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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NEW JERSEY; HIGHER
EDUCATION STUDENT ASSISTANCE
AUTHORITY; MARGO CHALY, Acting
Secretary of Higher Education, in her
official capacity; THE BOARD OF
DIRECTORS OF THE NEW JERSEY
EDUCATIONAL OPPORTUNITY
FUND; THE NEW JERSEY
COMMISSION ON HIGHER
EDUCATION,

Defendants.

Civil No. 26-cv-4862

COMPLAINT

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

INTRODUCTION

Congress made a legislative judgment that illegal aliens in our Nation cannot receive resident tuition benefits that are denied to U.S. citizens residing in other states. *See* 8 U.S.C.

§ 1623(a). There are no exceptions. Yet New Jersey has ignored this legislative command for over a decade. In 2013, New Jersey passed Senate Bill 2479, codified at N.J. Stat. Ann. § 18A:62-4.4, which extends eligibility for in-state tuition benefits at New Jersey postsecondary education institutions to illegal aliens, while requiring payment of higher tuition rates for U.S. citizens from other states. Three other New Jersey laws and regulations, N.J. Stat. Ann. § 18A:71B-2.1, N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b), extend eligibility for in-state tuition, grants, scholarships, and financial assistance to illegal aliens on the basis of residence but similarly deny them to U.S. citizens from other states. These statutes blatantly discriminate in favor of illegal aliens over U.S. citizens from other states. Worse, such preferential treatment is squarely prohibited and preempted by Congress. Federal law mandates that “an alien who is not lawfully present in the United States *shall not be* eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit . . . without regard to whether the citizen or national is such a resident.” 8 U.S.C. § 1623(a) (emphasis added). Accordingly, under the Supremacy Clause of our Nation’s Constitution, N.J. Stat. Ann. §§ 18A:62-4.4 and 18A:71B-2.1, and N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b), extend eligibility for postsecondary education benefits to illegal aliens, are unconstitutional, and must yield to Federal law.

The New Jersey regulations are preempted on an independent basis since federal law requires that illegal aliens can “only” be made eligible for “State or local public benefits” “through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d). New Jersey regulations are not laws. They are mere rules promulgated pursuant to New Jersey’s Administrative Procedure Act, so N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b) are preempted under 8 U.S.C. § 1621(d).

This Court should declare all four New Jersey laws and regulations challenged herein preempted and unconstitutional, and the Court should permanently enjoin the operation and enforcement of New Jersey’s laws and regulations treating illegal aliens in our Nation more favorably than United States citizens.

JURISDICTION AND VENUE

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

PARTIES

4. Plaintiff, the United States of America, regulates immigration under its inherent, constitutional, and statutory authorities. Plaintiff enforces Federal immigration laws through its Executive agencies, including the Department of Justice, Department of Homeland Security ("DHS"), and DHS component agencies, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, and U.S. Customs and Border Protection.
5. Defendant the State of New Jersey is a state of the United States.
6. Defendant the Higher Education Student Assistance Authority ("HESAA") is an executive branch agency of the State of New Jersey that administers programs dealing with access to postsecondary education including by loans, grants, and scholarships. *See* N.J. Stat. Ann. § 18A:71A-1, *et seq.*
7. Defendant Margo Chaly is the Acting Secretary of Higher Education (the "Secretary") and the Executive Director of the New Jersey Commission on Higher Education and is sued in her official capacity. *See* N.J. Stat. Ann. § 18A:3B-1, *et seq.*
8. Defendant the Board of Directors of the New Jersey Educational Opportunity Fund (the "Board") administers the business and operations of the New Jersey Educational Opportunity Fund. *See* N.J. Stat. Ann. § 18A:71-28, *et seq.*
9. Defendant the New Jersey Commission on Higher Education (the "Commission") is an executive branch agency of the State of New Jersey that provides general supervision of the Board. *See* N.J. Stat. Ann. § 18A:3B-13.

FEDERAL LAW

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

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

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

13. Based on its enumerated constitutional and sovereign powers to control and conduct relations with foreign nations, the Federal Government has broad authority to establish immigration laws. *See Fiallo v. Bell*, 430 U.S. 787, 798 (1977) (explaining that matters of immigration concern “policy questions entrusted exclusively to the political branches of our Government,” leaving “no judicial authority” for courts “to substitute [their] political judgment for that of the Congress”); *Qatanani v. Att’y Gen.*, 144 F.4th 485, 507–08 (3d Cir. 2025) (Matey,

J., dissenting) (explaining that our Nation followed the English tradition of “vesting immigration choices in the political branches”).

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

15. Congress declared that “aliens within the Nation’s borders [should] not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.” *Id.* § 1601(2)(A). This congressional judgment is fundamentally rooted in our Nation’s longstanding commitment that “[t]he bosom of America is open to receive” those aliens whose “decency & propriety of conduct . . . appear to merit the enjoyment,” Letter from George Washington to Joshua Holmes (Dec. 2, 1783), not those who detract from the flourishing our of society.

16. Congress also emphasized that “the availability of public benefits [should] not constitute an incentive for immigration to the United States.” 8 U.S.C. § 1601(2)(B).

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

18. As relevant here, PRWORA states: “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 . . . only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d).

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

20. Section 1623(a) provides that:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the 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.

Id.

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

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

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

¹ Executive Order, *Ending Taxpayer Subsidization of Open Borders*, 90 Fed. Reg. 10581 (Feb. 19, 2025), available at <https://perma.cc/2WAL-GUAR>.

² Executive Order, *Protecting American Communities From Criminal Aliens*, 90 Fed. Reg. 18761 (Apr. 28, 2025), available at <https://perma.cc/7RXB-JSLD>.

24. These Orders emphasize the commonsense principle that our Nation’s governing bodies must not confer greater benefits to illegal aliens present in our Nation than to American citizens. They also reflect Congress’s end—expressed in multiple provisions of the Immigration and Nationality Act—to reduce incentives for illegal immigration by limiting access to certain public benefits intended for American citizens.

THE NEW JERSEY LAWS AND REGULATIONS

I. New Jersey Makes Illegal Aliens Eligible for Resident Tuition

25. In direct conflict with Federal law, New Jersey law rewards an illegal alien present in our Nation with eligibility for in-state tuition based on residence within that state, while explicitly denying eligibility for resident tuition rates to U.S. citizens who are not New Jersey residents. *See* N.J. Stat. Ann. § 18A:62-4.4 (“Section 62-4.4”); *see also* N.J. P.L.2013, Ch. 170.

26. New Jersey, like most states, charges two separate tuition rates at New Jersey public institutions of higher education: resident and nonresident tuition.³ N.J. Stat. Ann. § 18A:62-4.5.

27. The governing boards of each public institution of higher education in New Jersey have the authority under New Jersey law to, *inter alia*, “set tuition and fees.” N.J. Stat. Ann. § 18A:3B-6.

28. For example, Rutgers University (New Brunswick campus) charges New Jersey residents \$14,933 for one academic year of tuition, but charges non-New Jersey residents \$35,758.⁴

29. Similarly, Montclair State University charges New Jersey residents \$15,678 for one year of tuition while charging out-of-state students \$26,394.⁵

³ “Public institutions of higher education” is a defined term in New Jersey law. *See* N.J. Stat. Ann. § 18A:62:1 (“The public institutions of higher education are the six state colleges; the county colleges; the public junior colleges; the New Jersey college of medicine and dentistry; the college of aeronautical and aerospace science established in Atlantic County pursuant to chapter 285 of the laws of 1964; the industrial schools; Newark college of engineering; Rutgers, the state university; and any other public universities, colleges, county colleges and junior colleges now or hereafter established or authorized by law.”).

⁴ *2025-2026 Tuition and Fees*, RUTGERS (last visited Apr. 30, 2026) <https://perma.cc/C7AW-VCH9>.

⁵ *Undergraduate Cost of Attendance*, MONTCLAIR STATE UNIVERSITY (last visited Apr. 30, 2026) <https://perma.cc/UGL5-WQLJ>.

30. The same structure—substantially less-expensive in-state tuition for New Jersey residents and much higher out-of-state costs for non-New Jersey residents—holds across other New Jersey public institutions of higher education,⁶ including at state community colleges.⁷

31. Since 2013, Section 62-4.4 has rewarded illegal aliens who violate Federal law by being in our Nation illegally with eligibility for these in-state tuition benefits in New Jersey. Yet New Jersey denies that same benefit to U.S. citizens who are not residents of New Jersey.

32. Section 62-4.4 unequivocally makes illegal aliens living in New Jersey eligible to receive resident tuition in New Jersey. Under Section 62-4.4, a person is “exempt from paying out-of-State tuition at a public institution of higher education” if the student

- (1) attended high school in this State for three or more years;
- (2) graduated from a high school in this State or received the equivalent of a high school diploma in this State;
- (3) registers as an entering student or is currently enrolled in a public institution of higher education not earlier than the fall semester of the 2013-2014 academic year; and
- (4) in the case of a person without lawful immigration status, files an affidavit with the institution of higher education stating that the student has filed an application to legalize his immigration status or will file an application as soon as he is eligible to do so.

N.J. Stat. Ann. § 18A:62-4.4.

33. Additionally, pursuant to its authority under N.J. Stat. Ann. §§ 18A:62-4 and 18A:62-4.4, *see* N.J. Admin. Code § 9A:5, HESAA makes illegal alien students eligible for the for resident tuition according to the same criteria as in Section 62-4.4 and adds that students who otherwise meet the eligibility requirements and attend county colleges “shall be considered in-State students” who can receive in-state tuition rates. N.J. Admin. Code § 9A:5-3.1 (“Section 5-3.1”).

⁶ *See, e.g., Cost of Attendance 2025-2026*, ROWAN UNIVERSITY (last visited Apr. 30, 2026) <https://perma.cc/3XPP-TQSR>; *Cost and Value*, THE COLLEGE OF NEW JERSEY (last visited Apr. 30, 2026) <https://perma.cc/2YA9-8HA5>; *Tuition & Costs*, THE NEW JERSEY INSTITUTE OF TECHNOLOGY (last visited Apr. 30, 2026) <https://perma.cc/KJ32-KPW8>.

⁷ *See, e.g., Tuition and Fees*, MIDDLESEX COLLEGE (last visited Apr. 30, 2026) <https://perma.cc/5K4M-LVMV>.

34. High school attendance *in New Jersey* for three years is a near perfect proxy for residence. *See* 8 U.S.C. § 1623(a). But independently of Sections 62-4.4 and 5-3.1, New Jersey law conditions attendance at New Jersey public high schools on domicile within each school district. N.J. Stat. Ann. § 18A:38-1.

35. Put differently, in both law and regulation, an illegal alien is eligible to receive in-state tuition in New Jersey so long as he attended high school in New Jersey for three years, graduated from a New Jersey high school, registered for college in New Jersey, and filed an affidavit affirming his intent to apply to legalize his immigration status once eligible to do so. N.J. Stat. Ann. § 18A:62-4.4; N.J. Admin. Code § 9A:5-3.1.

36. Accordingly, the tuition rate for illegal aliens in New Jersey who satisfy Section 62-4.4's criteria is the same tuition rate as other New Jersey residents. However, a U.S. citizen that is not eligible for in-state tuition under Section 62-4.4, due to residency requirements, is required to pay higher, nonresident tuition. The same is true for Section 5-3.1.

37. Put simply, Sections 62-4.4 and 5-3.1's requirements confer preferential treatment to illegal aliens within our Nation over American citizens on the basis of residence. That clearly contravenes Congress's command in Section 1623(a).

38. A different New Jersey law provides eligibility for resident tuition only to U.S. citizens, is distinct from Section 62-4.4, and is not challenged in this Complaint. *See* N.J. Stat. Ann. § 18A:62-4.5. However, New Jersey's citizen-only in-state tuition law is clear that "[n]othing in this section shall be construed to affect the eligibility for the resident undergraduate tuition rate of any student who does not meet the requirements of this section but is otherwise eligible for the resident undergraduate tuition rate at a public institution of higher education in accordance with law or regulation." *Id.* Put simply, nothing in Section 62-4.5 makes illegal aliens ineligible for resident tuition under Section 62-4.4.

II. New Jersey Makes Illegal Aliens Eligible for Scholarships and Financial Assistance on the Basis of Residence

39. In direct conflict with Federal law, New Jersey law also rewards an illegal alien present in our Nation with eligibility for state-funded scholarships and financial assistance based

on residence within New Jersey while explicitly denying eligibility for the same state-funded scholarships to U.S. citizens who are not New Jersey residents.

40. Since 2018, New Jersey has made illegal aliens “eligible to apply for, and participate in, any student financial aid program administered by the Higher Education Student Assistance Authority or the Secretary of Higher Education to the full extent permitted by federal law.” N.J. Stat. Ann. § 18A:71B-2.1(1)(a) (“Section 71B-2.1”); *see also* N.J. Admin. Code § 9A:9-2.3(b).

41. Eligibility for student financial aid programs is based on the same residency requirements that New Jersey uses to make illegal aliens eligible for in-state tuition with one exception. *Compare* N.J. Stat. Ann. § 18A:71B-2.1(1)(a), *with id.* § 18A:62-4.4. Whereas in-state tuition is only available to students registered at public institutions, *id.* § 18A:62-4.4, under Section 71B-2.1, the student can register at either public or “independent institution[s] of higher education,” N.J. Stat. Ann. § 18A:71B-2.1(1)(a).

42. Furthermore, pursuant to its authority under, *inter alia*, N.J. Stat. Ann. § 18A:71B-1 *et seq.*, HESAA makes illegal alien students eligible for the Tuition Aid Grant and the Garden State Scholarship Program using the same residency criteria in Section 62-4.4. N.J. Admin. Code § 9A:9-2.3(b) (“Section 2.3(b)”). Section 71B-2.1 and Section 2.3(b) independently provide authority in New Jersey law that make illegal aliens eligible for residence-based postsecondary education benefits.

43. The Secretary, appointed by the Governor of New Jersey, N.J. Stat. Ann. § 18A:3B-47, is responsible for, *inter alia*, “consulting with . . . [HESAA] on student assistance matters,” N.J. Stat. Ann. § 18A:3B-14, and serves as the Executive Director of the Commission. *Id.* § 18A:3B-13. The Commission provides general supervision of the Board. *Id.* § 18A:71-31.

44. HESAA, the Secretary, the Commission, and the Board administer scholarships, grants, and funds designed to help students pay for college tuition and related expenses.

A. Financial Aid and Scholarships Administered by HESAA

45. HESAA administers programs dealing with “access to postsecondary education” including “by loans, grants, scholarships or other means.” N.J. Stat. Ann. § 18A:71A-3.

46. Under Section 71B-2.1, illegal aliens are eligible to apply for and participate in all of the postsecondary education benefits administered by HESAA. N.J. Stat. Ann. § 18A:71B-2.1(1)(a).

47. For example, HESAA administers the Tuition Aid Grant programs, adopts rules and regulations, *see* N.J. Stat. Ann. § 18A:71B-19, and makes such grants available to full-time and part-time students and for summer tuition. *See* N.J. Admin. Code 9A:9-3.1–6.

48. The Tuition Aid Grant “offers need-based assistance to New Jersey students enrolled at approved New Jersey higher education institutions.”⁸

49. The Tuition Aid Grant conditions eligibility on residence. Using the same proxy for residence as Section 71B-2.1, HESAA’s regulation states that the student must “[h]ave attended a New Jersey high school for at least three years” and “graduated from a New Jersey high school or received the equivalent of a high school diploma from New Jersey.” N.J. Admin. Code 9A:9-2.3(b)(1)-(2). For students “without lawful immigration status,” an affidavit must be filed stating that the student has filed or will file an application to legalize his immigration status. *Id.* 9A:9-2.3(b)(3).

50. The amount of the Tuition Aid Grant is established by HESAA and certain limits are placed on the amount any student may receive by law. N.J. Stat. Ann. 18A:71B-21.

51. HESAA also defines the requirements of eligibility for various merit-based Garden State Scholarships. *See* N.J. Stat. Ann. § 18A:71B-12; *see also* N.J. Admin. Code § 9A:9-4.1. *et seq.*

52. In addition to specific academic requirements, such as class rank and SAT scores, *see* N.J. Admin. Code § 9A:9-4.2, illegal alien eligibility for Garden State Scholarships is determined by Sections 71B-2.1 and 2.3(b) and is therefore based on residency.

53. Garden State Scholarships are only available at eligible New Jersey institutions of higher education. *Id.* § 9A:9-4.3(a); *see also id.* § 9A:9-2.1(b).

⁸ *Tuition Aid Grant*, HESAA (last visited Apr. 30, 2026) <https://perma.cc/M6UW-KDW6>.

54. The Garden State Guarantee is another residence based financial aid program administered by HESAA.⁹ S.B. 2026, 221st Leg. (N.J. 2026) at 224-25, *available at* <https://perma.cc/48DD-95ZT>. Unlike the Tuition Aid Grant and Garden State Scholarships, the Garden State Guarantee is not codified in state statute,¹⁰ but is created and funded through the New Jersey yearly budget. *Id.*

55. During the fall of 2025 and spring of 2026, the Garden State Guarantee is available to full-time students, as defined at N.J. Admin. Code § 9A:9-3.4, who are in their third or fourth year of enrollment at a New Jersey “senior public college or university.” S.B. 2026, 221st Leg. (N.J. 2026) at 224-25.

56. The Garden State Guarantee determines the amount of funding each student is eligible for based on the student’s adjusted gross income, with those whose adjusted gross income ranges from \$0 to \$65,000 receiving “sufficient financial aid from a combination of State, federal, institutional, and other grants or scholarships to eliminate the student’s net cost of tuition and mandatory fees in both the fall 2025 and spring 2026 semesters.” *Id.*

57. The State of New Jersey allocated \$84,412,000 to the Garden State Guarantee for fiscal year 2026. *Id.* at 222.

58. In addition to income and other requirements, illegal aliens are eligible for the Garden State Guarantee on the basis of residence under Sections 71B-2.1 and 2.3(b).

59. Under New Jersey law and HESAA regulations, illegal aliens are eligible for other merit- and need-based scholarships and grants on the basis of residence: the New Jersey Student Tuition Assistance Reward Scholarship Program (“NJ STARS”), N.J. Stat. Ann. § 18A:71B-85, *et seq.*, N.J. Admin Code §9A:9-10.1 *et seq.*; New Jersey Student Tuition Assistance Reward Scholarship II Program (“NJ STARS II”), N.J. Stat. Ann. § 18A:71B-86.4, *et seq.*, N.J. Admin Code §9A:9-11.1, *et seq.*; and the Community College Opportunity Grant Program (“CCOG”),

⁹ *Garden State Guarantee*, HESAA (last visited Apr. 30, 2026) <https://perma.cc/52KM-7A8H>.

¹⁰ An attempt was made in 2021 to codify the Garden State Guarantee Program in chapter 71B of Title 18A of the New Jersey Statutes, but the bill died in committee. A.B. 5913, 219th Leg. (N.J. 2021); *see also* New Jersey Legislature, *Bill A5913 Session 2020-2021* (last visited Apr. 30, 2026), <https://legiscan.com/NJ/bill/A5913/2020>.

N.J. Stat. Ann. § 18A:71B-112, N.J. Admin Code §9A:9-9.4. Each of these scholarship and grant programs, notwithstanding various additional eligibility requirements, make illegal aliens eligible on the basis of residence under Sections 71B-2.1 or 2.3(b).

60. NJ STARS makes illegal aliens eligible on the basis of residence under Section 2.3(b). N.J. Stat. Ann. § 18A:71B-85(c)(1) (“To be eligible to receive a scholarship under the NJ STARS Program, a student shall . . . be a State resident pursuant to guidelines established by the [HESAA]”); N.J. Admin Code §9A:9-10.4(a)(3) (“At the time of high school graduation a student must have met, and continue to meet, all residency and citizenship requirements set forth in N.J. A[dmn. Code] 9A:9-2.2 and 2.3.”).

61. NJ STARS II makes illegal aliens eligible on the basis of residence under Section 2.3(b). N.J. Stat. Ann. § 18A:71B-86.4(e)(1) (“To be eligible to receive a scholarship under the NJ STARS II Program, a student shall . . . be a State resident pursuant to guidelines established by the [HESAA]”); N.J. Admin Code § 9A:9-11.3 (“General provisions . . . which pertain to residency set forth in . . . N.J. [Admin. Conde §] 9A:9-2.3 . . . shall be in effect for this Program.”).

62. The CCOG makes illegal aliens eligible on the basis of residence under Section 71B-2.1. N.J. Stat. Ann. § 18A:71B-113 (“To be eligible to receive a financial aid grant under the Community College Opportunity Grant Program, a student shall . . . be a legal resident of the State in accordance with the provisions of N.J. [Stat. Ann. §] 18A:71B-2 or be eligible for student financial aid pursuant to . . . [N.J. Stat. Ann. §] 18A:71B-2.1.”).

B. The New Jersey Educational Opportunity Fund

63. The New Jersey Educational Opportunity Fund (“EOF”) is administered by the Secretary, the Commission, and the Board (collectively, the “EOF Agencies”) and rewards illegal aliens who violate Federal law with eligibility for financial assistance based on financial need while denying that same benefit to U.S. citizens who are not residents of New Jersey. N.J. Stat. Ann. § 18A:3B-19.

64. Under Section 71B-2.1, illegal aliens are eligible to apply for and participate in all the postsecondary education benefits administered by the Secretary. N.J. Stat. Ann. § 18A:71B-2.1(1)(a).

65. The EOF Agencies adopt regulations “deemed necessary for the proper administration of the [EOF].” N.J. Stat. Ann. §§ 18A:71-31, 18A:71-33–36. *See also* N.J. Admin. Code 9A:11.1.

66. The EOF provides financial assistance to eligible undergraduate students on the basis of, *inter alia*, various socio-economic factors, *see* N.J. Admin. Code 9A:11-2.2(b), an assessment of the student’s motivation and talent, *id.* 9A:11-2.2(c), demonstration that the student has a high school diploma or a GED, *id.* 9A:11-2.2(d)(1), and on the basis of residence under Section 2.3(b). *Id.* § 9A:11-2.2.

67. The EOF Agencies thus make illegal aliens residing in New Jersey eligible for financial assistance so long as they satisfy, among other criteria, New Jersey residency requirements, while a U.S. citizen residing outside of New Jersey is not eligible.

THE NEW JERSEY LAWS ARE PREEMPTED

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

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

70. Federal statutes may preempt state laws and render them ineffective. They may do this expressly, by declaring that intent on the face of the statute. *Arizona v. United States*, 567 U.S. 387, 399 (2012) (“There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”).

71. “[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, ‘any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.’” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (quotations omitted); *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) (explaining that

under the Supremacy Clause, state laws that conflict with Federal law are “without effect”); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (same).

72. When the Federal statute contains an express preemption clause, the court does not indulge “any presumption against pre-emption but instead ‘focus[es] on the plain wording of the clause, which necessarily contains the best evidence of Congress’ pre-emptive intent.” *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (citation omitted). Further, “the purpose of Congress is the ultimate touchstone in every pre-emption case.” *Nat’l Ass’n of Indus. Bankers v. Weiser*, 159 F.4th 694, 711 (10th Cir. 2025) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)).

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

74. As indicated by its title—‘Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits’—Section 1623(a) mandates that all U.S. citizens must be eligible for a benefit regardless of residency before any illegal alien can receive that benefit based on residency.

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

76. Moreover, the United States District Court for the Northern District of Texas recently held that Section 1623(a) expressly preempted Texas Education Code §§ 54.051(m) and

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

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

78. Here, Sections 62-4.4, 5-3.1, 71B-2.1, and 2.3(b) conflict with federal law because they confer eligibility for post-secondary education benefits to aliens not lawfully present in the United States that are not available to American citizens on the same terms, regardless of residency. 8 U.S.C. § 1623(a). Sections 62-4.4 and 5-3.1 make illegal aliens eligible for in-state tuition benefits on the basis of residence. Sections 71B-2.1 and 2.3(b) make illegal aliens eligible for financial assistance, scholarships, and grants on the basis of residence.

79. Resident tuition, scholarships, financial assistance, and grants for college and university students are postsecondary education benefits. 8 U.S.C. § 1623(a).

80. Unlike illegal aliens residing in New Jersey, U.S. citizens who do not meet the requirements of Sections 62-4.4, 5-3.1, 71B-2.1, and 2.3(b) are not eligible for postsecondary

education benefits in no less an amount, duration, and scope without regard to whether the citizen is such a resident. 8 U.S.C. § 1623(a).

81. As a result, Section 1623(a) expressly preempts Sections 62-4.4, 5-3.1, 71B-2.1, and 2.3(b) because those New Jersey statutes and regulations bestow eligibility for postsecondary education benefits on illegal aliens that U.S. citizens who reside elsewhere are not eligible for. Sections 62-4.4, 5-3.1, 71B-2.1, and 2.3(b) are, therefore, unconstitutional.

82. Additionally and independently, Sections 5-3.1 and 2.3(b) explicitly conflict with 8 U.S.C. § 1621(d) because federal law mandates that illegal aliens may be made eligible for State and local public benefits “only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.”

83. Relying on Section 1621(d), the United States District Court for the Eastern District of Kentucky recently entered a consent judgement between Plaintiff United States of America and Defendant Kentucky Council on Postsecondary Education, *et al.* permanently enjoining the Kentucky Council on Postsecondary Education from enforcing Kentucky regulation 13 KAR 2:045, Section 8(4)(a) (eff. 6-22-2022), the Tuition Assessment Regulation. *See* Opinion & Order, *United States v. Kentucky Council on Postsecondary Education, et al.*, No. 3:25-cv-00028 (E.D. Ky. Mar. 31, 2026). The Kentucky regulation allowed illegal aliens who graduated from a Kentucky high school, among other criteria, to be considered Kentucky residents for purposes of in-state tuition. The court found that the Kentucky regulation violated federal law, 8 U.S.C. § 1621(d), because it was promulgated and enforced by the Kentucky Council on Postsecondary Education and therefore was not a valid State law, which Section 1621(d) requires, but a regulation instead. *See id.* at 21.

CLAIMS FOR RELIEF

COUNT I VIOLATION OF THE SUPREMACY CLAUSE (PREEMPTION OF N.J. STAT. ANN. § 18A:62-4.4)

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

85. Section 62-4.4, because 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 based on residency to illegal aliens present in the United States that are not available to all U.S. citizens regardless of residency. *See* 8 U.S.C. § 1623(a).

86. Accordingly, the Court should find the challenged provision, N.J. Stat. Ann. § 18A:62-4.4, unconstitutional.

COUNT II
VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION OF N.J. STAT. ANN. § 18A:71B-2.1)

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

88. Section 18A:71B-2.1, because it extends eligibility for postsecondary education benefits to illegal aliens, violates Federal immigration law. It directly conflicts with Congress's prohibition on providing eligibility for postsecondary education benefits based on residency to illegal aliens present in the United States that are not available to all U.S. citizens regardless of residency. *See* 8 U.S.C. § 1623(a).

89. Accordingly, the Court should find the challenged provision, N.J. Stat. Ann. § 18A:71B-2.1, unconstitutional.

COUNT III
VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION OF N.J. ADMIN. CODE § 9A:5-3.1)

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

91. Section 9A:5-3.1, because 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 based on residency to illegal aliens present in the United States that are not available to all U.S. citizens regardless of residency. *See* 8 U.S.C. § 1623(a).

92. Accordingly, the Court should find the challenged provision, N.J. Admin. Code § 9A:5-3.1, unconstitutional.

COUNT IV
VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION OF N.J. ADMIN. CODE § 9A:9-2.3(b))

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

94. Section 9A:9-2.3(b), because it extends eligibility for postsecondary education benefits to illegal aliens, violates Federal immigration law. It directly conflicts with Congress's prohibition on providing eligibility for postsecondary education benefits based on residency to illegal aliens present in the United States that are not available to all U.S. citizens regardless of residency. *See* 8 U.S.C. § 1623(a).

95. Accordingly, the Court should find the challenged provision, N.J. Admin. Code § 9A:9-2.3(b), unconstitutional.

COUNT V
VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION OF N.J. ADMIN. CODE § 9A:5-3.1)

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

97. Section 9A:5-3.1, because it extends eligibility for in-state tuition benefits to illegal aliens via regulation rather than State law, violates Federal immigration law. It directly conflicts with Congress's requirement that eligibility for State and local public benefits can "only" be provided to illegal aliens through "the enactment of a State law" that "affirmatively provides for such eligibility." 8 U.S.C. § 1621(d).

98. Accordingly, the Court should find the challenged provision, N.J. Admin. Code § 9A:5-3.1, unconstitutional.

COUNT VI
VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION OF N.J. ADMIN. CODE § 9A:9-2.3(b))

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

100. Section 9A:9-2.3(b), because it extends eligibility for postsecondary education benefits to illegal aliens via regulation rather than State law, violates Federal immigration law. It directly conflicts with Congress's requirement that eligibility for State and local public benefits can "only" be provided to illegal aliens through "the enactment of a State law" that "affirmatively provides for such eligibility." 8 U.S.C. § 1621(d).

101. Accordingly, the Court should find the challenged provision, N.J. Admin. Code § 9A:9-2.3(b), unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests the following relief:

1. That this Court enter a judgment declaring N.J. Stat. Ann. §§ 18A:62-4.4 and 18A:71B-2.1, and N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b), violate the Supremacy Clause because they extend eligibility for postsecondary education benefits to illegal aliens that are not available to American citizens, and are therefore unconstitutional and invalid;

2. That this Court enter a judgment declaring N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b) violate the Supremacy Clause because they extend State and local public benefits to illegal aliens through rule rather than by State law, and are therefore unconstitutional and invalid;

3. That this Court issue a permanent injunction that prohibits Defendants as well as their successors, agents, and employees, from enforcing N.J. Stat. Ann. §§ 18A:62-4.4 and 18A:71B-2.1, and N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b), because they extend eligibility for postsecondary education benefits to illegal aliens;

4. That this Court issue a permanent injunction that prohibits Defendants as well as their successors, agents, and employees, from enforcing N.J. Admin. Code §§ 9A:5-3.1 and 9A:9-2.3(b), because they extend State and local public benefits to illegal aliens through rule rather than by State law;

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

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

DATED: April 30, 2026

Respectfully Submitted

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LOCAL CIVIL RULE 101.1(f) DESIGNATION

The United States designates the United States Attorney's Office to receive notices and papers at the following address: Civil Chief, U.S. attorney's Office 970 Broad Street, 8th Floor, Newark, NJ 07102.