IN THE

Superior Court of New Jersey

APPELLATE DIVISION

No. A-2142-11-T1

ARTURO CORTES,	:	ON APPEAL FROM A FINAL AGENCY DETERMINATION OF THE HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY
Appellant,	:	
v.	:	
HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY,	:	AGENCY DOCKET NO. CID 8512320521
Appellee.	:	

BRIEF AND APPENDIX OF APPELLANT ARTURO CORTES

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INTRODUCTION

Appellant Arturo Cortes respectfully submits this initial brief in support of his appeal, which seeks to reverse the action of the Higher Education Assistance Authority ("HESAA"), dated August 15, 2011, and reaffirmed after appeal on November 21, 2011, which denied Cortes assistance under the Tuition Aid Grant and Educational Opportunity Fund ("EOF") programs.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Appellant Arturo Cortes, a natural born citizen of the United States, resides in New Jersey with his mother, who is not a citizen of the United States and cannot currently establish that she is a lawful resident of the United States under federal immigration law. Cortes was born on April 4, 1990, at Bellevue Hospital in New York City, New York.[2] (Pa42).[3] Cortes moved to New Jersey in 1997. Appellant possesses a current and valid

[1] Because this is an appeal from an administrative determination in which the relevant facts and procedural history before the agency are inextricably intertwined, Appellant has merged the Facts and the Procedural History into one section.

[2] This Court may take judicial notice of the birth certificate under N.J. R. Evid. 202. See, Mount Olive Complex v. Township of Mount Olive, 340 N.J. Super. 511, 527 (App. Div. 2001) ("A reviewing court may, in its discretion, take judicial notice of a determination by a governmental agency"). However appellant does not understand HESAA to contest the fact that Cortes is a native born citizen of the United States.

[3] References to Plaintiff's Appendix are in the form "Pa__." Social Security numbers, driver's license numbers and other confidential identification numbers, as well as local home street addresses, have been redacted in the Appendix.

United States passport, issued on August 16, 2010 by the United States Department of State. (Pa43). Appellant also possesses a currently valid New Jersey's Driver's License, issued on August 4, 2010. (Pa46). Additionally, Cortes receives Supplemental Security Income (SSI) and Medicaid from the State of New Jersey. (Pa47-48).

Cortes attended public schools in New Jersey for twelve years, and received his high school diploma in June 2009. (Pa49). In preparation for college, Appellant applied to the New Jersey Higher Education Student Assistance Authority for an EOF grant in 2009. Appellant was a recipient of both an Educational Opportunity Fund Grant and federal loans. (Pa56).

In furtherance of his grant renewal for 2010, Appellant completed the Free Application for Student Aid (FAFSA) online. (Pa18-35). On his FAFSA, Appellant provided his home address in field 2 and his social security number in field 3. (Pa19). He indicated in field 7 that he is a citizen of the United States. (Pa19). He provided New Jersey as his state of residence in field 6, and in field 6E affirmed that he has been a legal resident of New Jersey since before January 1, 2006. (Pa19). For his mother's social security number (field 45F), he entered nine zeros, in compliance with the FAFSA instructions. (Pa21). After calling FAFSA customer service for assistance, in field 17, Appellant listed "FC" as his mother's state of legal

residence (Pa20), although she had actually resided in New Jersey since 1997 (Pa7, A8). He indicated that his mother filed a 2010 tax return in field 24. (Pa20, Pa8).

On August 06, 2011, HESAA sent to Appellant an "Applicant Information Request" ("AIR"), informing him "[y]ou are ineligible because your parents are not legal residents. If this is incorrect, return this form with copies of their 2010 NJ Resident Income Tax Return and their NJ Driver Licenses issued before September 16, 2010." (Pa6). Cortes immediately completed and signed the AIR and returned it to HESAA, along with a copy of his mother's 2010 federal and state income tax returns.[4] (Pa7, Pa8-15). The tax returns indicated the same address that Cortes provided on his FAFSA (Pa18). They also included his mother's Individual Taxpayer Identification Number ("ITIN"). (Pa8).

However, after having received Cortes's response to its preliminary determination of ineligibility, on August 15, 2011, HESAA sent to Appellant a "Student Eligibility Notice" (SEN), which stated definitively that Appellant was "ineligible for the 2011-2012 academic year at the College of New Jersey because your parents are not legal New Jersey residents." (Pa17).

[4] Cortes's mother is not eligible for a New Jersey driver's license because she cannot prove that her presence in the United States is lawful, and therefore no copy was attached. See N.J.S.A. 39:3-10; N.J.A.C. 13:21-8.2(a)(7).

On October 11, 2011, pursuant to N.J.A.C. 9A:9-9-2.15, Appellant administratively appealed this initial eligibility determination to HESAA. (Pa38-56). However, on November, 21, 2012, HESAA sent a renewed notice stating that the Appellant was "ineligible" for State aid under both the Tuition Aid Grant and the Equal Opportunity Fund programs for the 2011-2012 academic year (A57). For reasons unknown to Appellant, HESAA also sent another notice, dated January 17, 2012, stating that the Appellant was "ineligible" for State tuition aid for the Spring 2012 semester. (A58).

SUMMARY OF ARGUMENT

Solely as a matter of statutory interpretation, Cortes is eligible for a state tuition assistance since he is a "resident" of the State of New Jersey within the meaning of N.J.S.A. 18A:71B-2. To the extent that N.J.A.C. 9A:9-2.2(a)(1) contravenes the clear meaning of the statute, the regulation is ultra vires and void. (Part I.A.). But even if N.J.A.C. 9A:9-2.2(a)(1) is applied according to its terms, Rosa Estrada, Cortes' mother, should be deemed to be domiciled in New Jersey and thus Cortes is a resident of New Jersey. (Part I.B.).

If the state statute and regulation are interpreted to render Cortes, a native born citizen of the United States who has lived in New Jersey for the past fifteen years, ineligible for state aid due to the immigration status of his mother, then

those provisions violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. (Part II.A). So construed, those provisions would also violate Article I, Paragraph 1 of the New Jersey Constitution. (Part II.B).

Finally, since Cortes is a citizen not just of the United States, but of the State of New Jersey, depriving him of the benefits available to other New Jersey citizens violates the Citizenship Clause of Section 1 of the Fourteenth Amendment. (Part III). The definition of "resides" for purposes of Section 1 of the Fourteenth Amendment is determined by federal common law, not state law. (Part III.A). As used in Section 1 of the Fourteenth Amendment, "resides" is construed to be the same as "domiciled, and by the universally accepted definition of "domicile," Cortes resides in New Jersey. (Part III.B). Once it is established that Cortes is a citizen of New Jersey, he must be afforded the same rights and benefits granted other New Jersey citizens. (Part III.C).

LEGAL ARGUMENT

I. CORTES IS ELIGIBLE UNDER NEW JERSEY STATE STATUTE TO RECEIVE TUITION ASSISTANCE FROM HESAA DESPITE THE UNDOCUMENTED STATUS OF HER MOTHER.

It is axiomatic that under the doctrine of constitutional avoidance, "a challenged statute will be construed to avoid constitutional defects if the statute is 'reasonably

susceptible' of such construction." Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 366 (2007)(quoting Board of Higher Educ. v. Board of Dirs. of Shelton College, 90 N.J. 470, 478 (1982)). "Even though a statute may be open to a construction which would render it unconstitutional or permit its unconstitutional application, it is the duty of this Court to so construe the statute as to render it constitutional if it is reasonably susceptible to such interpretation." State v. Profaci, 56 N.J. 346, 350 (1970). Cortes contends in Parts II and III of this brief that both the United States and New Jersey Constitutions render invalid the present attempt by HESAA to deny a citizen of the United States and of the State of New Jersey the benefits afforded other citizens due to the immigration status of his mother. These constitutional issues can be avoided, however, by interpreting the relevant state statutes in a way to reach the same result.

As noted in the SEN, the sole reason given for HESAA's denial of tuition aid to Cortes was "because your parents are not legal New Jersey residents." This decision is contrary to New Jersey law for two independent reasons: (1) as a United States citizen who has resided in New Jersey since 1997, Cortes is a "resident" of New Jersey within the meaning of the governing statute, N.J.S.A. 18A:71B-2, notwithstanding any arguably contravening regulation such as N.J.A.C. 9A:9-

2.2(a)(1); (2) even if N.J.A.C. 9A:9-2.2(a)(1) applies according to its terms, Cortes's mother, Ms. Estrada, meets the test of "domicile" under the regulation.

A. Under N.J.S.A. 18A:71B-2, A.Z. Is a "Resident" of the State of New Jersey, Regardless of the Immigration Status of her Mother.

The basic residency requirement to be eligible for state higher education financial aid is stated in N.J.S.A. 18A:71B-2(b):

> A person shall not be awarded financial aid under this chapter unless the person has been a resident of this State for a period of not less than 12 months immediately prior to receiving the financial aid.

This case therefore hinges upon interpretation of the word "resident" as used in N.J.S.A. 18A:71B-2(b).[5] While courts generally give deference to the interpretation of the agency charged with administering the statute (see, e.g., TAC Associates v. New Jersey Dept. of Environmental Protection, 202 N.J. 533, 541 (2010)), interpretation of the word "resident" does not depend upon any special agency expertise or technical knowledge, and thus deference is not at issue here. Construction of the word "resident" is purely an issue of law, as to which case law abounds, and the courts are the most

[5] N.J.S.A. 18A:71B-20,which deals specifically with state tuition aid grants, provides that a TAG grant shall be given "To each New Jersey resident enrolled as a full-time student," provided that the student "satisfies the residency and other requirements provided in article 1 of this part," thus referring back to N.J.S.A. 18A:71B-2(b).

competent and usual interpreters. An appellate court is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." In re Taylor, 158 N.J. 644, 658 (1999) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Here, HESAA does not dispute the fact that Cortes is a native born citizen of the United States who has lived in New Jersey for the past 15 years. He therefore satisfies any plausible definition of "resident," even if residence is for these purposes equated to the stricter term of "domicile." By declaring Cortes ineligible for tuition aid because of the immigration status of his parent, HESAA has contravened the clear meaning of its enabling statute.

While in other contexts there is a definitional distinction between "residence" and "domicile," for purposes of this case there is no need for Cortes to quarrel with the provision of N.J.A.C. 9A:9-2.2(a), which provides that "The residence of a student is defined in terms of domicile." [6] As shown below, Cortes clearly meets even the stricter definition of "domicile."

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[6] See Lipman v. Rutgers-State University of New Jersey, 329 N.J. Super. 433, 440 (App. Div. 2000) (N.J.S.A. 18A:62-4 dictates that residency status for tuition purposes is governed by a student's domicile). "[T]he words 'bona fide resident' are synonymous with 'domiciliary' and mean that plaintiff or defendant must be actually domiciled within New Jersey." Innes v. Carrascosa, 391 N.J. Super. 453, 482 (App. Div. 2007).

"Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever he or she is absent, he or she has the intention of returning." N.J.A.C. 9A:9-2.2(a); accord, State v. Benny, 20 N.J. 238, 250 (1955); Kurilla v. Roth, 132 N.J.L. 213, 215 (Sup. Ct. 1944); In re Jacobs, 315 N.J. Super. 189, 193-94 (Ch. Div. 1998). See also, Citizens Bank & Trust Co. v. Glaser, 70 N.J. 72, 81 (1976) (domicile is "that place which the subject regards as his true and permanent home").

Moreover, "Every person has a domicile at all times, and no person has more than one domicile at any one time. A domicile once established continues until it is superseded by a new one." In re Estate of Gillmore, 101 N.J. Super. 77, 87 (App. Div. 1968). New Jersey is where Cortes has slept virtually every night for the past 15 years, New Jersey is where he has returned whenever absent, and New Jersey is where he has spent his daytime hours attending school for his entire primary and secondary education until he graduated in June 2009. Since as a matter of law he could only have had one domicile during this time, one may well ask rhetorically that if New Jersey was not his domicile, then where could that domicile possibly have been?

HESAA's apparent response is that, through operation of N.J.A.C. 9A:9-2.2(a)(1) (domicile of financially dependent student determined by parent's domicile), Cortes is actually

domiciled in the country of his mother's legal citizenship, even though HESAA has no basis to believe that Cortes has ever spent a significant amount of time in that country, much less established it as his "true, fixed, permanent home" to which, whenever he is absent, he has the intention of returning. Such a contention flies in the face of the undisputed record to the contrary that the entirety of Cortes' life is centered in New Jersey.

As shown below, Cortes argues that Cortes' mother, Ms. Estrada, should be found to be domiciled in New Jersey regardless of her immigration status (see infra Part I.B.), but even if that were not the case, N.J.A.C. 9A:9-2.2(a)(1) cannot operate to overturn the clear meaning of the governing statute. An agency "may not under the guise of interpretation . . . give the statute any greater effect than its language allows." In re Freshwater Wetlands Protection Act Rules, 180 N.J. 478, 489 (2004) (quoting In re Valley Rd. Sewerage Co., 154 N.J. 224, 242 (1998)(Garibaldi, J., dissenting); GE Solid State v. Director, Division of Taxation, 132 N.J. 298, 306 (1993). If a regulation is "plainly at odds with the statute, [the Court] must set it aside." In re Freshwater Wetlands Protection Act Rules, 180 N.J. 478, 489 (2004). To the extent that HESAA applies N.J.A.C. 9A:9-2.2(a)(1) to deny the status of "resident" to Cortes – a United States citizen who has lived most of his young life in

New Jersey and who knows no other home other than New Jersey – because his parent, although physically present in New Jersey, cannot establish lawful presence in the United States, then the regulation distorts the words "resident" and "domicile" beyond recognition.

In Shim v. Rutgers, the State University of New Jersey, 191 N.J. 374 (2007), the New Jersey Supreme Court addressed a statutory framework very similar to the one at issue in this case. In Shim, a state statute (N.J.S.A. 18A:62-4) provided that "Persons who have been resident within this State for a period of 12 months prior to enrollment in a public institution of higher education are presumed to be domiciled in this State for tuition purposes." A subsidiary regulation (N.J.A.C. 9A:5-1.1(f)), however, provided that "Dependent students . . . are presumed to be domiciled in the state in which their parent(s) or legal guardian(s) is domiciled." Ms. Shim was a native born United States citizen who had moved with her parents to Korea, but when she was 14 years old returned to live in New Jersey with her aunt and uncle while her parents remained in Korea. Shim, 191 N.J. at 378-79. Shim attended and then graduated high school in New Jersey (id. at 379). She obtained a New Jersey driver's license, acquired and registered an automobile in New Jersey, filed New Jersey personal income tax returns, and registered to vote. She then matriculated to Rutgers and sought

the in-state tuition rate. Id. Citing N.J.A.C. 9A:5-1.1(f), however, Rutgers classified her as an out-of-state resident and charged her significantly higher tuition as a result.

The Supreme Court ruled that although financial dependence on out-of-state parents might create a genuine issue of fact regarding Shim's domicile, the provisions of N.J.A.C. 9A:5-1.1(f) could not create a presumption that she was a non-domiciliary, much less dispositively determine that fact. Shim, 191 N.J. at 390. The court thus ruled that Rutgers erred by interpreting N.J.A.C. 9A:5-1.1(f) to create a presumption of non domiciliary status and by refusing to consider the other evidence showing "that, notwithstanding her financial dependence on out-of-state parents, her domicile was, in fact, New Jersey." Shim, 191 N.J. at 391. "The problem with that interpretation is that it goes too far and, thus, runs afoul of the statute." Id. Although Shim's financial dependence on parents who were not domiciled in New Jersey was relevant to her domiciliary status, that factor alone did not "create a counter-presumption of non-domicile and thus could not be outcome determinative." Id. at 392. In order to reconcile the regulation with the statute in a way to avoid outright conflict, the Shim court interpreted the regulation as merely providing sufficient evidence, pursuant to the traditional law of presumptions, to overcome the presumption created by the statute, thus leaving the "playing field . . .

evened" and requiring the student to "prove her case, based on all the evidence, with no presumption either way." Id. at 390.

Here, HESAA is similarly attempting to misuse N.J.A.C. 9A:9-2.2(a)(1) to contradict the meaning of N.J.S.A. 18A:71B-2 and the generally accepted legal definitions of "resident" and "domicile." Indeed, HESAA goes farther than did Rutgers in Shim,[7] and is relying solely on the undocumented status of Cortes' parent, Ms. Estrada, effectively to create an irrebuttable presumption of non-resident status with regard to Cortes. HESAA thus disregards the overwhelming evidence that Cortes has been and continues to be a resident and domiciliary of New Jersey and thus eligible for an EOF grant under state statute. An administrative regulation cannot so brazenly reverse the meaning of the governing statute.

B. Even if N.J.A.C. 9A:9-2.2(a)(1) Is Applied According to its Terms, Cortes Is a Domiciliary of New Jersey Because his Mother is a New Jersey Domicilary Under the Commonly Accepted Definition Of "Domicile."

Even if N.J.A.C. 9A:9-2.2(a)(1) is applied according to its terms, there is a straightforward way to reconcile it with N.J.S.A. 18A:71B-2 and the generally accepted legal definitions of "resident" and "domicile," and thus avoid the constitutional controversies. It is of course the preferable outcome to

[7] It is worth noting that in Shim, the student's parents were actually domiciled in Korea, whereas here, Cortes' mother has physically resided in New Jersey for many years.

construe a regulation as consistent with the statute. See generally, Headen v. Jersey City Bd. of Educ., 420 N.J. Super. 105, 111 (App. Div. 2011) ("we make every effort to reconcile those laws that appear to be in conflict and attempt to interpret them harmoniously.").

Although presently unable to establish lawful presence in the United States under federal immigration laws, Cortes' mother, Ms. Estrada, should still be considered to be a domiciliary of New Jersey for purposes of N.J.A.C. 9A:9-2.2(a)(1). She has physically resided in New Jersey for the past fifteen years and maintains the household in which she raised her sons. She therefore meets the commonly accepted definition of resident or domiciliary, i.e. New Jersey is the place where she has her true, fixed, permanent home and principal establishment, and to which, whenever she is absent, she has the intention of returning.

As our Supreme Court has held, an undocumented alien can still be considered a "resident" for purposes of state statutes. Caballero v. Martinez, 186 N.J. 548, 560 (2006) (holding that undocumented alien's intent to remain in New Jersey can satisfy the intent required by the New Jersey Unsatisfied Claim and Judgment Fund (UCJF) Law to qualify as a "resident").[8] In

[8] Although Caballero was construing the word "resident," which it recognized is in some aspects a broader term than "domicile" (186 N.J. at 558), its analysis nevertheless focused

Caballero, a 17 year old undocumented alien was injured in an automobile accident less than five months after he came to New Jersey. Id. at 552. Although he had not brought significant belongings with him to New Jersey, nor registered for school, nor attempted to apply for resident alien status, the court nevertheless found that he was capable of forming the "subjective intent to remain in New Jersey" sufficient to be considered a "resident" under the statute. Id. at 561-62.

> We recognize the apparent paradox that exists when an undocumented alien intends to remain in this State but that alien, because of his or her illegal status, is subject to deportation at any time. Yet, as noted, our test for residency under the UCJF is a subjective one based on a person's intent at the time of the accident. The test does not require that a person's intent to remain be realized. Consequently, the fact that an undocumented alien may some day be forced to return to his or her homeland does not necessarily defeat the intent to remain. That is especially true in light of the uncertain nature of deportation.

Id. at 560 (citations omitted). If a 17-year-old undocumented alien who had been in New Jersey for less than five months can nevertheless establish an "intent to remain" sufficient to classify him as a "resident" as the term was intended by the Legislature, it would seem all the more apparent that Ms.

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on the "subjective intent to remain," which is the key element of the test of domicile. "[T]he concept of residency connotes a 'degree of permanence in contrast with the situation which obtains when a person is merely transiently staying at a given address and with the formed intention of shortly going elsewhere.'" Id. at 559 (quoting Continos v. Parsekian, 68 N.J. Super. 54, 60 (App. Div. 1961)).

Estrada, a woman who has maintained her permanent home in New Jersey for fifteen years and has raised her children in that home, must also qualify as a resident.[9] The Court further observed that:

> We do not consider federal immigration law and policy in making our determination because, if we were to consider those sources, we would "assume (or possibly usurp) the very function of the Federal Immigration and Naturalization Service. The adjudication of potentially complex questions of federal immigration law and policy is better left to that Federal Agency."

Caballero, 186 N.J. at 557 (quoting Das v. Das, 254 N.J. Super. 194, 200 (Ch. Div. 1992)). Indeed, the United States Supreme Court itself has stated that "[a]n illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within a state." Plyler v. Doe, 457 U.S. 202, 227 n.22 (1982). See, Elkins v. Moreno, 435 U.S. 647 (1978) (since holder of nonimmigrant visa could apply for an adjustment of status to become permanent resident and had no obligation to maintain a foreign residence, federal law did not bar him from having the subjective intent of residing in a state indefinitely and thus establishing domicile).

In determining the meaning of the word "domicile," it is useful to look to how the term is defined in similar statutes.

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[9] See also Plyler v. Doe, 457 U.S. 202, 206 (1982)("[T]here is no assurance that a [person] subject to deportation will ever be deported. An illegal entrant might be granted federal permission to continue to reside in this country, or even to become a citizen").

The most obvious analog to N.J.A.C. 9A:9-2.2(a)(1) is N.J.A.C. 6A:22-3.1(a)(1), which similarly derives the child's domicile from the parent's domicile for purposes of determining the proper public school district from which the child receives her primary and secondary education. N.J.S.A. 18A:38-1 provides that "Public schools shall be free to the following persons over five and under 20 years of age: (a) Any person who is domiciled within the school district" (emphasis added).[10] N.J.A.C. 6A:22-3.1(a)(1) then provides that:

> A student is domiciled in the school district when he or she is the child of a parent or guardian whose permanent home is located within the school district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.

For purposes of this regulation, it is obviously the case that an undocumented alien parent can establish a domicile in a school district in New Jersey, assuming that is where he maintains his permanent home, since otherwise it would be impossible for the student to be domiciled in any school district. "For purposes of [N.J.S.A. 18A:38-1(a)] the domicile of an unemancipated child is the domicile of the parent, custodian or guardian." P.B.K. v. Board of Educ. of The Borough

[10] N.J.A.C. 6A:22-3.1(a) also provides that "A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in a school district if the student is domiciled within the district."

of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001) (emphasis added). But since under state regulations all students, even students who (unlike Cortes) are themselves undocumented aliens,[11] are entitled to a free public education in the school district in which they are "domiciled," it must be the case that the parents from whom they derive that domicile are also domiciliaries of the school district, and thus also of New Jersey.

A number of other jurisdictions have also held that undocumented immigrants were residents or domiciliaries of the state for purposes of state law. See, e.g., St. Joseph's Hosp. & Medical Ctr. v. Maricopa County, 688 P.2d 986, 992 (Ariz. 1984) (illegal aliens are "residents" for purposes of medical care reimbursement; "There is no federal impediment to an undocumented alien becoming a resident of an Arizona county. We have been cited to no state law which would create such an impediment."); Cabral v. State Bd. of Control, 112 Cal. App. 3d 1012, 1016 n.5 (1980) (illegal alien a resident for purposes of crime victim compensation fund; "establishing [a] domicile of choice . . . does not mean that the residence must be lawful since '[a] domicile may be even acquired at a home that is

[11] N.J.A.C. 6A:22-3.3(b) ("immigration/visa status shall not affect eligibility to attend school"; "Any student over five and under 20 years of age . . . who is domiciled in the district. . . shall be enrolled without regard to, or inquiry concerning, immigration status").

maintained unlawfully.')(internal citation omitted) Munoz-Hoyos v. de Cortez, 207 P.3d 951, 953 (Colo. Ct. App. 2009) (illegal alien a resident of state for purposes of bond requirement; "[T]he proper determination of [the Plaintiff's] residence . . . was not dependent on her immigration status, but on the evaluation of her place of domicile and her subjective intent"); Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 435 (D.C. 1972) (for purposes of jurisdiction in divorce proceeding, "husband's temporary status and later 'lack of status' under the immigration laws are irrelevant to the issue of domicile"); Maldonado v. Allstate Ins. Co., 789 So. 2d 464 (Fla. Ct. App. 2001) (illegal alien was Florida resident for purposes of personal injury protection benefits); Garcia v. Angulo, 644 A.2d 498 (Md. 1994) (illegal alien was resident of state for purposes of Automobile Insurance Fund).

It would lead – but alas, under HESAA's current policy, has already led – to absurd results if the parent of a child is deemed to be a domiciliary of New Jersey in June when her child is in high school, but even though still living in the same house, is deemed not a domiciliary of New Jersey the following September when her child enters higher education. The regulation should be construed to avoid that absurdity, and thus N.J.A.C. 9A:9-2.2(a)(1) should be interpreted to find that Cortes' mother, Ms. Estrada, is a domiciliary of New Jersey.

II. DENYING STATE AID TO A CITIZEN OF THE UNITED STATES DUE TO THE IMMIGRATION STATUS OF HER PARENT VIOLATES THE PRINCIPLES OF EQUAL PROTECTION IN THE UNITED STATES AND NEW JERSEY CONSTITUTIONS.

The constitutional gravamen of this case is that Cortes, a citizen of the United States, is being denied state assistance to which he would otherwise be entitled due to the immigration status of his mother. To classify citizens based on the legal status of their ancestors offends basic principles of equal protection contained in both the United States and New Jersey Constitutions. If the Court must reach the constitutional issue, its result is clear.

A. Under Federal Equal Protection Principles, Discriminating Against a Class Of Persons Due to the Alien Status of Their Parents Violates Equal Protection.

The basic premise of the Equal Protection Clause of the Fourteenth Amendment is that "all persons similarly circumstanced shall be treated alike." F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). Although legislatures are usually afforded "substantial latitude to establish classifications that roughly approximate the nature of the problem perceived," the Equal Protection Clause nevertheless imposes a minimum requirement that "the classification at issue bears some fair relationship to a legitimate public purpose." Plyler v. Doe, 457 U.S. 202, 216 (1982).

Certain suspect classifications, however, trigger a more heightened form of scrutiny than mere inquiry into the rationality of the statute.

> Some classifications are more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective. Legislation predicated on such prejudice is easily recognized as incompatible with the constitutional understanding that each person is to be judged individually and is entitled to equal justice under the law. Classifications treated as suspect tend to be irrelevant to any proper legislative goal. Finally, certain groups, indeed largely the same groups, have historically been "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." The experience of our Nation has shown that prejudice may manifest itself in the treatment of some groups. Our response to that experience is reflected in the Equal Protection Clause of the Fourteenth Amendment. Legislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of "class or caste" treatment that the Fourteenth Amendment was designed to abolish.

Plyler, 457 U.S. at 218 n.14 (citations omitted).

Thus, classifications according to alienage have triggered heightened, and often strict scrutiny under federal equal protection analysis. In Graham v. Richardson, 403 U.S. 365 (1971), the United States Supreme Court struck down a statute that imposed a durational residency requirement for state welfare benefits on resident aliens, but not on citizens. Writing for the Court, Justice Blackmun noted that "the Court's decisions have established that classifications based on alienage, like those based on nationality or race, are

inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate." Id. at 371-72 (quoting United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938)).

Similarly, in Nyquist v. Mauclet, 432 U.S. 1 (1977), the Court invalidated a New York statute that restricted receipt of state financial assistance for higher education by resident aliens to those aliens who have applied for citizenship. The Court noted the strict scrutiny standard imposed by Graham, and further found that "The first purpose offered by the appellants, directed to what they describe as some 'degree of national affinity,' . . . is not a permissible one for a State. Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." Id. at 10. See also, Toll v. Moreno, 458 U.S. 1 (1982) (state law denying in-state tuition status to holders of non-immigrant visa violated Supremacy Clause due to federal government's exclusive power to regulate immigration).[12]

While it is true that in Sugarman v. Dougall, 413 U.S. 634 (1973), the Court appeared to apply intermediate scrutiny, and

[12] While in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546, Congress may have allowed states to pass statutes that deny undocumented students eligibility for in-state tuition, scholarships (8 U.S.C. § 1623), needless to say IIRIRA does not so empower the states to discriminate against United States citizens.

noted that the State's legitimate interest "in establishing its own form of government, and in limiting participation in that government to those who are within 'the basic conception of a political community'" might justify some consideration of alienage, it nevertheless struck down a statute imposing a flat ban on the employment of aliens in civil service positions, finding those positions that have little, if any, relation to a state's legitimate interest. Id. at 747 (citation omitted). And in Folie v. Connelie, 435 U.S. 291 (1978), the Court upheld a requirement that police officers be United States citizens, finding that the strict scrutiny utilized in Graham, Nyquist and Sugarman applied only when the state regulation affected "the noncitizens' ability to exist in the community" by denying them educational benefits or the ability to engage in ordinary trades or professions. Id. at 294-95. The denial of educational benefits in this case, however, directly affects Cortes's "ability to exist in the community" by denying him access to financial assistance for higher education.

Of course, if the person seeking state benefits were themselves an undocumented or illegal alien, then the state may very well have a legitimate state interest in regulating them as a class that would satisfy even heightened scrutiny. See, Plyler, 457 U.S. at 219 n.19 (declining to find illegal aliens were a "suspect class," but nevertheless striking down denial of

public education to illegal alien children on equal protection grounds even under rational basis scrutiny); see also, De Canas v. Bica, 424 U.S. 351 (1976) (upholding, against Supremacy Clause challenge, state law prohibiting employment of undocumented aliens). The seminal and undisputed fact in this case, therefore, bears repeating: Cortes himself is a United States citizen.

But it is alas the fact that even native born children of immigrants who enjoy birthright citizenship are fast being "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." Plyler, 457 U.S. at 218 n.14. See, San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 28 (1973). They are themselves becoming the subjects of a prejudice that is manifesting itself as they are labeled derisively as "anchor babies," and as some extremists even question their citizenship under untenable readings of the Fourteenth Amendment. As has been the case with all too many New Jersey children other than Cortes who have also been denied eligibility by HESAA, they do not dare assert their rights to which they are clearly entitled, for fear of putting their parents at risk. Citizen children of undocumented immigrants are therefore becoming one of the "groups disfavored by virtue of circumstances beyond their control," and subject to the kind of "class or caste" treatment

that the Fourteenth Amendment was designed to abolish. Plyler, U.S. at 218 n.14. Any regulation that classifies citizens of the United States based upon the immigration status of their parent(s), as does the HESAA regulation here, should therefore be subject to strict scrutiny.

Needless to say, Cortes contends that the HESAA regulation here, if interpreted to deny a citizen state assistance and benefits due to the immigration status of his parent, would fail any level of scrutiny, including rational basis. As noted in Plyler (where the children themselves were undocumented but nevertheless protected under rational basis review), "legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice." Id. at 220.

> [Visiting] . . . condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual -- as well as unjust -- way of deterring the parent.

Id. (quoting Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1972)); accord, New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619, 620-21 (1973)(striking down on equal protection grounds New Jersey statute denying welfare benefits to illegitimate children). Even under the relatively forgiving rational basis analysis, therefore, visiting legal disabilities

upon Cortes because of his mother's undocumented status fails to comport with equal protection.

B. Under New Jersey's Version of Equal Protection, Cortes' Right To Receive State Aid, Regardless Of The Immigration Status Of His Parent, Clearly Outweighs The State's Interest in Denying Aid To Students Who Are United States Citizens Who Reside in New Jersey.

It is of course well-known that, "Although the phrase 'equal protection' does not appear in the New Jersey Constitution, it has long been recognized that Article I, paragraph 1, of the State Constitution, 'like the fourteenth amendment, seeks to protect against injustice and against the unequal treatment of those who should be treated alike.'" Barone v. Dep't of Human Servs., 107 N.J. 355, 367 (1987) (citation omitted). But the New Jersey Supreme Court has rejected the tiered equal protection analysis used under the federal constitution, and instead employs a balancing test in analyzing claims under the state constitution. Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985); Taxpayers Ass'n of Weymouth Township v. Weymouth Township, 80 N.J. 6, 43 (1976). In striking that balance, New Jersey courts consider (1) the nature of the affected right, (2) the extent to which the governmental restriction intrudes upon it, and (3) the public need for the restriction. Greenberg, 99 N.J. at 567; Right to Choose v. Byrne, 91 N.J. 287, 309 (1982).

The affected right in this case is access to higher education, the profound effect of which on the future life of an individual student cannot be gainsaid.[13] By their nature, the EOF and Tuition Aid Grant programs are based on financial need, and are directed towards those who, due to their limited financial circumstances, might not otherwise be able to afford higher education or to sustain their attendance, even though academically qualified. Education has become an essential attribute in modern society, to which the state constitution should give special solicitude. Cf. Abbott v. Burke, 206 N.J. 332, 400 (2011) (Abbott XXI)(right to primary and secondary education is fundamental under N.J. constitution); Weymouth Township, 71 N.J. at 44 (right to decent housing has preferred status under N.J. Constitution).

Moreover, by declaring Cortes absolutely ineligible to receive state financial assistance due to his mother's immigration status, the restriction imposed by N.J.A.C. 9A:9-2.2(a)(1) constitutes a significant and possibly devastating intrusion upon Cortes's interest in pursuing higher education. The nature of this intrusion is severe and unconditional; Cortes cannot avoid or mitigate its effect through any practical action of his own. N.J.A.C. 9A:9-2.2(a)(1) therefore does not operate

[13] See U.S. Census Bureau, The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings, available at http://www.census.gov/prod/2002pubs/p23-210.pdf.

merely as a condition to the receipt of state aid, but rather as an outright denial of it, and thus the second factor in the balancing test weighs against the government.

Lastly, there is no demonstrated public need to treat Cortes differently from his classmates who are eligible for EOF grants because their parent is a citizen or has regular immigration status. Under this prong of the state constitution's equal protection analysis, "where an important personal right is affected by governmental action, this Court often requires the public authority to demonstrate a greater 'public need' than is traditionally required in construing the federal constitution." Weymouth Township, 71 N.J. at 43. There has thus far been no real attempt to demonstrate that public need.

If HESAA were to argue that the public has an interest in denying Cortes state aid because Cortes has insufficient ties to New Jersey, then that contention would be based on a legal fiction, and bad fiction at that. Cortes has lived virtually his entire life in New Jersey. Indeed, his mother, Ms. Estrada, has also lived in New Jersey for the past 14 years, and her life is anchored in this State. The contention that Cortes is less worthy of state assistance because his mother is a de jure resident of a foreign country (although a de facto resident of New Jersey) and thus Cortes should be deemed to be a de jure

foreign resident even though he lives in New Jersey, and thus the state has demonstrated some public need to deny him access to state aid, is exactly the type of evanescent reasoning that New Jersey courts dismiss with even greater dispatch under the state constitution than do their federal counterparts under the Equal Protection Clause.

C. A Regulation Rendering Cortes Ineligible for State Benefits Because of His Mother's Inability to Establish Lawful Presence in the United States Amounts to an Unconstitutional Bill of Attainder.

Although perhaps somewhat supplementary to the safeguards provided by the Equal Protection Clause, Cortes also believes that N.J.A.C. 9A:9-2.2(a)(1), as applied by HESAA, amounts to a legislative imposition of punishment upon Ms. Estrada for her undocumented status, about which there has been no judicial adjudication of culpability. By rendering Ms. Estrada unable to establish domicile for her son, this provision constitutes an impermissible bill of attainder in violation of Article I, § 10, cl. 1 of the United States Constitution. See United States v. Lovett, 328 U.S. 303 (1946) (legislation that denied funds to pay government employees found by HUAC to have "engaged in subversive activity" constituted unconstitutional bill of attainder). The essence of a bill of attainder is that it proscribes a form of punishment by legislation for specified persons who have not been adjudicated as culpable by a court. The legislative provision need not identify the subject by name,

so long as it addresses an identifiable group of people by their conduct. See, United States v. Brown, 381 U.S. 437 (1965) (statute that forbade a member of the Communist Party from being an officer of a labor union constituted unconstitutional bill of attainder); Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1866)(state constitutional requirement requiring loyalty oath in order to pursue certain professions constituted bill of attainder because it presumed without judicial process that persons taking the oath had committed acts of disloyalty that must be purged by oath).

Although, in Selective Service System v. Minnesota Public Research Interest Group, 468 U.S. 841 (1984), the Court sustained against a bill of attainder attack a statute denying higher education financial aid to students who had not registered for the draft, it based its holding on the fact that the students could remove themselves from the sanction by the simple expedient of registering. Thus, the provision did not amount to legislative punishment for past actions. In this case, there is no similar ability on the part of Ms. Estrada, and certainly none on the part of Cortes, to remove the disability caused by Ms. Estrada's immigration status.[14] Ms.

[14] The punishment imposed in this case is akin to another ancient device also proscribed by the Constitution, i.e. a "corruption of blood." In feudal times, a corruption of blood was a punishment imposed whereby the condemned party's heirs could not inherit his estate. See, Nixon v. Adm'r of General

Estrada may never be judicially adjudicated as in violation of federal immigration laws, and imposing a disability upon her son by legislation or regulation therefore amounts to a bill of attainder.

III. CORTES IS A CITIZEN OF THE STATE OF NEW JERSEY UNDER THE CITIZENSHIP CLAUSE OF THE FOURTEENTH AMENDMENT.

The Fourteenth Amendment to the Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

U.S. Const., amend. 14, § 1 (emphasis added). Cortes' claim under the Citizenship Clause is straightforward: Cortes is a citizen of the United States, and resides in New Jersey. He is therefore a citizen of the State of New Jersey, and thus must be afforded all the rights and privileges given to other citizens of New Jersey. Depriving Cortes of the same rights and privileges of New Jersey citizenship enjoyed by other citizens due to the status of his parent therefore deprives him of his rights as a citizen of the state.

A. The Definition Of "Reside" for Purposes Of The Citizenship Clause Must Be Given a Uniform Federal Meaning.

Servs., 433 U.S. 425, 473 n.35 (1977). Here, Cortes is the victim of an indirect corruption of blood by disabling Ms. Estrada from establishing domicile that would enable Cortes to enjoy state benefits.

The core purpose of the Fourteenth Amendment, of course, was to prohibit the states from depriving any state citizen (and particularly but not exclusively the recently emancipated slaves) of the rights of state citizenship enjoyed generally. Thus, "the fact of citizenship does not depend upon parentage, family, nor upon the historical division of the land into separate States." Slaughter-House Cases, 83 U.S. 36, 53 (1873). Rather, "the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship only with simple residence." Zobel v. Williams, 457 U.S. 55, 69 (1982); Saenz v. Roe, 526 U.S. 489, 506 (1999).

In order to implement this guarantee of the rights of citizenship, it is necessary to arrive at a definition of the word "reside," as it was used and intended in Section 1 of the Fourteenth Amendment. For this undertaking, however, there obviously must be a uniform federal definition of the constitutional term "reside." If the states could indirectly limit the attributes of citizenship by manipulating the definition of "reside," then they could also quickly eviscerate the core of the Fourteenth Amendment through linguistic artifice.

Thus, for purposes of the Fourteenth Amendment, federal common law, not state law, must govern the meaning of the

constitutional language.[15] While federal common law may look to state law for general guidance, the definition of "reside" must be given a uniform national definition. Indeed, even in determining the meaning of such traditionally state law concepts as "contract" or "property" as they apply to the Due Process Clause, the Supreme Court has held that there is a baseline federal definition, below which state law may not descend.

> On such a question, one primarily of state law, we accord respectful consideration and great weight to the views of the State's highest court but, in order that the constitutional mandate may not become a dead letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions, and whether the State has, by later legislation, impaired its obligation.

Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 100 (1938). Thus, HESAA cannot avoid the inexorable conclusion, drawn pursuant to the Citizenship Clause, that Cortes is not only a citizen of the United States but also a citizen of New Jersey, simply by engaging in the transparent device of claiming that under state law he does not "reside" in New Jersey because his parent is an undocumented immigrant. Such an argument is exactly the type of tautological reasoning that the Fourteenth

[15] In defining "liberty" for purposes of the Due Process Clause, for instance, the cases typically arrive at their own definition without reference to state law. See, Ingraham v. Wright, 430 U.S. 651 (1977)(freedom from corporal punishment triggered "liberty" interest); Santosky v. Kramer, 455 U.S. 745, 754 (1982) (termination of parental rights implicated liberty interest); Troxel v. Granville, 530 U.S. 57, 65 (2000) (parental right to raise children free from state interference implicated liberty interest).

Amendment was enacted to prevent. State law does not determine residency for purposes of the Fourteenth Amendment, and thus cannot determine the attributes of citizenship.

B. Cortes Resides in New Jersey for Purposes of the Citizenship Clause Since He is Domiciled Here.

For purposes of the Citizenship Clause of the Fourteenth Amendment, the term "reside" is synonymous with the term of "domicile," which even in 1868, when the amendment was adopted, had a well-settled and universally accepted meaning in the law. See, Robertson v. Cease, 97 U.S. 646, 649-51 (1878) (finding, after considering Section 1 of the Fourteenth Amendment, that citizenship in a state for purposes of diversity jurisdiction requires averring a "fixed permanent domicile in that State"). "The Fourteenth Amendment, in providing that one by residence in a state becomes a citizen thereof, probably used 'residence' as synonymous with 'domicile.'" Williams v. North Carolina, 317 U.S. 287, 322 (1942) (Jackson, J., dissenting). Nash v. Pennsylvania R. Co., 60 F.2d 26, 28 (6th Cir. 1932) ("the word 'resides' in the Fourteenth Amendment giving citizenship in a state to a citizen of the United States who resides therein is interpreted to require not mere residence but domicile"). See also, Smith v. Cummings, 445 F.3d 1254, 1259-60 (10th Cir. 2006) ("For purposes of federal diversity jurisdiction, an individual's state citizenship is equivalent to domicile");

accord, Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9th Cir. 2001).

There really is no serious doctrinal dispute about the general definition of domicile. "In general, the domicile of an individual is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning." Martinez v. Bynum, 461 U.S. 321, 331 (1983) (quoting Vlandis v. Kline, 412 U.S. 441, 454 (1973)). "Domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there." Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989); Newton v. Comm'rs, 100 U.S. 548 (1880) ("Domicile is acquired by residence and the animus manendi, the intent to remain").[16] A "[d]omicile is a place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." In re Seyse, 353 N.J. Super. 580, 586 (App. Div.), certif. denied, 175 N .J. 80 (2002).

By any rational test, Cortes "resides" in New Jersey for purposes of Section 1 of the Fourteenth Amendment. New Jersey

[16] Restatement (Second) of Conflict of Laws, § 11, provides: "Domicile is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place." Section 12 of the Restatement then provides that "Home is the place where a person dwells and which is the center of his domestic, social and civil life."

is where he has lived, slept, worked, attended school, and engaged in social activities, for the past fourteen years, since he was seven years of age. There is no other place on the earth that could qualify as Cortes's domicile other than New Jersey. He is therefore a citizen of New Jersey under the federal constitution.

C. Since Cortes Is a Citizen Not Only of the United States But Also of New Jersey Under the Citizenship Clause, He Must Be Afforded the Same Rights and Protections as any Other Similarly Situated Citizen of this State.

As noted in Part II above, our nation survives under the principle of equal protection because each citizen has the same rights and protections as any other similarly situated citizen of the state. Consequently, no state can infringe upon the privileges and immunities given to all citizens of the state. Similarly, under the Citizenship Clause, a state may not deny one of its citizens the privileges and benefits of citizenship that it grants to others.

Thus "one of the privileges conferred by this Clause 'is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State.'" Saenz v. Roe, 526 U.S. 489, 503 (1999) (quoting Slaughter-House Cases, 83 U.S. at 80). In Saenz, California attempted to discriminate amongst its own citizens by imposing durational residency requirements before a citizen became

eligible for welfare benefits. The Supreme Court held that this violated Section 1 of the Fourteenth Amendment, which included, "for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State" within the protected aspects of national citizenship. 526 U.S. at 500.

Similarly, in Zobel v. Williams, 457 U.S. 55 (1982), the State of Alaska devised a plan to distribute windfall profits from oil revenue to its citizens that pro-rated a citizen's shares of those profits according to how long he had lived in the state. The Supreme Court struck down Alaska's plan that would distribute benefits unequally among its citizens. Finding such a plan discriminatory even under the rational basis analysis, the Court noted pointedly:

> If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence -- or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? Could states impose different taxes based on length of residence? Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible.

Id. at 64. It is therefore clear that states may not discriminate amongst its citizens in the allocation of benefits and services based upon some vague goal of rewarding long-time

and sedentary citizens for past contributions, compared to newer and more mobile arrivals. Id. at 63. Zobel also rejected the notion that the state interest in efficient allocation of scarce resources justified pegging state benefits to the length of time the citizen had lived in the state. Id. at 62-63. And the Court also noted the illogic of arguing that pro-rating benefits for past residence in the state provided an incentive to residence to continue future residence. Id. at 61-62.

As Justice Bradley put it long ago in his dissent in the Slaughter-House Cases:

> The States have not now, if they ever had, any power to restrict their citizenship to any classes or persons. A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens.

83 U.S. at 112-13 (Bradley, J., dissenting). Applying these principles to this case, if it is irrational to deny state benefits to Cortes because of the length or nature of his connections with the state, then it would seem all the more unreasonable to deny her the same benefits because of his mother's connections with the state. Once the threshold determination has been made that Cortes is a citizen of New Jersey, then any further distinctions based on the perceived

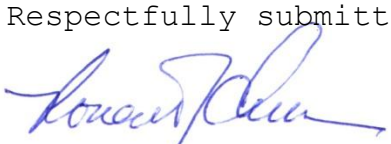
strength her family's connections with the state fail any level of scrutiny under the Fourteenth Amendment.

CONCLUSION

For the reasons stated herein, Appellant Cortes respectfully prays that this Court reverse the decision of HESAA declaring him ineligible for state tuition assistance due to his mother's immigration status, and order HESAA to grant him the assistance applied for.

March 26, 2012.

Respectfully submitted,



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