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13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE DISTRICT OF NEBRASKA**
 15 **OMAHA DIVISION**

16 UNITED STATES OF AMERICA,
 Plaintiff,
 17 v.
 18 STATE OF NEBRASKA,
 19 Defendant.
 20

Civil No. 8:26-cv-172

COMPLAINT

21 Plaintiff, the United States of America, by and through its undersigned counsel, brings
 22 this civil action for declaratory and injunctive relief, and alleges as follows:

23 **INTRODUCTION**

24 Federal law prohibits illegal aliens in our Nation from receiving in-state tuition benefits that
 25 are denied to out-of-state United States citizens. *See* 8 U.S.C. § 1623(a). There are no exceptions.
 26 Yet Nebraska has ignored this Federal law for over two decades. Legislative Bill 239, codified at
 27 Neb. Rev. Stat. § 85-502, extends eligibility for in-state tuition benefits at Nebraska postsecondary
 28

1 education institutions to illegal aliens, while requiring payment of higher tuition rates for U.S.
2 citizens from other states. Three other Nebraska statutes, Neb. Rev. Stat. §§ 85-1907(3),
3 85-3202(6), and 85-2102(6), extend eligibility for scholarships and financial assistance to illegal
4 aliens on the basis of residence but similarly deny them to U.S. citizens from other states. And a
5 fourth statute, Neb. Rev. Stat. § 4-112, extends eligibility for illegal aliens to receive public benefits
6 by merely attesting that they are present in the United States legally prior to verification by the U.S.
7 Department of Homeland Security (“DHS”). These statutes engage in blatant unequal treatment
8 favoring illegal aliens over citizens from other states. Worse, such preferential treatment is squarely
9 prohibited and preempted by Congress. Federal law mandates that “an alien who is not lawfully
10 present in the United States *shall not be* eligible on the basis of residence within a State . . . for any
11 postsecondary education benefit unless a citizen or national of the United States is eligible for such
12 a benefit . . . without regard to whether the citizen or national is such a resident.” 8 U.S.C. § 1623(a)
13 (emphasis added). Accordingly, under the Supremacy Clause of our Nation’s Constitution, the
14 portions of Neb. Rev. Stat. §§ 85-502, 85-1907(3), 85-3202(6), and 85-2102(6), that extend
15 eligibility for in-state tuition benefits to illegal aliens are unconstitutional and must yield to Federal
16 law. This Court should declare those portions of all four Nebraska statutes preempted and
17 unconstitutional, and the Court should permanently enjoin the operation and enforcement of those
18 portions of all four statutes.

19 JURISDICTION AND VENUE

- 20 1. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.
- 21 2. Venue is proper in this jurisdiction under 28 U.S.C. § 1391(b) because a substantial
22 portion of the events giving rise to this Complaint arose from events occurring within this judicial
23 district.
- 24 3. The Court has the authority to provide the relief requested under the Supremacy
25 Clause, U.S. Const. art. VI, cl. 2; 28 U.S.C. §§ 1651, 2201, and 2202; and the Court’s inherent
26 equitable powers.

PARTIES

1
2 4. Plaintiff, the United States of America, regulates immigration under its inherent,
3 constitutional, and statutory authorities. Plaintiff enforces Federal immigration laws through its
4 Executive agencies, including the Department of Justice (“DOJ”), DHS, and DHS component
5 agencies, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Citizenship and Immigration
6 Services (“USCIS”), and U.S. Customs and Border Protection (“CBP”).

7 5. Defendant State of Nebraska is a state of the United States.

FEDERAL LAW

8
9 6. The Constitution empowers Congress to “establish an uniform Rule of
10 Naturalization,” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations,”
11 U.S. Const. art. I, § 8, cl. 3.

12 7. The Constitution also vests the President of the United States with “[t]he executive
13 Power,” U.S. Const. art. II, § 1, and authorizes the President to “take Care that the Laws be faithfully
14 executed,” U.S. Const. art. II, § 3, which necessarily includes his duty to take care over immigration
15 matters.

16 8. The United States has inherent, well-established, preeminent, and preemptive
17 authority to regulate immigration matters. This authority derives from its inherent obligations as a
18 sovereign, the Constitution, and numerous acts of Congress. *See, e.g., Fong Yue Ting v. United*
19 *States*, 149 U.S. 698, 711 (1893) (“The right to exclude or to expel all aliens, or any class of aliens,
20 absolutely or upon certain conditions, in war or in peace, [is] an inherent and inalienable right of
21 every sovereign and independent nation, essential to its safety, its independence, and its
22 welfare”); *Ping v. United States*, 130 U.S. 581, 603–04 (1889) (“Jurisdiction over its own
23 territory to that extent is an incident of every independent nation. It is a part of its independence. If
24 it could not exclude aliens it would be to that extent subject to the control of another power.”);
25 *Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“The exclusion of aliens is a fundamental act of
26 sovereignty. The right to do so stems not alone from legislative power but is inherent in the
27 executive power to control the foreign affairs of the nation. When Congress prescribes a procedure
28

1 concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is
2 implementing an inherent executive power.”).

3 9. Based on its enumerated constitutional and sovereign powers to control and conduct
4 relations with foreign nations, the Federal Government has broad authority to establish immigration
5 laws. *See Fiallo v. Bell*, 430 U.S. 787, 798 (1977) (explaining that matters of immigration concern
6 “policy questions entrusted exclusively to the political branches of our Government,” leaving “no
7 judicial authority” for courts “to substitute [their] political judgment for that of the Congress”).

8 10. On February 19, 2025, President Trump issued Executive Order 14218, *Ending*
9 *Taxpayer Subsidization of Open Borders*,¹ ordering Federal Departments and Agencies to “ensure,
10 to the maximum extent permitted by law, that no taxpayer-funded benefits go to unqualified aliens.”
11 *Id.* at § 2(a).

12 11. On April 28, 2025, President Trump issued Executive Order 14287, *Protecting*
13 *American Communities From Criminal Aliens*,² directing relevant officials to ensure the “[e]qual
14 [t]reatment of Americans” and to “take appropriate action to stop the enforcement of State and local
15 laws, regulations, policies, and practices favoring aliens over any groups of American citizens that
16 are unlawful, preempted by Federal law, or otherwise unenforceable, including State laws that
17 provide in-State higher education tuition to aliens but not to out-of-State American citizens.” *Id.* at
18 § 5.

19 12. These Orders emphasize that Federal and state governments must not confer greater
20 benefits to illegal aliens present in our Nation than to American citizens. They also reflect
21 Congress’s end—expressed in multiple provisions of the Immigration and Nationality Act
22 (“INA”)—to reduce incentives for illegal immigration by limiting access to certain public benefits
23 intended for American citizens.

25 ¹ Executive Order, *Ending Taxpayer Subsidization of Open Borders*, 90 Fed. Reg. 10581 (Feb. 19,
26 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/ending-taxpayer-subsidization-of-open-borders/>

27 ² Executive Order, *Protecting American Communities From Criminal Aliens*, 90 Fed. Reg. 18761
28 (Apr. 28, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-communities-from-criminal-aliens/>

1 13. Specifically, in 1996, Congress passed the Personal Responsibility and Work
2 Opportunity Reconciliation Act (“PRWORA”) and the Illegal Immigration Reform and Immigrant
3 Responsibility Act (“IIRIRA”). *See* PRWORA, Pub. L. No. 104-193, 110 Stat. 2268 (1996);
4 IIRIRA, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996). Those Acts sought to encourage
5 self-sufficiency among immigrants, limit their dependence on public assistance, and prevent public
6 benefits from serving as an incentive for illegal immigration. *See id.*; *see also* 8 U.S.C. § 1601(1)
7 (“Self-sufficiency has been a basic principle of United States immigration law since this country’s
8 earliest immigration statutes.”).

9 14. Congress declared that “aliens within the Nation’s borders [should] not depend on
10 public resources to meet their needs, but rather rely on their own capabilities and the resources of
11 their families, their sponsors, and private organizations.” *Id.* § 1601(2)(A).

12 15. Congress also emphasized that “the availability of public benefits [should] not
13 constitute an incentive for immigration to the United States.” *Id.* § 1601(2)(B).

14 16. Moreover, Congress determined that “[i]t is a compelling government interest to
15 enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-
16 reliant in accordance with national immigration policy” and “to remove the incentive for illegal
17 immigration provided by the availability of public benefits.” 8 U.S.C. §§ 1601(5), (6).

18 17. As relevant here, PRWORA states: “A State may provide that an alien who is not
19 lawfully present in the United States is eligible for any State or local public benefit for which such
20 alien would otherwise be ineligible . . . only through the enactment of a State law after August 22,
21 1996, which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d).

22 18. But even in such cases, a state may not offer in-state tuition (or “resident tuition”)
23 benefits to illegal aliens present in the United States based on their residence in the state, if those
24 same benefits are denied to American citizens from other states. *See* 8 U.S.C. § 1623(a). IIRIRA
25 included a clear “[l]imitation on eligibility for preferential treatment of aliens not lawfully present
26 on basis of residence for higher education benefits.” *Id.*

1 19. Section 1623(a) provides that:

2 Notwithstanding any other provision of law, an alien who is not
3 lawfully present in the United States shall not be eligible on the basis
4 of residence within a State (or a political subdivision) for any
5 postsecondary education benefit unless a citizen or national of the
6 United States is eligible for such a benefit (in no less an amount,
duration, and scope) without regard to whether the citizen or
national is such a resident.

7 *Id.*

8 20. Accordingly, under 8 U.S.C. § 1623(a), illegal aliens present in the United States
9 are not eligible for postsecondary education benefits based on state residency unless those same
10 benefits are also offered to all American citizens, regardless of their state of residence.

11 THE NEBRASKA LAWS

12 I. Resident Tuition (Neb. Rev. Stat. § 85-502)

13 21. In direct conflict with Federal law, Nebraska law rewards an illegal alien present in
14 our Nation with eligibility for in-state tuition based on residence within that state, while explicitly
15 denying eligibility for resident tuition rates to United States citizens who are not Nebraska
16 residents. *See* Neb. Rev. Stat. § 85-502.

17 22. Since 2006, Section 85-502 has rewarded illegal aliens who violate Federal law with
18 eligibility for in-state tuition in Nebraska while denying that same benefit to United States citizens
19 who are not residents of Nebraska.

20 23. Section 85-502 unequivocally enables illegal aliens living in Nebraska to receive
21 eligibility for resident tuition in Nebraska. Under Section 85-502, a person is deemed a resident of
22 Nebraska if he or she “has established a home in Nebraska where he or she is habitually present for
23 a minimum period of one hundred eighty days, with the bona fide intention of making this state his
24 or her permanent residence, supported by documentary proof.” Neb. Rev. Stat. § 85-502(1).

25 24. Residency is extended to any person if their parent or guardian has “established a
26 home in Nebraska where such parents, parent, or guardian are or is habitually present with the bona
27 fide intention to make [Nebraska] their, his, or her permanent residence, supported by documentary
28 proof.” Neb. Rev. Stat. § 85-502(2).

1 25. Residency is also extended to any person who marries a Nebraska resident, Neb.
2 Rev. Stat. § 85-502(4), to staff members or a dependent of a staff member of a Nebraska public
3 college or university, Neb. Rev. Stat. § 85-502(6), and to students serving in the Nebraska National
4 Guard, Neb. Rev. Stat. § 85-502(8).

5 26. Section 85-502 explicitly extends Nebraska residency to an illegal alien if he or she
6 has merely lived in Nebraska for at least 180 days, is habitually present with the bona fide intention
7 to make Nebraska their permanent residence, supported by documentary proof, and “has applied to
8 or has a petition pending” with federal immigration agencies “to attain lawful status under federal
9 immigration law.” Neb. Rev. Stat. § 85-502(5).

10 27. Specifically, Section 85-502(9)(a) allows for aliens to meet the residency
11 requirements if the student resided with his parent, guardian, or conservator while attending a high
12 school in the state, or a school in the state which elected to not meet accreditation requirements,
13 and they: graduated from high school or obtained a GED in Nebraska; resided in Nebraska for at
14 least three years before the date of his or her high school graduation; have registered as an entering
15 student at a postsecondary educational institution no earlier than the fall 2006 semester; and submit
16 an affidavit stating he or she will apply to become a permanent resident at his earliest opportunity.
17 Neb. Rev. Stat. § 85-502(9)(a).

18 28. Put differently, an illegal alien receives in-state tuition in Nebraska so long as he
19 resided with a parent, guardian, or conservator while attending a high school in the state, and 1) is
20 registered to attend a Nebraska postsecondary educational institution; 2) resided in Nebraska for at
21 least three years before the date the student graduated from high school; 3) graduated from a
22 Nebraska high school or received a GED; and 4) filed an affidavit affirming his intent to apply to
23 become a permanent resident once eligible to do so.

24 29. Accordingly, under Nebraska law, the tuition rate for illegal aliens in Nebraska who
25 satisfy Section 85-502’s criteria is the same tuition rate as other Nebraska residents. However, a
26 United States citizen that is not eligible for in-state tuition under Section 85-502, due to residency
27 requirements, is required to pay higher, nonresident tuition.
28

1 30. Put simply, Section 85-502's requirements confer preferential treatment to illegal
2 aliens within our Nation over American citizens on the basis of residence. That clearly contravenes
3 Congress's command in § 1623(a).

4 31. In direct conflict with Federal law, Nebraska law also rewards an illegal alien
5 present in our Nation with eligibility for state-funded scholarships and financial assistance based
6 on residence within Nebraska while explicitly denying eligibility for the same state-funded
7 scholarships to United States citizens who are not Nebraska residents.

8 **II. Coordinating Commission for Postsecondary Education**

9 32. The Nebraska Coordinating Commission for Postsecondary Education ("CCPE")
10 administers, coordinates, and oversees post-secondary education in Nebraska. Neb. Rev. Stat.
11 §§ 85-1401 to 85-1420.

12 33. Among its other responsibilities, the CCPE helps "administer loans, grants, and
13 programs from the federal or state government and from other sources, public and private, for
14 carrying out any of its functions, including the administration of privately endowed scholarship
15 programs." Neb. Rev. Stat. § 1412(8).

16 34. The CCPE administers numerous public scholarships and financial assistance
17 programs, Neb. Rev. Stat. § 85-1412(7), including three discussed here.

18 **III. Nebraska Scholarships and Financial Assistance Available to Illegal Aliens**

19 35. The Nebraska Opportunity Grant Act ("NOG Act"), established by Neb. Rev. Stat.
20 §§ 85-1901-1920, rewards illegal aliens who violate Federal law with eligibility for financial
21 assistance based on financial need while denying that same benefit to United States citizens who
22 are not residents of Nebraska.

23 36. The NOG Act provides for financial assistance to postsecondary educational
24 institutions who then issue such awards to an "eligible student" who is, among other criteria,
25 defined as "a resident student who is domiciled in Nebraska as provided by section 85-502." Neb.
26 Rev. Stat. § 85-1907(3).

27
28

1 37. Section 85-1907(3) and Section 85-502 thus make illegal aliens residing in Nebraska
2 eligible for the NOG Act so long as they satisfy Nebraska residency requirements, among other
3 criteria, while a U.S. citizen residing outside of Nebraska is not eligible.

4 38. The Access College Early Scholarship Program Act (“ACESPA”), established by
5 Neb. Rev. Stat. §§ 85-2101 to 2108, rewards illegal aliens who violate Federal law with eligibility
6 for scholarships, based on financial need, and disbursed to their post-secondary educational
7 institution, while denying that same benefit to United States citizens who are not residents of
8 Nebraska.

9 39. The ACESPA provides for scholarships to any individual who is, among other
10 criteria, “a student attending a Nebraska high school with a reasonable expectation that such student
11 will meet the residency requirements of Section 85-502 upon graduation from a Nebraska high
12 school.” Neb. Rev. Stat. § 85-2102(6).

13 40. Section 85-2102(6) and Section 85-502 thus make illegal aliens residing in Nebraska
14 eligible for the ACESPA so long as they satisfy Nebraska residency requirements, among other
15 criteria, while a U.S. citizen residing outside of Nebraska is not.

16 41. The Door to College Scholarship Act (“DTC Act”), established by Neb. Rev. Stat.
17 §§ 85-3201-3211, rewards illegal aliens who violate Federal law with eligibility for financial
18 assistance while denying that same benefit to United States citizens who are not residents of
19 Nebraska.

20 42. The DTC Act provides financial assistance to any individual who is, among other
21 criteria, “a resident student who is domiciled in Nebraska as provided by section 85-502.” Neb.
22 Rev. Stat. § 85-3202(6)(d).

23 43. The DTC Act also provides for financial assistance to any individual who, among
24 other criteria, “Graduated from high school from an accredited education program at a youth
25 rehabilitation and treatment center operated and utilized in compliance with state law, or graduated
26 from an approved or accredited public, private, denominational, or parochial school or received a
27 diploma of high school equivalency issued by the Commissioner of Education after being
28 discharged from a youth rehabilitation and treatment center operated and utilized in compliance

1 with state law.” Neb. Rev. Stat. § 85-3202(6)(a). Since Nebraska makes high school attendance
2 compulsory, *see* Neb. Rev. Stat. § 79-201, and conditions the availability of free public high school
3 education on residence, *see* Neb. Rev. Stat. § 79-215, the requirement of Neb. Rev. Stat. § 85-
4 3202(6)(a) amounts to a residency requirement by proxy.

5 44. Section 85-3202(6) of the DTC Act and Section 85-502, thus make illegal aliens
6 residing in Nebraska eligible for the DTC Act so long as they satisfy Nebraska residency
7 requirements, among other criteria, while a U.S. citizen residing outside of Nebraska is not.

8 **IV. Limitations on Eligibility for Public Benefits (Neb. Rev. Stat. §§ 4-108 to 4-112)**

9 45. Although a Nebraska statute provides that only individuals lawfully present in the
10 United States may receive public benefits, Neb. Rev. Stat. § 4-108(1), this statute does not preclude
11 the state from providing the NOG Act, DTC Act, ACESPA, and other publicly funded scholarships
12 or financial assistance to illegal aliens.

13 46. Nebraska defines public benefit in part as any “postsecondary education benefit
14 involving direct payment of financial assistance.” Neb. Rev. Stat. § 4-109.

15 47. The ACESPA scholarship does not constitute public benefits as defined by Neb.
16 Rev. Stat. § 4-109 because it does not involve “direct payment” to the student.

17 48. Therefore, the limitation in Neb. Rev. Stat. § 4-109 that prohibits illegal aliens from
18 receiving public benefits does not apply to the ACESPA scholarship.

19 49. Additionally, even if the CCPE interprets the ACESPA as “public benefits” under
20 Neb. Rev. Stat. § 4-109 and restricts eligibility to those scholarships on that basis, illegal aliens
21 would still be eligible for the scholarships by making the attestation of lawful status contemplated
22 by Neb. Rev. Stat. § 4-111(1). *See infra* ¶¶ 53-56.

23 50. The NOG Act and the DTC Act, regardless of their classification under Nebraska
24 law, make illegal aliens eligible to receive them.

25 51. Nebraska permits individuals to obtain public benefits relating to postsecondary
26 education merely by submitting an attestation that the individual is a United States citizen or is
27 lawfully present in the United States. Neb. Rev. Stat. § 4-111(1).
28

1 52. And while a Nebraska statute purports to require the verification of the applicant’s
2 attestation of lawful presence by DHS, “[u]ntil such verification of eligibility is made, such
3 attestation may be presumed to be proof of lawful presence for purposes of [eligibility for state
4 public benefits] unless such verification is required before providing the public benefit under
5 another provision of state or federal law.” Neb. Rev. Stat. § 4-112.

6 53. No provision of Nebraska law requires verification of lawful presence, beyond an
7 unverified attestation on behalf of the applicant, prior to eligibility for and distribution of
8 postsecondary education benefits. In other words, the NOG Act and the DTC Act can be provided
9 to an illegal alien who simply says that he is lawfully present even if that is not true.

10 54. Nor does any provision of Nebraska law require verification of the applicant’s
11 attestation of lawful presence with DHS within a certain period before or after the distribution of
12 postsecondary education benefits based solely on the applicant’s attestation of lawful presence. The
13 result is that the illegal alien could receive the NOG Act and the DTC Act for any period of time
14 while the verification of his status is pending.

15 55. Nebraska law thus provides eligibility for the distribution of postsecondary
16 educational benefits like the NOG Act and the DTC Act to individuals based solely on their own
17 attestation that they are U.S. citizens or lawfully present, without verification by DHS of their
18 immigration status prior to—or at any time after—the distribution of those benefits.

19 **THE NEBRASKA LAWS ARE PREEMPTED**

20 56. The Constitution’s Supremacy Clause mandates that “[t]his Constitution, and the
21 Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law
22 of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”
23 U.S. Const. art. VI, cl. 2.

24 57. Express preemption occurs when Congress, through statutory language, explicitly
25 supersedes all state enactments in a particular area. *Pac. Gas & Elec. Co. v. State Energy Res.*
26 *Conserv. & Dev. Comm’n*, 461 U.S. 190, 203–04 (1983).

27 58. Federal statutes may preempt state laws and render them ineffective. They may do
28 this expressly, by declaring that intent on the face of the statute. *Arizona v. United States*, 567 U.S.

1 387, 399 (2012) (“There is no doubt that Congress may withdraw specified powers from the States
2 by enacting a statute containing an express preemption provision.”).

3 59. “[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived,
4 “any state law, however clearly within a State’s acknowledged power, which interferes with or is
5 contrary to federal law, must yield.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108
6 (1992) (quotations omitted); *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) (explaining that
7 under the Supremacy Clause, state laws that conflict with Federal law are “without effect”);
8 *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (same).

9 60. When the Federal statute contains an express preemption clause, the court does not
10 indulge “any presumption against pre-emption but instead ‘focus[es] on the plain wording of the
11 clause, which necessarily contains the best evidence of Congress’ pre-emptive intent.” *Puerto Rico*
12 *v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (citation omitted).

13 61. Here, § 1623(a) contains an express preemption clause as it directs that
14 “[n]otwithstanding any other provision of law,” an illegal alien “shall not be eligible on the basis
15 of residence within a State . . . for any postsecondary education benefit unless a citizen or national
16 of the United States is eligible for such a benefit . . . without regard to whether the citizen or national
17 is such a resident.” 8 U.S.C. § 1623(a).

18 62. As indicated by its title—“Limitation on eligibility for preferential treatment of
19 aliens not lawfully present on basis of residence for higher education benefits”—§ 1623(a)
20 mandates that all United States citizens must be eligible for a benefit regardless of residency before
21 any illegal alien can receive that benefit based on residency.

22 63. At least three courts have found that § 1623(a) “expressly preempts state rules that
23 grant illegal aliens benefits when U.S. citizens haven’t received the same.” *Young Conservatives*
24 *of Tex. Found. v. Smatresk*, 73 F.4th 304, 313 (5th Cir. 2023); *see also Equal Access Educ. v.*
25 *Merten*, 305 F. Supp. 2d 585, 606 (E.D. Va. 2004) (stating that under § 1623(a) “public post-
26 secondary institutions need not admit illegal aliens at all, but if they do, these aliens cannot receive
27 in-state tuition unless out-of-state United States citizens receive this benefit”); *Foss v. Ariz. Bd. of*
28 *Regents*, No. 1 CA-CV 18-0781, 2019 WL 5801690, at *3 (Ariz. Ct. App. Nov. 7, 2019) (“Section

1 1623 is directed at institutional practices, curtailing the authority of educational institutions to grant
2 in-state tuition benefits to undocumented aliens. . . .”).

3 64. Moreover, the United States District Court for the Northern District of Texas
4 recently held that § 1623(a) expressly preempted Texas Education Code §§ 54.051(m) and
5 54.052(a), which permitted illegal aliens to qualify for in-state tuition, even though out-of-state
6 American citizens were not afforded the same benefit. *See United States v. Texas*, 350 F.R.D. 74,
7 79–81 (N.D. Tex. 2025); *see also United States v. Texas*, No. 7:25-CV-00055, 2025 WL 1583869,
8 at *1 (N.D. Tex. June 4, 2025) (permanently enjoining Texas defendants from enforcing Texas
9 Education Code §§ 54.051(m) and 54.052(a) because the challenged provisions violated the
10 Supremacy Clause). In so doing, the court found that § 1623(a) “expressly preempts state rules
11 that grant illegal aliens benefits when U.S. citizens haven’t received the same. No matter what a
12 state says, if a state did not make U.S. citizens eligible, illegal aliens cannot be eligible.” *Texas*,
13 350 F.R.D. at 79 (citation and internal citations omitted).

14 65. Similarly, the United States District Court for the Eastern District of Oklahoma
15 found that analogous Oklahoma in-state tuition provisions “as applied to aliens who are not lawfully
16 present in the United States, violates the Supremacy Clause and are unconstitutional and invalid.”
17 *See Order and Final Consent Judgment at 1, United States v. Oklahoma*, No. 6:25-cv-00265-RAW-
18 DES (E.D. Okla. Aug. 29, 2025); *see also Rpt & Rec. at 1, United States v. Oklahoma*, No. 6:25-
19 cv-00265-RAW-DES, slip op. at 1 (E.D. Okla. Aug. 7, 2025) (holding that 8 U.S.C. § 1623(a)
20 expressly preempts Oklahoma laws providing that individuals “who are not lawfully present in the
21 United States may qualify for in-state tuition or nonresident tuition waivers if they meet certain
22 residency and high school graduation criteria”).

23 66. The United States District Court for the Eastern District of Kentucky recently
24 entered a consent judgement between Plaintiff United States of America and Defendant Kentucky
25 Council on Postsecondary Education, *et al.* permanently enjoining the Kentucky Council on
26 Postsecondary Education from enforcing Kentucky regulation 13 KAR 2:045, Section 8(4)(a) (eff.
27 6-22-2022), the Tuition Assessment Regulation. *See Opinion & Order, United States v. Kentucky*
28 *Council on Postsecondary Education, et al.*, No. 3:25-cv-00028-GFVT (E.D. Ky. Mar. 31, 2026).

1 The Kentucky regulation allowed illegal aliens who graduated from a Kentucky high school, among
2 other criteria, to be considered Kentucky residents for purposes of in-state tuition. The court found
3 that the Kentucky regulation violated federal law, 8 U.S.C. § 1621(d), because it was promulgated
4 and enforced by the Kentucky Council on Postsecondary Education and therefore was not a valid
5 *State* law, which Section 1621(d) requires, but a regulation instead. *See id.* at 21. The court noted
6 its subject matter jurisdiction per 28 U.S.C. §§ 1331, 1345 (*see id.* at 6, 7) and found that although
7 both parties agreed on the merits of the consent judgement, a “justiciable controversy remains
8 present,” as the Kentucky Council on Postsecondary Education continued to enforce the regulation.
9 *Id.* at 8. The court determined that it had jurisdiction and adopted the consent decree “[h]aving
10 determined that the proposed consent decree is necessary to remedy a violation of federal law, the
11 Court must approve it.” *Id.* at 21.

12 67. Here, Neb. Rev. Stat. § 85-502 conflicts with 8 U.S.C. § 1623(a) because the
13 Nebraska statute confers eligibility for in-state tuition benefits to illegally present aliens that are
14 not available to American citizens on the same terms, regardless of residency.

15 68. As a result, § 1623(a) expressly preempts Neb. Rev. Stat. § 85-502, § 85-1907(3),
16 § 85-3202(6), and § 85-2102(6), because portions of those Nebraska statutes bestow eligibility for
17 postsecondary education benefits on illegal aliens that United States citizens who reside elsewhere
18 are not eligible for. Those portions of Sections 85-502, 85-1907(3), 85-3202(6), and 85-2102(6)
19 are, therefore, unconstitutional.

20 CLAIMS FOR RELIEF

21 COUNT I 22 VIOLATION OF THE SUPREMACY CLAUSE 23 (PREEMPTION OF NEB. REV. STAT. § 85-502)

24 69. Plaintiff hereby incorporates the preceding paragraphs of the Complaint as if fully
25 stated herein.

26 70. Section 85-502, to the extent it extends eligibility for in-state tuition benefits to
27 illegal aliens, violates Federal immigration law. It directly conflicts with Congress’s prohibition
28 on providing eligibility for postsecondary education benefits (lower, resident tuition rates) based

1 on residency to illegal aliens present in the United States that are not available to all United States
2 citizens regardless of residency. *See* 8 U.S.C. § 1623(a).

3 71. Accordingly, the Court should find the challenged provision, Neb. Rev. Stat.
4 § 85-502, unconstitutional.

5
6 **COUNT II**
7 **VIOLATION OF THE SUPREMACY CLAUSE**
8 **(PREEMPTION OF NEB. REV. STAT. § 85-1907(3))**

9 72. Plaintiff hereby incorporates the preceding paragraphs of the Complaint as if fully
10 stated herein.

11 73. Section 85-1907(3), to the extent it extends eligibility for in-state tuition benefits to
12 illegal aliens, violates Federal immigration law. It directly conflicts with Congress's prohibition
13 on providing eligibility for postsecondary education benefits (NOG Act) based on residency to
14 illegal aliens present in the United States that are not available to all United States citizens
15 regardless of residency. *See* 8 U.S.C. § 1623(a).

16 74. Accordingly, the Court should find the challenged provision, Neb. Rev. Stat.
17 § 85-1907(3), unconstitutional.

18 **COUNT III**
19 **VIOLATION OF THE SUPREMACY CLAUSE**
20 **(PREEMPTION OF NEB. REV. STAT. § 85-3202(6))**

21 75. Plaintiff hereby incorporates the preceding paragraphs of the Complaint as if fully
22 stated herein.

23 76. Section 85-3202(6), to the extent it extends eligibility for in-state tuition benefits to
24 illegal aliens, violates Federal immigration law. It directly conflicts with Congress's prohibition
25 on providing eligibility for postsecondary education benefits (DTC Act) based on residency to
26 illegal aliens present in the United States that are not available to all United States citizens
27 regardless of residency. *See* 8 U.S.C. § 1623(a).

28 77. Accordingly, the Court should find the challenged provision, Neb. Rev. Stat. § 85-
3202(6), unconstitutional.

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COUNT IV
VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION OF NEB. REV. STAT. § 85-2102(6))

78. Plaintiff hereby incorporates the preceding paragraphs of the Complaint as if fully stated herein.

79. Section 85-2102(6), to the extent it extends eligibility for in-state tuition benefits to illegal aliens, violates Federal immigration law. It directly conflicts with Congress's prohibition on providing eligibility for postsecondary education benefits (ACESPA) based on residency to illegal aliens present in the United States that are not available to all United States citizens regardless of residency. *See* 8 U.S.C. § 1623(a).

80. Accordingly, the Court should find the challenged provision, Neb. Rev. Stat. § 85-2102(6), unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests the following relief:

1. That this Court enter a judgment declaring the portions of Neb. Rev. Stat. §§ 85-502, 85-1907(3), 85-3202(6), and 85-2102(6), to the extent they extend eligibility for in-state tuition benefits to illegal aliens, violate the Supremacy Clause and are therefore unconstitutional and invalid;

2. That this Court issue a permanent injunction that prohibits Defendant as well as their successors, agents, and employees, from enforcing the portions of Neb. Rev. Stat. §§ 85-502, 85-1907(3), 85-3202(6), and 85-2102(6), to the extent they extend eligibility for in-state tuition benefits to illegal aliens;

3. That this Court award the United States its costs and fees in this action; and

4. That this Court award any other relief it deems just and proper.

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