

1 **Rule 14-721. Admission of undocumented immigrants.**

2 An applicant who is an undocumented immigrant; and

3 (a) a recipient of:

4 (i) deferred action status pursuant to the United States' Policy of
5 Deferred Action for Childhood Arrivals, or

6 (ii) deferred action status, whether granted on an individualized, case
7 by case basis or pursuant to national policy, based in part upon
8 such applicant having arrived in the United States as a minor; and

9 (b) authorized by the United States to accept employment at the time of
10 application;

11 will be eligible for admission to the Utah Bar if they meet all other requirements for
12 admission.

13

14 **Utah Supreme Court statement:**

15 Two individuals who assert that they qualify for Deferred Action for Childhood
16 Arrivals (DACA) status petitioned this Court to adopt a rule that would allow them to
17 be admitted to practice law in Utah. The Utah Bar does not limit admission to United
18 States citizens, but it verifies an applicant's legal presence in the United States and
19 denies admission to those who cannot establish that they are legally present. Petitioners
20 cannot provide this verification and therefore cannot presently be admitted to the Utah
21 Bar.

22 8 U.S.C. section 1621(a), part of the Personal Responsibility and Work
23 Opportunity Reconciliation Act, prohibits certain unqualified aliens, including aliens
24 who are not lawfully present in the United States, from receiving certain state or local
25 public benefits. This includes professional licenses. *Id.* § 1621(c). However, section
26 1621(d) allows a state to "opt out" of this prohibition through the "enactment of state
27 law" and provide a state or local benefit, such as a law license, to an alien not lawfully
28 present in the United States. Petitioners ask us to adopt a rule that would take
29 advantage of section 1621(d)'s opt out and permit the Utah Bar to issue licenses to
30 practice law in Utah to qualified DACA recipients.

31 It is beyond dispute that the Utah Supreme Court possesses the constitutional
32 authority to govern the practice of law. *See* UTAH CONST. art. VIII, 4 ("The Supreme
33 Court by rule shall govern the practice of law, including admission to practice law and
34 the conduct and discipline of persons admitted to practice law.") But a question arose if
35 a court-adopted rule would qualify as the "enactment of a state law" that section

36 1621(d) would recognize as a state law permitting Utah to opt out and provide law
37 licenses to qualified applicants with DACA status. There is also a question whether
38 Utah’s attorney licensing structure – a privately funded bar association overseen by a
39 state Supreme Court – falls with section 1621(d)’s ambit.

40 In response to that concern, we solicited briefing. We appreciate the assistance,
41 research, and arguments from those who submitted briefs: Petitioners Jane and Mary
42 Doe; Utah State Bar; Office of the Utah Attorney General; United States Department of
43 Justice; Ad Hoc Coalition of Utah Professors; University of Utah, S.J. Quinney College
44 of Law; Utah Minority Bar Association; Latino Justice; American Civil Liberties
45 Union/ ACLU Of Utah; and Parr Brown Gee & Loveless. We also appreciate the input of
46 the Office of Legislative Research and General Counsel on behalf of the Utah
47 Legislature. The Legislature, citing the constitutional authority granted to this Court,
48 opined that this Court could enact a rule that would meet the requirements of 8 U.S.C.
49 section 1621(d).

50 We then heard presentations from a number of those who provided briefs. We
51 again appreciate the input we received from counsel for the Petitioners, the Utah State
52 Bar, the Office of Legislative Research and General Counsel, the United States
53 Department of Justice, and the Utah Minority Bar Association.

54 We have considered the question and the materials presented to us, and are
55 confident that 8 U.S.C. 1621(d) does not prohibit this Court, pursuant to the authority
56 the people of Utah gave us in article VIII, section 4 of the Utah Constitution, from
57 adopting a rule that would permit those with DACA status to practice law in Utah. In
58 so doing, we join New York and Pennsylvania, which have reached the same
59 conclusion about their ability to act on this question. Accordingly, we move forward on
60 the petition for a rule change and invite public comment on a proposed rule.