admitted to the bar, and given the earned privilege of practicing law after years of work and preparation. Lastly, several other states have already passed measures to allow qualified undocumented students to practice law given that it is a proper exercise of State Powers.

Respectfully,

Zoila Y. Alvarez-Hernández, M.A.
J.D. Candidate, Class of 2018 | UNM School of Law

¹ American Immigration Council, *Immigrants in New Mexico* (Oct. 13, 2017)
https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_mexico.pdf



SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be "J.M." or similar, written over a faint circular stamp.

April 11, 2018

Via Electronic Mail

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504
nmsupremecourtclerk@nmcourts.gov

RE: Comment on Proposal 2018-006

Dear Honorable Justices of the New Mexico Supreme Court:

The New Mexico Dream Team & United We Dream NM writes to strongly support the amendment to Rule 15-103(B)(7) NMRA, allowing undocumented applicants who meet the character and fitness requirements to be admitted to the New Mexico State Bar.

Since 2013, the UNM School of Law has consistently admitted undocumented students, recognizing that their contribution would diversify and meaningfully contribute to the law school and the legal profession in New Mexico. Bar admission for these students since 2013 remained ambiguous placing an undue burden on undocumented students as they completed their rigorous legal training and prepared for the profession.

Federal law establishes the right of free public education regardless of immigration status. *Plyler v. Doe*, 457 U.S. 202 (1982). New Mexico Constitution establishes the right of its Spanish-speaking residents to learn in its public schools. N.M. Const. art. XII, § 8. New Mexico state law mandates that public post-secondary educational institutions in the state "shall not deny admission to a student on account of the student's immigration status." NMSA 1978 § 21-1-4.6.

Individuals seeking to practice law in New Mexico should not be discriminated against based on their immigration status or lack of work authorization. This amendment would allow the NM Board of Bar Examiners ("the Board") to assess each applicant for admission on the basis of their merits and their individual character and fitness, regardless of their undocumented status.

NM Dream TEAM

This change is needed to relieve the Board, a volunteer board not trained in immigration law, from making bar admission determinations based on its interpretation of ambiguous immigration law and the immigration status of the applicant. An undocumented applicant in New Mexico does not demonstrate unfitness to practice law. An undocumented applicant who has graduated from elementary, secondary and post-secondary schools in New Mexico and is at-risk of not being admitted to its state bar in spite of his or her qualifications demonstrate the unjust effects of a broken immigration system. It is incumbent upon the New Mexico Supreme Court to use its constitutional authority to mitigate the negative effects that our broken federal immigration system has on the lives of our undocumented colleagues. *In Re: Application of Oppenheim*, 2007-NMSC-022, ¶ 26 (ruling that “[t]his Court exercises its constitutional power of superintending control when it establishes and enforces standards of qualification for admission to the Bar.”); 8 U.S.C. § 1621(d) (providing that “[a] State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility”).

Students, faculty, community members, and attorneys in New Mexico have come together since 2013 to advocate for this needed revision to the current rule to accommodate undocumented lawyers in the profession. The process to revise the rule is thoughtful, carefully analyzed, and legally sound. Therefore, Instituto Legal affirms and strongly supports the process and the current amendment to Rule 12-103(B)(7) NMRA.

Sincerely,

New Mexico Dream Team & United We Dream



Gabriela S. Hernandez Martinez
NM Dream Team Executive Director
United We Dream New Mexico Director

Your Name
Ashley Williams

Phone Number
5053199271

Email
Esthi.ash@gmail.com

Proposal Number
2018-06

Comment

We should allow immigrants to be admitted to the nm bar regardless of immigration status, if they graduated law school and took the bar exam and passed it.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'E. Williams', located below the date stamp.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



Your Name
Ernest I. Herrera

Phone Number
2102191462

Email
ernestiherrera@gmail.com

Proposal Number
2018-006

Comment

I am a member of the bar in New Mexico. I support the proposed rule change. I believe that the bar should welcome any immigrant who is otherwise qualified to be an attorney. The state of New Mexico was founded as a crossroads of nations and peoples. I believe immigrants serve to enrich the services that the people of New Mexico require. I do not believe that the State of New Mexico or the State Bar should be in the business of enforcing immigration law in any way.

- Ernest I. Herrera, Bar # 144619

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'DPA' followed by a horizontal line.

Your Name
Diana Alvarez

Phone Number
5056398200

Email
Dianalvarez00@gmail.com

Proposal Number
2018-006

Comment

I want to express my support for the Proposal 2018-006 - Immigration Status/Bar Applicants [Rule 15-103 NMRA] Immigration status does not define ones competency. We shouldn't let prejudice play part in this decision.

Your Name
Jorge Hernandez

Phone Number
5054597844

Email
jhernandezabq@gmail.com

Proposal Number
2018-006

Comment

To Whom It May Concern:

I write to voice my full support of PROPOSAL 2018-006 revising the rules for admission to the New Mexico Bar. The provision would allow current DACA and undocumented students already heavily contributing to our society to put forth their knowledge and skills to the benefit of our state.

-Jorge Hernandez, Founder/Vice President of Burqueños for Education and Empowerment (BEE) Scholarships

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018



Your Name
Danielle

Phone Number
5052351758

Email
Daniellemia2@gmail.com

Proposal Number
2018-006

Comment

Applicants who hold qualification for bar status should not be denied solely based on their immigration status. I stand strongly in support of this proposed rule.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'DPA' with a horizontal line extending to the right.

Your Name
Celina Franco

Phone Number
5057103833

Email
Cpadill2@gmail.com

Proposal Number
2018-006

Comment

I believe that immigrants who have taken the time to learn about our judicial system, and have passed the bar thus earning them the right to practice law, should infact be allowed to practice in New Mexico.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'CPA' followed by a horizontal line.

Your Name
Molly Graver

Phone Number
5753128387

Email
m_graver@yahoo.com

Proposal Number
2018-006

Comment

April 11, 2018

Dear Chief Justice and Esteemed Members of the New Mexico Supreme Court:

I am an attorney practicing in the State of New Mexico, and I submit this comment in support of Proposal 2018-006, "Proposed Revisions to the Rules Governing Admission to the Bar." The proposed change to Rule 15-103 would admit to the NM State Bar qualified attorneys who, without the change, would be excluded solely on the basis of their immigration status.

Many who would be eligible for admission under this revision have already availed themselves to the fullest extent of this nation's immigration laws. They are committed law-abiding members of our communities. Excluding them from the NM State Bar would deprive us of their significant contribution to the practice of law in our state.

Licensure in New Mexico should be awarded to all candidates who have proven themselves worthy of pursuit of a legal career in New Mexico. It should not hinge on immigration status.

Sincerely,

Molly Graver

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'M. Graver', is written over the date stamp.

Your Name
Deshawnda Chaparro

Phone Number
9703470555

Email
cha_08@live.com

Proposal Number
2018-006

Comment

The proposed rule change is a progressive step in breaking down the walls between immigrant applicants and their peers. Every year when another immigrant student graduates, the graduate is left to wonder if they will be admitted to the New Mexico state bar despite otherwise being eligible and passing the bar exam. There is much uncertainty and anxiety in the time the applicant must wait to hear about their bar exam score and the willingness of the Board of Bar Examiners and the New Mexico Supreme Court to admit an applicant with immigration status or lack thereof.

In adopting this rule change, the New Mexico Supreme Court is moving to an open bar that embraces all persons who have pursued a law degree and admittance to the New Mexico state bar. I urge the Supreme Court to adopt this proposed amendment to the rule.

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be 'D. Chaparro', written over the date stamp.

Your Name
Bianca Smoker

Phone Number
5059882744

Email
name@host.com

Proposal Number
2018-006

Comment

I write in support of this proposed rule change. Anyone who is able to overcome the significant challenge of attending law school and sitting for the bar exam, and who will otherwise be subject to the rigorous character and fitness investigation, should be permitted entry to our profession. An individual's immigration status has no bearing on his or her ability to undertake representation of clients and to carry out that representation effectively. The immigration system of the United States is exceedingly complex. To bar access to our profession based on where an individual fits within a bureaucratic process, and over which the individual may have no control or influence, is to prevent its enrichment by qualified and capable people.

Sincerely,
Bianca Smoker
UNM School of Law, Class of 2016

SUPREME COURT OF NEW MEXICO
FILED

APR 11 2018

A handwritten signature in black ink, appearing to be the initials 'BS' followed by a horizontal line.