F050528

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

IGNACIO GARCIA,

Plaintiff and Respondent,

vs.

PARAMOUNT CITRUS ASSOCIATION, INC.,

Defendant and Appellant.

Appeal from the Superior Court for Fresno County (03CECG02782)
Honorable James Quaschnick, Judge

BRIEF OF WASHINGTON LEGAL FOUNDATION
AND ALLIED EDUCATIONAL FOUNDATION
AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANT AND APPELLANT

Of Counsel:

Daniel J. Popeo
Richard A. Samp
Washington Legal Foundation
2009 Massachusetts Ave., N.W.
Washington, DC 20036
202-588-0302

Paul F. Utrecht
235 Montgomery Street
Suite 1130
San Francisco, CA 94104
415-956-8100

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Counsel for *amici curiae*

State of California
Court of Appeal
Fifth Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Garcia v. Paramount Citrus Association, Inc., No. F050528

Pursuant to Rule 8.208, *amici curiae* Washington Legal Foundation (WLF) and Allied Educational Foundation (AEF) state as follows:

(1) WLF and AEF are both § 501(c)(3) nonprofit corporations. Neither WLF nor AEF has a parent corporation, and no entity or person has any ownership interest in either corporation.

(2) Neither WLF nor AEF has a financial or other interest in the outcome of this proceeding, nor are they aware of anyone other than the parties who possesses such an interest.

_____

Richard A. Samp
Washington Legal Foundation
2009 Massachusetts Avenue, NW
Washington, DC 20036
Counsel for *amicus curiae*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ISSUES PRESENTED FOR REVIEW 1

INTERESTS OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 3

ARGUMENT 6

I. THE DAMAGES AWARDED TO GARCIA STAND AS AN OBSTACLE TO THE OBJECTIVES OF FEDERAL IMMIGRATION LAW AND THUS ARE PREEMPTED 6

A. Principles of Preemption Law 6

B. Federal Immigration Policy Mandates Deportation of Those, Such as Garcia, Not Authorized to Live in the U.S. 7

C. The U.S. Supreme Court's *Hoffman* Decision 8

D. The Award to Garcia Undermines Federal Immigration Policy in Precisely the Ways Outlined in *Hoffman* 10

II. THE DAMAGES AWARDED TO GARCIA FOR FUTURE MEDICAL CARE ARE EXCESSIVE UNDER CALIFORNIA LAW 16

CONCLUSION 21

CERTIFICATE OF WORD COUNT 22

TABLE OF AUTHORITIES

Page(s)

Cases:

Alonso v. State of California,
(1975) 50 Cal. App. 3d 242 17
Balbuena v. IDR Realty LLC,
(2006) 6 N.Y.3d 338 . . . . . 2, 13, 14
California Fed. Sav. and Loan Ass'n v. Guerra,
(1987) 479 U.S. 272 . . . . . 7, 16
Cipollone v. Liggett Group, Inc.,
(1992) 505 U.S. 504 . . . . . 6, 7
English v. General Electric Co.,
(1990) 496 U.S. 72 6
Farmers Bros. Coffee v. Workers' Compensation Appeals Bd.,
(2005) 133 Cal. App. 4th 533 . . . . . 14, 19
Harif v. Housing Authority of Yolo County,
(1988) 200 Cal. App. 3d 635 19
Hoffman Plastic Compounds, Inc. v. NLRB,
(2002) 535 U.S. 137 . . . . . *passim*
Incalze v. Fendi North America, Inc.,
(9th Cir. 2007) 479 F.3d 1005 15
Jones v. Rath Packing Co.,
(1977) 430 U.S. 519 7
Madiera v. Affordable Housing Foundation, Inc.,
(2d Cir. 2006) 469 F.3d 219 . . . . . 13, 14
Melone v. Sierra Railway Co.,
(1907) 151 Cal. 113 20
Paramount Citrus v. Superior Court,
(2006) 2006 Cal. LEXIS 1914 2
Reyes v. Van Elk, Ltd.,
(2007) 148 Cal. App. 4th 604 . . . . . 12, 13, 14
Rodriguez v. Kline,
(1986) 186 Cal. App. 3d 1145 . . . . . 5, 16, 17
Simon v. San Paulo U.S. Holding Co.,
(2005) 35 Cal.4th 1159 1
State Dep't of Health Services v. Superior Court,
(2003) 31 Cal.4th 1026 20

Page(s)

Statutes and Constitutional Provisions:

U.S. Const., Art. VI, cl. 2 ("Supremacy Clause") 6

Immigration and Naturalization Act, 8 U.S.C. § 1101 *et seq.* 7-8
8 U.S.C. § 1185(a)(1) 7, 18
8 U.S.C. § 1227(a)(1)(B) 7, 18
8 U.S.C. § 1324a(a) 13, 18

Personal Responsibility and Work Opportunity Act of 1996
("PRWORA"), P.L. 104-93, 110 Stat. 2260 . . . . . 8, 11
PRWORA § 401, 8 U.S.C. § 1611 . . . . . 8, 11
PRWORA § 411, 8 U.S.C. § 1621 . . . . . 8, 11

National Labor Relations Act 9

California Labor Code § 1171.5(a) & (b) 19

California Civil Code § 3339 19

California Government Code § 7285 19

Miscellaneous:

Restatement (Second) of Torts, § 918(1) 20

ISSUES PRESENTED FOR REVIEW

Defendant Paramount Citrus Association, Inc. ("Paramount") appeals from a judgment entered in favor of Plaintiff Ignacio Garcia, who was awarded damages for injuries he suffered in a motor vehicle collision. Paramount challenges both the trial court's finding of liability and the manner in which the court assessed damages. *Amici curiae* Washington Legal Foundation and Allied Educational Foundation do not address the issue of liability. They address the following issues only, both related to the damage award:

1. Does federal immigration law preempt state law to the extent that state law permits an illegal alien to recover the costs of obtaining future life care and medical expenses here in the United States, where there has been no trial court finding that the alien is likely to obtain permission to remain in this country?

2. Under those same circumstances, does California law permit an illegal alien to recover the costs of obtaining future life care and medical expenses?

INTERESTS OF *AMICI CURIAE*

The interests of *amici curiae* Washington Legal Foundation (WLF) and Allied Educational Foundation (AEF) are set out more fully in the attached motion for leave to file this brief. In brief, WLF is a public-interest law and policy center located in Washington, D.C. with supporters in all 50 States, including many in California. WLF devotes a significant portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. WLF regularly appears before California courts and other State and federal courts in support of its view that reasonable limits ought to be placed on damages awardable in tort actions. *See, e.g., Simon v. San*

Paolo U.S. Holding Co. (2005) 35 Cal.4th 1159. In particular, WLF has appeared in courts to urge that damages awarded to injured plaintiffs who are not legally permitted to remain in the United States should be limited to the amount necessary to make them whole if they were to comply with U.S. law by returning to their native countries. *See, e.g., Balbuena v. IDR Realty LLC* (2006) 6 N.Y.3d 338. WLF also filed a brief in this case in support of the defendant's effort to obtain pre-trial appellate review of the issues raised herein. *Paramount Citrus v. Superior Court*, Supreme Court Case No. S140024, *review denied*, (2006) Cal. LEXIS 1914 2006.

AEF is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared as *amicus curiae* in this Court on a number of occasions.

STATEMENT OF FACTS

Plaintiff Ignacio Garcia is a Mexican citizen living in California in violation of United States immigration laws. As a result of a 2001 automobile accident, he suffered serious injuries that will require long-term medical care. He filed a negligence action against Paramount, alleging that the accident would not have occurred if Paramount had maintained warning signs on its private ranch road.[1]

All parties agree that the cost of Garcia's future life care and

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[1] A truck being driven by Salud Andrede struck the van in which Garcia was driving. Garcia alleges that Andrede improperly failed to yield when his truck entered a public highway from a private road. The private road was owned by Paramount, and Andrede was driving on it without Paramount's permission. Garcia faults Paramount for failing to place a stop sign or other traffic control device at the intersection.

medical expenses will be significantly higher if he remains in the United States rather than returning to his native Mexico.[2] In the trial court, Paramount sought to limit Garcia's claims for future care to the costs of providing such care in Mexico, pointing out that Garcia entered the United States illegally and is violating U.S. law by remaining here. The trial court nonetheless excluded all evidence regarding Garcia's immigration status and ruled that his future damages claims would be based solely on evidence regarding costs of life and medical care here in the United States. Def. Br. 8.

The jury found that both Paramount and Andrede were negligent and that their negligence was a substantial factor in causing Garcia's injuries. It assigned to Andrede 65% of the responsibility for Garcia's injuries and assigned 35% to Paramount. The damages awarded to Garcia included $850,000 for future medical and healthcare expenses. Following entry of a $1.64 million judgment against Paramount, it appealed to this Court.

SUMMARY OF ARGUMENT

The $850,000 award to Garcia for future medical and healthcare expenses should be reversed, on two separate grounds. First, the award must be overturned because it stands as an obstacle to accomplishment of the objectives of federal immigration law. The U.S. Supreme Court has made clear that when, as here, state law creates such an obstacle, it is preempted by federal law. Second, the award must be overturned

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[2] Garcia's experts estimated the present value of future life care here in the United States at between $3.8 million and $7.5 million and the present value of future life care in Mexico at $1.5 million. Paramount's expert estimated the present value of such care at $850,000 in the United States and $220,000 in Mexico.

because it is contrary to California public policy. California case law provides that when, as here, an illegal alien has failed to demonstrate that (s)he has taken steps to legalize his/her status and thereby demonstrate that (s)he is likely to continue to live in the United States for the indefinite future, a court should not award damages that are premised on an assumption of continued residency in the United States.

There can be little doubt that the $850,000 award tends to undermine federal immigration law. Federal policy would be served by Garcia's immediate departure from the United States: Garcia entered this country in violation of federal law, his continued presence in this country is unauthorized, and he is subject to immediate deportation if immigration authorities become aware of his presence. Yet, by premising the computation of Garcia's compensation for future medical expenses on an assumption that he will continue to live in this country, California law (as enunciated by the trial court) stands as an obstacle to Garcia's immediate departure. It has been six years since Garcia suffered his injuries. Had he moved back to Mexico during that period, there is little question that the trial court would have computed future medical expenses based on medical costs in Mexico. Thus, Garcia had every incentive to remain in this country, in order to ensure a far-higher, U.S.-based medical expense award. Other tort claimants similarly situated to Garcia would have a similar incentive to remain in this country, at least for so long as their tort claims are pending.

Hoffman Plastic Compounds, Inc. v. NLRB (2002) 535 U.S. 137, is squarely on point and mandates a preemption finding. The U.S. Supreme Court made clear in that case that courts are not to award damages to illegal aliens when the effect of such awards would be to undercut federal

immigration policy by encouraging aliens to come to this Nation illegally and/or to stay here without authorization. Case law cited by Garcia is not to the contrary. Those cases recognize that there may be instances in which awarding damages to illegal aliens is proper because it furthers the interests of federal immigration policy by, for example, discouraging U.S. employers from hiring illegal aliens in the first place. But where, as here, awarding damages to illegal aliens does not serve federal immigration policy but to the contrary affirmatively undermines that policy, a finding of preemption is mandated.

Quite apart from preemption concerns, reversal of the damage award is required as a matter of California public policy. A California appeals court established long ago that once a defendant demonstrates that the plaintiff is an illegal alien, the burden of proof falls on the plaintiff to establish that he has taken steps that will legalize his status in this country – and if he fails to meet that burden, future damages are to be computed based on the assumption that the illegal alien will obey the law and return to his native country. *Rodriguez v. Kline* (1986) 186 Cal. App. 3d 1145, 1149. The trial court's failure to adhere to *Rodriguez*, a decision that frequently has been cited with approval by court of appeal decisions, warrants reversal. Garcia presented *no* evidence to the trial court that he has taken steps to legalize his status or that he is likely to gain legal status in the near future. While California has adopted statutes (in response to the *Hoffman* decision) designed to broaden the rights of illegal aliens to sue their former employers for lost wages, nothing in that legislation suggests that the broadening of rights was intended to apply outside the labor law context.

Moreover, California law has long limited damage awards for

medical expenses to expenses reasonably incurred, and has required tort plaintiffs to mitigate their damages. There is nothing reasonable about permitting recovery of medical costs incurred solely because Garcia has remained in the United States (and intends to remain here indefinitely) in violation of federal immigration law. Furthermore, the duty to mitigate damages requires Garcia to comply with federal law and return to his native Mexico – and thereby significantly reduce the cost of his future medical care.

ARGUMENT

I. THE DAMAGES AWARDED TO GARCIA STAND AS AN OBSTACLE TO THE OBJECTIVES OF FEDERAL IMMIGRATION LAW AND THUS ARE PREEMPTED

It is the federal government's established policy that: (1) aliens present in this country without authorization should be removed from the country and returned to their countries of origin; and (2) such aliens should be denied financial incentives that are likely to induce them to remain in this country. The California courts are obstructing those policies by awarding tort damages based on an assumption that illegal aliens such as Garcia will remain in this country for the remainder of their lives, thereby inducing such aliens to remain here. Accordingly, federal law preempts any effort by California courts to award such damages. In the event of a conflict between California law and federal law, the Supremacy Clause of the U.S. Constitution, Art. VI cl. 2, mandates that federal law must prevail.

A. Principles of Preemption Law

As the U.S. Supreme Court has repeatedly emphasized, "Pre-emption fundamentally is a question of congressional intent. . ." *English v. General Electric Co.* (1990) 496 U.S. 72, 78-79. *Cipollone v. Liggett*

Group, Inc. (1992) 505 U.S. 504, 516 ("The purpose of Congress is the ultimate touchstone of preemption analysis."). In other words, it is the role of Congress, not a court, to define how broad or narrow federal law's preemption should be.

In seeking to determine federal government intent regarding preemption, the Supreme Court initially determines whether the federal statutes (or constitutional provisions) at issue contain explicit language that *expressly* preempts some portion of State law. *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 30 (1996). If the express language does not directly answer the question at issue, "courts must consider whether the federal statute's 'structure and purpose,' or nonspecific statutory language, nonetheless reveal a clear, but implicit, preemptive intent." *Id.* (quoting *Jones v. Rath Packing Co.* (1977) 430 U.S. 519, 525). State law is impliedly preempted if: (1) it actually conflicts with federal law; or (2) federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the States to supplement it." *Cipollone*, 505 U.S. at 516. State law "actually conflicts" with federal law "*either* because compliance with both federal law and state regulations is a physical impossibility *or* because the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *California Fed. Sav. and Loan Ass'n v. Guerra* (1987) 479 U.S. 272, 281 (emphasis added and internal quotations omitted).

B. Federal Immigration Policy Mandates Deportation of Those, Such as Garcia, Not Authorized to Live in U.S.

There is no dispute that Garcia is an illegal alien. He is a citizen of Mexico who came into this country without permission. In doing so, he violated 8 U.S.C. § 1185(a)(1), which makes it "unlawful" to enter the

United States except in accordance with rules established by immigration authorities.

It is the policy of the United States to deport illegal aliens such as Garcia. *See, e.g.,* 8 U.S.C. § 1227(a)(1)(B) (aliens present in the United States in violation of the Immigration and Naturalization Act, 8 U.S.C. §§ 1101 *et seq.*, are subject to immediate deportation). Moreover, Congress has passed a series of laws in recent years designed to discourage aliens from entering the country illegal and to encourage those already here illegally to return home. Most pertinent to this case is the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA"), P.L. 104-93, 110 Stat. 2260, adopted by Congress in 1996. PRWORA included a series provisions prohibiting payment of public benefits to illegal aliens; those provisions were designed to decrease financial incentives for aliens to come to this country illegally and to increase financial incentives for illegal aliens to return home. *See, e.g.,* PRWORA § 401, 8 U.S.C. § 1611 (prohibiting payment of virtually all federal public benefits to illegal aliens, other than emergency medical care and public education through high school); PRWORA § 411, 8 U.S.C. § 1621 (prohibiting States in most instances, even when using their own funds, from providing public benefits to illegal aliens). Congress determined that aliens would be less likely to remain in this country illegally if they were denied access to public benefits such as TANF ("Temporary Assistance for Needy Families"), Medicaid, and food stamps.

C. The U.S. Supreme Court's *Hoffman* Decision

In *Hoffman*, the U.S. Supreme Court made clear that courts should avoid interpreting federal and state law in a manner that could undermine

federal immigration policy. In that case, Hoffman Plastic (a manufacturing company) employed Castro, an illegal alien who was hired after presenting fake documents that appeared to verify his authorization to work in the United States. After Castro began supporting union-organizing activities at his work site, Hoffman Plastic laid him off. The National Labor Relations Board (NLRB) determined that Hoffman Plastic violated the National Labor Relations Act (NLRA) by laying off Castro in retaliation for his union activity. It ordered Hoffman Plastic to cease and desist from such violations and awarded Castro 4 ½ years of backpay. The Supreme Court reversed the backpay award. *Hoffman*, 535 U.S. at 149-152. The Court explained that rewarding illegal aliens such as Castro with backpay, despite not being authorized to live or work in the United States,[3] "runs counter to policies underlying" federal immigration law. *Id.* at 149. The Court said:

> [A]warding backpay in a case like this not only trivializes the immigration laws, it also condones and encourages future violations. The [NLRB] admits that had the INS detained Castro, or had Castro obeyed the law and departed to Mexico, Castro would have lost his right to backpay. . . . Castro thus qualifies for the [NLRB's] award only by remaining in the United States illegally. [¶] We therefore conclude that allowing the [NLRB] to award backpay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy. . . . It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations.

Id. at 150-52.

Hoffman thus makes clear that a State may not adopt policies that

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[3] The Court emphasized that neither Castro nor the NLRB "offered any evidence that Castro had applied or intended to apply for legal authorization to work in the United States." *Id.* at 141.

undermine federal immigration policy by encouraging illegal aliens to evade apprehension by immigration authorities, condoning their prior violations of immigration laws, or encouraging future violations.

D. The Award to Garcia Undermines Federal Immigration Policy in Precisely the Ways Outlined in *Hoffman*

Federal law preempts the trial court's $850,000 award for medical expenses because the award undermines federal immigration policies in precisely the ways warned against by *Hoffman*. By computing damages based on an assumption that Garcia will remain in the United States for the remainder of his life, despite undisputed evidence that Garcia has never been authorized to be in this country, the California courts are condoning his past violations of the immigration law and encouraging him (and similarly situated aliens) to remain illegally in the United States – at the very least, until such time as the judgment in this case becomes final.

The jury was allowed to hear evidence regarding the present value of the cost of providing Garcia's future life care and medical expenses here in the United States, yet was never told that he was an illegal alien and was not authorized to remain in this country. There can be no doubt that had Garcia complied with immigration law and returned to his native Mexico following his 2001 accident, evidence regarding such costs would have been limited to the far-lower costs of providing future life care and medical expenses *in Mexico*. Accordingly, California tort law (as interpreted by the trial court) has provided Garcia a strong financial incentive to remain in the United States for the six years following his accident; his multi-million dollar judgment would have been far lower

had he complied with the law.[4] Other illegal-alien tort claimants similarly situated to Garcia would have a similar incentive to remain in this country.

Moreover, by granting Garcia the financial wherewithal to continue to pay medical expenses at U.S. rates, the trial court judgment makes it far more likely that Garcia will attempt to remain in the United States for the indefinite future. In the absence of such a judgment, Garcia might well determine that the only way he could afford to pay for the medical care he needs is to comply with the law and return to Mexico. It is federal immigration policy to deny illegal aliens access to publicly awarded funds whose availability encourages illegal aliens to remain this country. Thus, for example, Congress adopted PRWORA in 1996 to prohibit federal and state government from providing public benefits to illegal aliens in most instances. *See* 8 U.S.C. §§ 1611, 1621. In direct conflict with that policy, the trial court judgment provides Garcia with the funds necessary to remain in this country in violation of U.S. law.[5]

Nothing in *Hoffman* suggests that the Supreme Court intended to limit its holding to cases arising under labor law. *Hoffman* established a general rule that prohibits the award of damages to illegal aliens when the

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[4] Indeed, Garcia admits as much in his brief. *See* Respondent Br. at 51 ("[M]easuring future medical care by the United States standard does not require or encourage Ignacio Garcia to . . . remain in the United States *after his case is resolved*.") (emphasis added).

[5] WLF does not mean to suggest that Garcia is not entitled to seek adequate compensation from those whose alleged negligence caused his injuries. But WLF respectfully submits that computing the award based on medical costs in Mexico, the country in which Garcia may lawfully reside, provides fully adequate compensation without creating a conflict with U.S. immigration law.

effect of such awards would be to undercut federal immigration policy by encouraging aliens to come to this Nation illegally and/or to stay here without authorization. *Hoffman*, 535 U.S. at 152. Awarding to illegal aliens the cost of medical treatment here in the United States undercuts federal immigration policy just as surely as does the award of U.S.-based backpay.

In an effort to distinguish *Hoffman*, Garcia cites a series of decisions in which courts held that *Hoffman* did not preclude the plaintiffs' request for damages despite the plaintiffs' illegal alien status. In fact, *every* one of the cited cases supports Paramount's position that the $850,000 medical expenses award is preempted by federal law.

The cases cited by Garcia are all labor cases in which the defendant employer sought to invoke *Hoffman* to avoid payment of a backpay award to an illegal alien employee. In each instance, the court upheld the award – but only because the court determined that the award actually *advanced* federal immigration policy.

Reyes v. Van Elk, Ltd. (2007) 148 Cal. App. 4th 604, involved a claim by illegal alien employees that their U.S. employer had paid them at a rate below that mandated by California's prevailing wage law. In holding that the plaintiffs' claims for backpay were not preempted under *Hoffman*, the court determined that recognizing such claims would actually *promote* federal immigration policy. The court explained:

> Allowing employers to hire undocumented workers and pay them less than the wage mandated by statute is a strong incentive for the employers to do so, which in turn encourages illegal immigration. . . . Allowing employers to hire undocumented workers and pay them less than the prevailing wage would also subvert [federal immigration law] by condoning and encouraging future violations by employers. Moreover, such awards do not condone future unauthorized work; rather, they make it clear that employers

> should not be allowed to profit from employing undocumented workers and then exploiting them.

Id. at 618-19. The court noted that the employer was aware that the employees were unauthorized to work.[6] It distinguished *Hoffman* by noting that the employer in that case was unaware of the employee's unauthorized status and was being asked to provide backpay for work not actually performed – and thus that awarding backpay against Hoffman Plastic would have done nothing to promote employer compliance with the immigration laws. *Id.* at 618.

Similarly, the New York Court of Appeals recently held that illegal aliens injured on the job may recover lost wages at U.S. rates – but only when (unlike in *Hoffman*) it was the employer's violation of immigration law (not the worker's document fraud) that led to the illegal alien being hired. *Balbuena v. IDR Realty LLC* (2006) 6 N.Y.3d 338, 360. The New York court explained that allowing recovery of lost wages at U.S. rates adhered to federal immigration policy by encouraging employer compliance with immigration law; a contrary rule would:

> [I]mprovidently reward employers who knowingly disregard the employment verification system in defiance of the primary purpose of federal immigration laws . . . and make it more financially attractive to hire undocumented aliens. This . . . would actually increase employment levels of undocumented aliens, not decrease it as Congress sought.

Id. at 359-60.

The U.S. Court of Appeals for the Second Circuit arrived at that same conclusion in *Madiera v. Affordable Housing Foundation, Inc.* (2d Cir. 2006) 469 F.3d 219. In upholding an award for lost pay to an illegal

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[6] Immigration law prohibits employers from hiring "unauthorized aliens." *See* 8 U.S.C. § 1324a(a).

alien injured while performing construction work, the court distinguished *Hoffman* by noting that his employer had hired him "in knowing violation" of federal immigration law. *Id.* at 237. *Reyes, Balbuena,* and *Madiera* all support Paramount; they stand for the proposition that federal law does not preempt state-law damages awards to illegal aliens that have the effect of *promoting* compliance with the immigration laws. But they recognize that where, as here, a state-law damages award would undercut federal immigration policy by encouraging illegal aliens to remain in this country and where denial of an award would not encourage Paramount and similarly situated defendants to violate immigration laws, *Hoffman* bars such awards.

Garcia's reliance on *Farmers Bros. Coffee v. Workers' Compensation Appeals Bd.* (2005) 133 Cal. App. 4th 533, is wholly misplaced. Garcia cites *Farmers Bros*. for the proposition that "an undocumented alien has the same rights as a legal resident or citizen to receive workers' compensation benefits." Respondent Br. 40. *Farmers Bros.* held no such thing. To the contrary, it held that California workers' compensation law was not preempted by federal immigration law only because California law does *not* permit illegal aliens who suffer job-related injuries to seek reinstatement and back pay. 133 Cal. App. 4th at 542.[7]

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[7] Garcia cites *Farmers Bros.* for the proposition that federal immigration law does "not occup[y] the field of workers' compensation" and thus that California is not prohibited from classifying illegal aliens as "employees" eligible for at least some forms of workers' compensation benefits. Respondent Br. at 41 (citing *Farmers Bros.*, 133 Cal. App. 4th at 540). But Paramount has not made a field preemption argument and does not claim that California is barred from awarding any sort of judgment to illegal aliens. Rather, Paramount's argument is that

If there were evidence that Garcia is highly likely to stay in this country for the remainder of his life – for example, evidence that Garcia is on the verge of obtaining permanent resident alien status – then the $850,000 award for medical expenses would not undercut federal immigration policy. Under those circumstances, one could reasonably conclude that the award would have no effect on Garcia's decision regarding whether to remain in the U.S. or return to Mexico.[8] But no such evidence was presented at trial; indeed the trial court flatly prohibited introduction of any evidence regarding Garcia's immigration status. In the absence of such evidence, the only reasonable conclusion is that the $850,000 award tends to undermine federal immigration policy and thus is preempted.

WLF recognizes that there is a danger of unfair prejudice against a plaintiff if his status as an illegal alien is revealed to the jury. But California courts are quite capable of addressing issues of this sort while at the same time protecting a plaintiff from unfair prejudice. For example, at the request of the plaintiff, the issue of immigration status could be heard by the judge outside the presence of the jury. If the judge determines that the plaintiff is an illegal alien but has demonstrated that he is highly likely to remain in the United States for the remainder of his

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California law is preempted in one respect only: California may not award judgments that undermine federal immigration law by encouraging illegal aliens to stay in this country.

[8] For example, in *Incalze v. Fendi North America, Inc.* (9th Cir. 2007) 479 F.3d 1005, 1012-13, the Ninth Circuit held that a fired employee's backpay claim was not preempted under *Hoffman* on the grounds that he temporarily lacked a work visa, because the evidence showed that the employee soon thereafter regained his authorization to work.

life (*e.g.,* he is on the verge of gaining permanent resident alien status), then the judge could permit the plaintiff to introduce evidence regarding the cost of medical care here in the United States. Otherwise, the plaintiff would be limited to introducing evidence regarding costs in his native country – but even then, the jury would not need to be told the details regarding where the care would be provided.

In sum, by allowing an award for medical expenses based on U.S. costs in the absence of evidence that Garcia is ever likely to obtain legal authorization to live in this country, the trial court undercut federal immigration policy – which dictates that illegal aliens such as Garcia are to be deported and are not to receive publicly awarded funds that might induce them to remain in this country. Because the trial court judgement thereby "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *California Fed. Sav. and Loan Ass'n*, 479 U.S. at 281, it is preempted by federal law.

II. THE DAMAGES AWARDED TO GARCIA FOR FUTURE MEDICAL CARE ARE EXCESSIVE UNDER CALIFORNIA LAW

Quite apart from preemption concerns, reversal of the damages award is required as a matter of California public policy. California law does not permit computation of an award of future damages to be based on an assumption of continued residency in the United States when, as here, that assumption is unreasonable.

A California appeals court addressed this precise question in *Rodriguez v. Kline* (1986) 186 Cal. App. 3d 1145. Like Garcia, the plaintiff in *Rodriguez* was a Mexican citizen who was living in the United States without authorization and who was injured in an automobile accident. The court held that the plaintiff was entitled to sue for lost

future earnings, but noted that that figure would be considerably smaller if based on Mexican wage scales than if based on U.S. wage scales. *Id.* at 1148. The court reversed a $99,000 judgment for the plaintiff and remanded to the trial court for a hearing to determine the plaintiff's "status in this country . . . as a preliminary question of law." *Id.* at 1149.[9] The court explained that at this hearing:

> [T]he defendant will have the initial burden of producing proof that the plaintiff is an alien who is subject to deportation. If this effort is successful, then the burden will shift to the plaintiff to demonstrate to the court's satisfaction that he has taken steps which will correct his deportable condition. A contrary rule, of course, would allow someone who is not lawfully available for future work in the United States to receive compensation to which he is not entitled. (See *Alonso v. State of California* (1975) 50 Cal. App. 3d 242.) [¶] If the court's decision following this hearing is in the plaintiff's favor, then all evidence relating to his alienage shall be computed upon the basis of his past and projected future income in the United States. Should the defendant prevail, then evidence of the plaintiff's future earnings must be limited to those he could anticipate receiving in his country of lawful citizenship.

Id.

It is uncontested that Garcia is an illegal alien. He presented no evidence in the trial court that "he has taken steps that will correct his deportable condition." *Id.* Accordingly, *Rodriguez* dictates that, as a matter of California law, Garcia's claim for future life care and medical expenses should have been computed on the basis of the cost of providing such care in Mexico. Although Garcia is seeking damages based on future medical expenses while the plaintiff in *Rodriguez* sought damages

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[9] By directing that the issue be decided by the trial judge alone, the appeals court hoped to avoid the prejudice that might arise against the plaintiff if the jury learned that he had entered the country in violation of U.S. law. *Id.* at 1148.

for lost future earnings, the distinction is immaterial. In each instance, the plaintiff sought damages based on a situation (employment in the U.S. in one instance, medical treatment in the U.S. in the other instance) to which "he [wa]s not entitled." *Id.*

Garcia does not dispute that *Rodriguez* continues to be good law in California. Respondent Br. 57. Rather, he contends that *Rodriguez* is applicable only to cases involving claims for future lost wages (a claim which he waived at trial), not to future medical claims. He contends that *Rodriguez* was premised on a supposed explicit prohibition against an illegal alien working in the United States, and notes, "There is no law prohibiting an undocumented alien from receiving medical care in the United States." *Id*. at 56.

Garcia's effort to distinguish *Rodriguez* is unavailing. While federal immigration law prohibits aliens from entering the United States illegally and declares aliens who have entered illegally to be subject to immediate deportation, 8 U.S.C. §§ 1185(a)(1) & 1227(a)(1)(B), there is no law that explicitly prohibits such aliens from working while in this country illegally.[10] Thus, when *Rodriguez* stated that illegal aliens are not "entitled" to be paid for work in the United States,[11] the court could only have meant that it is not reasonable to assume that one unauthorized to enter and be present in the United States should or would (but for his injury) have found employment here and been paid for his work. That

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[10] Rather, the relevant law is directed at employers, who are prohibited from hiring "unauthorized aliens." 8 U.S.C. § 1324a(a).

[11] *See Rodriguez*, 186 Cal. App. 3d at 1149 ("A contrary rule, of course, would allow someone who is not lawfully available for future work in the United States to receive compensation to which he is not entitled.").

rationale is equally applicable to a claim for medical care: it is not reasonable to assume that one unauthorized to enter and be present in the United States should or would receive life care and medical treatment in the country for the rest of his life.

Garcia also points to several statutes adopted by the California legislature in response to *Hoffman*: Labor Code § 1171.5, Civil Code § 3339, and Government Code § 7285. Garcia contends that these statutes stand for the proposition that, unless prohibited from doing so by federal preemption, California law provides that "the undocumented employee will have all the rights of a citizen." Respondent Br. 39. No case has so held, and the statutes in question on their face are limited to the employment context. *See, e.g.,* Labor Code § 1171.5(a). While declaring that "a person's immigration status is irrelevant to the issue of liability" in a labor, employment, civil rights, or employee housing case, Labor Code § 1171.5(b), the statute makes no similar determination with respect to the issue of damages. Moreover, as noted above, *Farmers Bros.* has interpreted § 1171.5 as prohibiting both reinstatement and backpay as remedies in workers' compensation cases. *Farmers Bros.*, 133 Cal. App. 4th at 542.

Barring computation of Garcia's medical expenses based on U.S. costs is consistent with longstanding principles of California tort law. California has long limited damage awards for medical expenses to expenses *reasonably* incurred. *See, e.g., Harif v. Housing Authority of Yolo County* (1988) 200 Cal. App. 3d 635, 640 ("[A] person injured by another's tortious conduct is entitled to recover the reasonable value of medical care and services reasonably required and attributable to the tort.") (citing *Melone v. Sierra Railway Co.* (1907) 151 Cal. 113). There

is nothing "reasonable" about medical costs incurred solely because Garcia has remained in the United States (and intends to remain here indefinitely) in violation of federal immigration law.

Moreover, California tort law has long imposed on plaintiffs a duty to mitigate their damages. *See, e.g., State Dep't of Health Services v. Superior Court* (2003) 31 Cal. 4th 1026, 1043 ("Under the avoidable consequences doctrine as recognized in California, a person injured by another's wrongful conduct will not be compensated for damages that the injured person could have avoided by reasonable effort or expenditure."); *see also* Restatement (Second) of Torts, § 918(1). That duty to mitigate damages requires Garcia to comply with federal law and return to his native Mexico – a step that can be accomplished with "reasonable effort" and that would result in a substantial reduction in his medical costs.

In sum, even if federal law did not preempt the trial court judgment, California law requires reversal because it does not permit aliens to recover damages for the cost of receiving medical care in the United States when they are not authorized to be in this country.

CONCLUSION

The Washington Legal Foundation and the Allied Educational Foundation respectfully request that the Court reverse the judgment below, to the extent that it awarded $850,000 to Garcia based on the present cost of his future life care and medical expenses.

Respectfully submitted,

Of Counsel:

Daniel J. Popeo
Richard A. Samp
Washington Legal Foundation
2009 Massachusetts Avenue, NW
Washington, DC 20036
202-588-0302

Paul F. Utrecht
235 Montgomery Street
Suite 1130
San Francisco, CA 94104
415-956-8100

Counsel for *amici curiae*

Date: September 20, 2007

Counsel wish to thank Todd Wayne, a student at Texas Tech University School of Law, for his assistance in preparing this brief.

CERTIFICATE OF WORD COUNT

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Dated: September 20, 2007

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Richard A. Samp

PROOF OF SERVICE

WASHINGTON, DISTRICT OF COLUMBIA

I, RICHARD A. SAMP, declare:

That I am over the age of eighteen (18) years, and not a party to the within cause. My business address is 2009 Massachusetts Avenue, N.W., Washington, DC 20036.

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_____

Richard A. Samp

MAILING LIST

HORVITZ & LEVY, LLP
John A. Taylor
Jeremy B. Rosen
16760 Ventura Blvd., 18th Floor
Encino, CA 91436-3000

LYNBERG & WATKINS
Dana Alden Fox
888 South Figueroa St., 16th Floor
Los Angeles, CA 90017-5449

LAW OFFICES OF OLIVER U. ROBINSON
Oliver U. Robinson
3434 Truxton Avenue, Suite 150
Bakersfield, CA 93301

LAW OFFICES OF YOUNG & NICHOLS
Todd A. Gall
Thomas A. Brill
1901 Truxton Avenue, P.O. Box 2347
Bakersfield, CA 93303

Hon. James Quaschnick
Superior Court of California
County of Fresno
1100 Van Ness
Fresno, CA 93724-0002

Office of the Clerk (4 copies)
California Supreme Court
350 McAllister St., Room 1295
San Francisco, CA 94102-3600