them U.S. citizens, and have lived most, if not all, of their lives in the State of Florida. The Plaintiffs and their parents have resided in Florida for far beyond the requisite 12 months necessary to establish state residency for tuition purposes.[1] Yet, under the Defendants' regulations, Plaintiffs and the class they represent are classified as "out-of-state" residents and thus non-citizens of the state in which they and their parents reside. As a result, the named Plaintiffs have had to delay or forego their education and professional aspirations.

This case raises two important issues of federal law: (1) whether a state classification that disadvantages certain United States citizens violates the Equal Protection Clause of the Fourteenth Amendment, and (2) whether Defendants' actions in requiring that these United States citizens be classified as "out-of-state" residents conflicts with the Supremacy Clause of the U.S. Constitution. As shown below, there are no material facts in dispute and Plaintiffs are entitled to judgment as a matter of law on both claims.

Standard of Review

Under Federal Rule of Civil Procedure 56, "summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "By its very terms, this standard provides that the mere existence of *some* alleged factual

[1] In order to qualify as a "resident for tuition purposes, a dependent student's parent must have established legal residence in Florida and maintained it for at least twelve consecutive months prior to the student's initial enrollment in a state college or university." Fla. Stat. § 1009.21(2)(a)(1). Under Section 1009.21, a "legal resident" is expressly defined as "a person who has maintained his or her residence in this state for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to s. 222.17." *Id.* § 1009.21(1)(d). The definition of legal resident is facially neutral regarding immigration status. The students and their parents therefore meet the statutory definition of Florida residents.

dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the r

for tuition purposes, set forth in Fla. Stat. § 1009.21(1)(d) & (2)(a)(1). (Plaintiffs' Statement of Undisputed Facts ("SOF") ¶ 1.)

Classification as an out-of-state resident increases the cost of tuition by three to five times, making a college education unaffordable for many U.S. citizen students who are Florida residents for tuition purposes but whose parents lack federal immigration status. (SOF ¶¶ 54-62.) At Miami-Dade College ("MDC"), classification as an out-of-state resident increases the cost of student tuition from $2,531.52 to $9,047.28, a difference of more than $6,500 per year. (*Id.* ¶¶ 55-57.) At Florida International University ("FIU"), classification as out-of-state increases the cost of student tuition from $5,678.02 to $18,077.02, a difference of more than $12,300. (*Id.* ¶¶ 58-60.) At Florida State University, the cost differential is $14,444 per year, and at the University of Florida the difference comes to more than $22,200 per year. (*Id.* ¶¶ 61, 62.) Classification as an out-of-state resident for tuition purposes also means that a Florida student is ineligible for state financial aid programs including Bright Futures and Florida Resident Access grants. (*Id.* ¶63.)

Plaintiffs Wendy Ruiz, Noel Saucedo, Caroline Roa, Kassandra Romero, and Janeth America Perez are U.S. citizens and Florida residents who aspire to earn college degrees at a Florida public institution of higher education. (*Id.* ¶¶ 2-53.) Plaintiffs and their parents have resided in Florida for years, far beyond the twelve months required to establish Florida residency for tuition purposes. (*Id.* ¶¶ 3, 7, 13, 17, 23, 26, 34, 38, 44, 48.) Plaintiffs' educational aspirations, however, have been thwarted by Defendants' policies, which classify them as "out-of-state" residents solely because Plaintiffs are unable to prove that their parents have federal immigration status. (*Id.* ¶¶ 8-10, 18-20, 27-31, 39-41, 49-51.)

Plaintiff Wendy Ruiz

Wendy Ruiz was born in Miami, Florida, in 1992, and is therefore a U.S. citizen. (SOF ¶ 2.) She has lived in Florida her entire life. (*Id.* ¶ 3.) Ms. Ruiz's parents have resided continuously in Florida for the past ten years, including the twelve months before Ms. Ruiz sought to enroll in a Florida public institution of higher education. (*Id.* ¶ 7.) Ms. Ruiz graduated from a Florida public high school in June 2010. (*Id.* ¶ 4.)

In January 2010, Ms. Ruiz attempted to enroll at FIU. (*Id.* ¶ 8.) As part of the online application process, she was asked to provide information to prove her parents' federal immigration status, a requirement she could not meet. *Id.* Unable to provide the requested information, Ms. Ruiz was prevented from completing the application process and unable to enroll at FIU. (*Id.*)

Ms. Ruiz currently attends MDC where she has been enrolled since approximately August 2010. (*Id.* ¶ 9.) Because she is a dependent student who cannot prove her parents' immigration status, MDC has classified Ms. Ruiz as an out-of-state resident, requiring her to pay nearly three times the resident tuition rate.[2] (*Id.* ¶¶ 9, 10.) As a result of the higher tuition rate, Ms. Ruiz has been unable to afford to take a full course load every semester, and it will therefore take her more than two years to complete a two-year degree. (*Id.* ¶ 11.) Ms. Ruiz works multiple jobs in order to afford the out-of-state tuition rate. (*Id.*)

Plaintiff Noel Saucedo

Noel Saucedo was born in Miami, Florida, in 1991, and is therefore a U.S. citizen. (SOF c0a

parents have continuously resided in Florida for the past six years, including the twelve months prior to his application for enrollment in a Florida public institution of higher education. (*Id.* ¶ 17.) Noel graduated from a Florida public high school in June 2010. (*Id.* ¶ 14.) In March 2010, Noel attempted to enroll at FIU. (*Id.* ¶ 18.) As part of the online application process, he was asked to provide information to prove his parents' federal immigration status, a requirement he could not meet. (*Id.*)

Noel later applied to MDC and was accepted with a full scholarship for the two-year program. (*Id.* ¶ 19.) Because Noel is a dependent student who cannot prove his parents' immigration status, MDC classified him as an out-of-state resident.[3] (*Id.* ¶ 20.) As a result, Noel is being charged the higher tuition rate for out-of-state students, and the amount of his scholarship has been reduced. (*Id.*) Because of the higher tuition rate, Noel has been unable to afford to take a full course load every semester, and it will therefore take him more than two years to complete a two-year degree.[4] (*Id.* ¶ 21.)

Plaintiff Caroline Roa

Caroline Roa was born in Miami, Florida, in 1993, and is therefore a U.S. citizen. (*Id.* ¶ 22.) She has lived in Florida her entire life. (*Id.* ¶ 23.) Ms. Roa graduated from a Florida public high school in June 2011. (*Id.* ¶ 24.) Ms. Roa's father, who is her only living parent, has continuously resided in Florida for the past twenty-two years, including the twelve months prior to her application for enrollment in a Florida public institution of higher education. (*Id.* ¶ 26.) In 2011, Ms. Roa applied to MDC and was accepted. In August 2011, however, MDC officials

[3] Mr. Saucedo is not married, has no dependents, and has never served in the military. (*Id.* ¶ 16.)

[4] Mr. Saucedo has been attending MDC as a part-time student from August 2010 until the present. (*Id.* ¶ 19.)

Florida. (*Id.* ¶ 46.) Ms. Perez's mother has continuously lived in Florida for twenty-five years, including the twelve months prior to her application for enrollment in a Florida public institution of higher education. (*Id.* ¶ 48.) In the summer of 2011, Ms. Perez applied to MDC and was accepted. (*Id.* ¶ 49.) Ms. Perez, however, was classified as an out-of-state student because she could not prove her mother's federal immigration status. (*Id.* ¶ 50.) Unable to afford out-of-state tuition rates, Ms. Perez was forced to withdraw from MDC.[7] (*Id.* ¶ 51.) By letter dated March 28, 2012, MDC Registrar Dulce M. Beltran advised that Ms. Perez continued to be classified as "'Out of State' for Tuition purposes." (*Id.* ¶ 52.) Ms. Perez currently attends a Job Corps program and plans on attending college in the future. (*Id.* ¶ 53.)

Argument

I. Plaintiffs Are Entitled to Judgment On Their Claim For Relief Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Plaintiffs bring this action to challenge Defendants' unconstitutional regulations that categorize dependent United States citizen students who reside in Florida as out-of-state residents for tuition purposes solely because they are unable to prove the federal immigration

their parents' federal immigration status. By imposing this additional burden, Defendants effectively make these U.S. citizen children the residents of no state at all. Unlike students whose parents in fact reside out of state, Plaintiffs can claim no state other than Florida as their state of residency for tuition purposes.[8] Plaintiffs are therefore treated differently from dependent students who are properly deemed out-of-state residents because their parents reside in another state. Plaintiffs are also treated differently from similarly-situated dependent students who are U.S. citizens and whose parents have resided continuously in the State of Florida for twelve months prior to their application to a public institution of higher learning.

A. Plaintiffs' Equal Protection Claim Must Be Analyzed Under Heightened Scrutiny.

The Equal Protection Clause of the Fourteenth Amendment "requires the State to treat all persons similarly situated alike or, conversely, to avoid all classifications that are 'arbitrary or irrational' and those that reflect 'a bare ... desire to harm a politically unpopular group.'" *Glenn v. Brumby*, 663 F.3d 1312, 1315 (11th Cir. 2011) (citation omitted); *Plyler v. Doe*, 457 U.S. 202,

[8] Defendants' policies in fact preclude the dependent student class that Plaintiffs represent from establishing state residency for at least six years when compared to their peers. For, Defendants' policies will permit the Plaintiff class to be recognized as Florida residents only if and when they turn 24 years old unless one of a few narrow exceptions is met. Plaintiffs' similarly-situated classmates, however, can establish their Florida residency with just 12 months of consecutive parental residency in the state. This means that a dependent graduating senior whose parents are U.S. citizens residing in Florida for the past 12 months will immediately qualify as a Florida resident for higher education tuition purposes. But a dependent graduating senior whose parents are undocumented immigrants residing in Florida for the past 12 months will have to wait until he or she turns 24 to be classified as a state resident. This discrimination not only violates equal protection, but also runs afoul of Supreme Court precedent invalidating excessive state residency requirements as violating the fundamental right to travel. *See generally Saenz v. Roe*, 526 U.S. 489 (1999); *Vlandis v. Kline*, 412 U.S. 441 (1973) (case decided on due process grounds). While the right to travel is not burdened when an individual is free to move to a different state and establish residency, under the rules set forth by the Defendants, the Plaintiff class would not be able to establish residency in any state at all. *See generally Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

216 (1982). The Supreme Court has treated as "presumptively invidious those classifications that disadvantage a 'suspect class, or that impinge upon the exercise of a 'fundamental right.'" *Id.* at 216-217. State classifications based on race, nationality, and alienage are subjected to strict scrutiny. *See generally Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Nyquist v. Mauclet*, 432 U.S. 1 (1977); *Loving v. Virginia*, 388 U.S. 1 (1967); *Eide v. Sarasota County*, 908 F.2d 716, 722 (11th Cir. 1990); *Florida A.G.C. Council Inc. v. Florida*, 303 F. Supp. 2d 1307, 1314 (N.D. Fla. 2004). As the Court explained in *Graham v. Richardson*, 403 U.S. 365, 372 (1971), "[a]liens as a class are a prime example of a 'discrete and insular' minority for whom judicial solicitude is appropriate." When state action involves a suspect classification, the state must "demonstrate that its classification has been precisely tailored to serve a compelling government interest." *Plyler*, 457 U.S. at 217.

This rule applies with equal force when a state discriminates against a U.S. citizen child based on his or her parent's alienage. In scores of cases over a period spanning more than fifty years, courts have held as unconstitutional state rules that create a separate means of access to a public benefit that is more burdensome to U.S. citizen children of undocumented parents than to other similarly-situated U.S. citizens. *See e.g.*, *Oyama v. California*, 332 U.S. 633 (1948) (state law that created burden on land transfers between U.S. citizen child and non-citizen parent was unconstitutional in violation of the Equal Protection Clause); *Lewis v. Thompson*, 252 F.3d 567 (2d Cir. 2001) (denial of automatic Medicaid eligibility to U.S. citizen child of undocumented mother was subject to heightened scrutiny); *L.P. v. Comm'r Ind. State Dep't of Health*, 2011 U.S. Dist. LEXIS 8154 (S.D. Ind. January 27, 2011) (court enjoined practice of refusing paternity affidavits to applicants who do not have a social security number finding that immigration status is "immutable" and akin to classification based on alienage, race, gender, or

illegitimacy); *Darces v. Woods*, 679 P.2d 458 (Cal. 1984) (state's practice of excluding undocumented immigrants from the calculation of the family budget for purpose of welfare program was subject to strict scrutiny); *Ruiz v. Bloom*, 549 F. Supp. 871, 877 (S.D.N.Y 1982) (state cannot "victimize the citizen child" and withhold day care services solely on the basis of his mother's lack of federal immigration status).

These decisions follow a historic line of cases that memorialize a fundamental principle of American jurisprudence—we do not punish children for the acts of their parents. The application of this principle to the equal protection rubric was provided by the United States Supreme Court in the form of a two-pronged test. In *Kadrmas v. Dickinson Public Schools*, 487 U. S. 450, 459 (1988), the Court announced that heightened scrutiny will apply when the statute in question (1) penalizes children for the illegal conduct of their parents, and (2) risks significant and enduring adverse consequences to the children.

The Second Circuit's decision in *Lewis v. Thompson*, 252 F.3d 567 (2d Cir. 2001), is particularly instructive in the application of this test. The *Lewis* court was asked to consider, among other issues, whether the denial of automatic Medicaid eligibility for a U.S. citizen child of an undocumented mother violated equal protection. *Lewis*, 252 F.3d at 589-592. The court acknowledged the significance of automatic Medicaid eligibility, stating that it "is important because it assures immediate care, unfettered by paperwork and bureaucratic hurdles, at a critical time in the child's life." *Id.* at 588. Focusing on the equal protection issues, the court noted that the rational basis standard that is usually "appropriate in matters of immigration" was not applicable here, because the claim was brought on behalf of the U.S. citizen child. *Id.* at 590. Given that the denial of automatic eligibility was imposed on the children "solely because of the

Benefits of Educational Attainment, The Florida College System, March 2011, http://www.fldoe.org/cc/osas/evaluations/pdf/Zoom2011-02.pdf (last accessed July 16, 2012) ("over their working lifetimes, the graduates of 2015-16 would add over $33 billion dollars to Florida's economy … that would lead to the creation of 250,000 jobs," as well as a savings of $769 million in reduced social service costs). For members of all demographic groups, professional opportunities, the likelihood of employment and average earnings increase measurably with higher levels of education. College graduates are also more likely to earn employer-provided health and pension benefits, and less likely to have to rely on government support. The denial of an equal opportunity to fulfill one's potential, something guaranteed to

federal laws. *Kurns v. R.R. Friction Products Corp.*, 132 S. Ct. 1261, 1265-66 (2012). Such an intent may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Cipollone*, 505 U.S. at 516 (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)). The intent can be inferred "from a framework of regulation 'so pervasive ... that Congress left no room for the States to supplement it' or where there is a 'federal interest ... so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Arizona v. United States*, 132 S. Ct. 2492, 2012 WL 2368661, *7 (2012).

Defendants' policy of denying resident status to U.S. citizens residing in Florida based solely on their parents' immigration status violates the Supremacy Clause both by directly conflicting with federal law, and by attempting to regulate a field that is exclusively a realm of federal power. Defendants have classified the Plaintiffs in this matter as "out-of-state" residents, despite their U.S. citizenship and the years they and their parents have resided in Florida. (*Id.* ¶¶ 10, 20, 30, 40, 50, 52.) Defendants have thereby stripped Plaintiffs of the right guaranteed by the Fourteenth Amendment to the Constitution of the United States to be citizens not only of the United States, but also "of the State wherein they reside." U.S. Const. amend. XIV; *see also Saenz v. Roe*, 526 U.S. 489, 510-11 (1999); *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (citizenship language in the Fourteenth Amendment encompasses everyone born in the United States, including the U.S.-born children of foreigners). Further, Defendants' policy essentially re-defines the set of people entitled to benefits of citizenship and treats Plaintiffs as though they were non-citizens. In so doing, the policy constitutes a state regulation of citizenship and immigration, an exclusively federal power, in violation of the Supremacy Clause.

A. Defendants' Policy Directly Conflicts with Federal Law Granting One – and Only One – Class of Citizenship, Regardless of the Citizen's Parents' Status.

Defendants' policy creates a lesser form of citizenship for U.S. citizens residing in Florida whose parents lack federal immigration status. Such a policy directly conflicts with federal law—specifically with the Fourteenth Amendment to the Constitution.

The Fourteenth Amendment provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . ." U.S. Const. amend. XIV, §1. The Citizenship Clause of the Fourteenth Amendment "does not provide for, and does not allow for, degrees of citizenship," nor does it allow for "subclasses" of citizens. *Saenz*, 526 U.S. at 506 (citation omitted). As explained by the Supreme Court: "Citizens of the United States, whether rich or poor, have the right to choose to be citizens 'of the State wherein they reside.' The States, however, do not have any right to select their citizens." *Id*. at 510-11 (citing U.S. Const. amend. XIV, § 1). States "can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states." *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 419 (1948); *see also Cent. Alabama Fair Hous. Ctr. v. Magee*

governmental unit"). Redefining the set of people deemed not to be citizens of the State directly conflicts with the Citizenship Clause of the Fourteenth Amendment.

Plaintiffs in this case were born in the United States. (SOF ¶¶ 2, 12, 22, 33, 43.) They and their parents have resided in Florida much longer than the twelve months required for a Florida resident to be entitled to resident status for tuition purposes. (*Id*. ¶¶ 7 (ten years), 17 (six years), 26 (twenty-two years), 38 (fourteen years), 48 (twenty-five years)); s*ee also* Fla. Stat. §1009.21(2)(a)(1). Defendants' imposition of immigration-related burdens on U.S.-citizen children of undocumented parents "shift[s], cancel[s], or dilute[s]" Plaintiffs' citizenship for the purpose of their right to go to school on the same terms, and for the same cost, as all other Florida citizens. *See Afroyim*, 387 U.S. at 262. Defendants' policy creates degrees of citizenship. It provides that the Plaintiffs cannot enjoy the same rights as other citizens of the United States and Florida, specifically the right to attend school in Florida at the lower tuition rates for residents of Florida. It thus directly conflicts with federal law. U.S. Const. amend. XIV; *Afroyim*, 387 U.S. at 262; *Saenz*, 526 U.S. at 506.

Federal law simply does not permit Defendant

virtue of their birth in this country, having the same rights, responsibilities, and privileges as all other American citizens. U.S. Const. amend. XIV, § 1. Similarly, Plaintiffs are "citizens of the . . . State wherein they reside," namely Florida. *Id.* As discussed above, Plaintiffs meet all lawful requirements to be considered residents of Florida for tuition purposes and are being denied in-state tuition—a benefit of state citizenship—solely based on their parents' immigration status. The immigration status of Plaintiffs' parents has absolutely no bearing on Plaintiffs' citizenship. *Id.* Pursuant to the Supremacy Clause, a state has no authority to exclude persons born in this country from state citizenship in the State wherein they reside. U.S. Const. art. VI, cl. 2; Doe v. Bolton, 410 U.S. 179, 200-01

regard results in the actual removal or inadmissibility of any particular alien." *Equal Access Educ*., 305 F. Supp. 2d at 602-03 (*citing DeCanas*, 424 U.S. at 355).

Although not all state laws and policies that implicate immigration issues are necessarily pre-empted, a law or polic

aliens for any purpose, as this is an exclusively federal power. Defendants' attempt to reclassify Plaintiffs therefore violates the Supremacy Clause. *See Plyler*, 457 U.S. at 225-27; *see Equal Access Educ.*, 305 F. Supp. 2d at 608 ("[T]he *Supremacy Clause* does not bar defendants from adopting and enforcing admissions policies that deny admission to illegal aliens, *provided that defendants use federal immigration standards to identify which applicants are illegal aliens*.") (emphasis added).

Defendants' policy of reclassifying citizens as non-citizens cannot stand. The federal government has occupied the field of determining who is a citizen and who is an alien and the State of Florida cannot make new citizenship classifications on its own.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Summary Judgment. Plaintiffs ask that the Court (1) declare that the challenged policies and practices violate the United States Constitution, and (2) enjoin the Defendants from requiring that the named Plaintiffs and the class they represent provide proof of their parents' federal immigration status to establish Florida residency for tuition purposes.

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Respectfully submitted,

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