10-1981

Toll v. Moreno

Lewis F. Powell Jr.

Probably Grant

This is another chapter in the row at U. of Md. over entitlement of certain aliens (children of foreign nationals employed in Gov't positions here - e.g. World Bank) to in-state tuition rates.

Residing in Md

Md's present rule denies this benefit since these aliens pay no taxes. CA 4, applying strict scrutiny (Griffin), invalidated the Reg. as discriminatory & also an irrebuttal presumption

Preliminary Memo

Summer List 21
Sheet 2

No. 80-2178

There also is an 11th Amend. issue re payment of back tuition, but I'd limit grant.

TOLL, PRESIDENT, UNIVERSITY OF MARYLAND v. MORENO (student dependent of holder of of G-4 visa)	Cert to CA 4 (Winter, Russell & Ervin; ✓per curiam) Federal/Civil	Timely

1. SUMMARY: In deciding that student holders of G-4 visas are entitled to in-state tuition at the University of Maryland, did the CA properly apply strict scrutiny, use pre-emption and irrebuttable presumption analysis, and order retroactive tuition refunds?

Grant. CA4 held that holders of G-4 visas (non-immigrant ~~non-resident~~ aliens who do not pay taxes) are entitled to in-state tuition rates at the Univ. of Md. See attached

2. FACTS AND PROCEEDINGS BELOW: This case has a lengthy history, one which includes two previous Supreme Court opinions. Resps represent a class of individuals holding G-4 visas who attend University of Maryland. They are dependents of foreign national employees of the Inter-American Development Bank and the International Bank for Reconstruction and Development (World Bank), who, together with their families, are classified as "nonimmigrant aliens" and given G-4 visas. Unlike most nonimmigrant aliens, such persons often reside permanently in the United States. They are exempt from federal and state income taxation on salaries and emoluments paid by the international organizations, but are subject to all other taxes.

Resps originally brought this suit in 1975. Maryland, like most state universities, charged "out-of-state" students higher tuition than "in-state" students. It based this determination on the student's showing of domicile, but the policy was phrased in such a way that resps could not establish Maryland domicile because they were nonimmigrant aliens. They challenged the policy in the district court under 42 U.S.C. §1983 on the grounds that it denied them due process of law and equal protection and that it interfered with federal prerogatives over international agreements and immigration in violation of the supremacy clause.

The District Court (Miller) granted summary judgment on the basis of Vlandis v. Kline, 412 U.S. 441 (1973). It reasoned that the policy created an irrebuttable presumption because it was not universally true that resps could not establish Maryland domicile. It ordered University officials to permit the students

to prove domicile. It did not consider the other bases for relief.

The University president obtained a stay pending appeal. He agreed to refund the difference between the "out-of-state" tuition and fees the student would actually pay and the "in-state" tuition and fees they would have paid "but for the stay" should the district court's order be "finally affirmed on appeal."

CA4 affirmed without opinion. The University president obtained a writ of cert. This Court stated that "[b]ecause petitioner makes domicile the 'paramount' policy consideration and because respondents' contention is that they can be domiciled in Maryland but are conclusively presumed to be unable to do so, this case is squarely within Vlandis as limited by Salfi to those situations in which a State 'purport[s] to be concerned with [domicile,]' but at the same time den[ies] to one seeking to meet its test of [domicile] the opportunity to show factors clearly bearing on that issue." The Court chose to obtain a possibly dispositive authoritative interpretation of state law. It held that federal law did not prevent a G-4 nonimmigrant alien from establishing domicile and that state law would determine the issue. It certified to the Maryland Court of Appeals the question of whether Maryland law permitted G-4 nonimmigrant aliens to establish Maryland domicile.

Mr. Justice Rehnquist and the Chief Justice dissented, explaining that domicile is not the sole criterion on which the University determines "in-state" status. The student must first

establish status as a U.S. citizen or immigrant alien. The reasons for this classification include the desire to equalize costs of education between those who pay all state taxes and those who do not. Thus, the University has not created an irrebuttable presumption. Elkins v. Moreno, 435 U.S. 647 (1978).

The Maryland court held that Maryland law did not prohibit such aliens from establishing Maryland domicile. Toll v. Moreno, 397 A.2d 1009 (1979).

While the case was pending before the Maryland court, the University Board of Regents passed a clarifying resolution. This resolution stated in part:

> "The Board of Regents deems its statutory authority under the laws of Maryland to include the power, right, or privilege to adopt a more restrictive definition of domicile for purposes of according in-state status for admissions, tuitions, and charge differentials than may be appliable generally or otherwise under the Maryland common law."

The resolution also justified its policy on the basis of cost equalization.

Because of this resolution, this Court supplemented its earlier opinion. It recognized that the resolution "fundamentally altered the posture of the case" and raised new constitutional issues. It noted that "if domicile is not the 'paramount' policy consideration of the University, this case is no longer 'squarely within Vlandis as limited by Salfi.'" It remanded the case to the district court "for further consideration in light of our opinion and judgment in Elkins, the opinion and judgment of the Maryland Court of Appeals in Toll,

and the Board of Regents' clarifying resolution of June 23, 1978." Toll v. Moreno, 441 U.S. 458 (1979).

Upon remand, the district court concluded that this Court's second opinion had not removed the irrebuttable presumption issue from the case, but had remanded for the district court to decide whether the irrebuttable presumption had been removed. It further concluded that the resolution in fact altered rather than clarified the University's position. It declined to give the resolution retroactive effect. Thus, the policy created an impermissible irrebuttable presumption prior to the date of the resolution, but not after its issuance.

The district court next turned to the equal protection claims. It rejected petr's contentions that strict scrutiny is inappropriate when the discrimination does not affect resident aliens, when some aliens are eligible for in-state status, when the matter at issue is not a necessity of life, when the University policy is consistent with the purposes of the federal immigration law, or on the basis of the dissent's language in Elkins that "[t]here . . . would not appear to be any issue of suspect class and the University's in-state tuition policy need only be shown to be rationally related to a legitimate state interest." It described the issue of whether state classifications which narrowly discriminate against nonimmigrant aliens should be examined under strict scrutiny analysis as a novel question of law. In rejecting petr's contentions, it relied on Nyquist v. Mauclet, 432 U.S. 1 (1977), in which the Court applied strict scrutiny analysis in striking down a statute

that barred certain resident aliens from eligibility for state financial assistance for higher education. Nyquist also established that the presumably lesser degree of national affinity which nonresident aliens possess is not a permissible purpose for a State because immigration is entrusted exclusively to the federal government. According to the district court, the Supreme Court has wrapped both immigrant and nonimmigrant resident aliens in the suspect classification blanket because they are a "discrete and insular minority." The court also concluded that the exception to strict scrutiny of alienage when governmental functions are involved does not apply to this case. The purposes for petr's policy, including cost equalization, affinity to the state, and efficient administration, would arguably survive a rational basis analysis, but fail under strict scrutiny.

Preemption The district court rejected resps' argument that the policy interfered with international agreements, but agreed that it violated the supremacy clause by encroaching upon the exclusive federal power over immigration and naturalization. The Court applied strict scrutiny to the question of interference with control over immigration and found that the policy failed to meet the burden for the reasons previously set forth.

The district court affirmed its order enjoining the University president from enforcing the in-state status policy as applied to resps and directed him to permit the students to demonstrate Maryland domicile. It also ordered the president, pursuant to the agreement entered at the time of the stay, to

refund the difference in tuition and fees between in and out of state tuition and fees.

The CA affirmed the due process, equal protection, and supremacy clause issues for the reasons stated by the district court. It rejected the State's argument that the refund violated the Eleventh Amendment because the state waived its Eleventh Amendment immunity when it obtained the stay. The change in the posture of the case resulting from the University's policy resolution did not provide a basis for excuse of the obligation to refund fee differentials. The district court had continuing jurisdiction over the suit because it expressly did not resolve all the issues in the litigation in its original order.

3. CONTENTIONS: Petr argues that strict scrutiny in this case extended the alien/suspect class doctrine beyond the reasonable bounds of any decision of this Court and conflicts with the views of other courts and commentators. The decision, if allowed to stand, would permit all categories of nonimmigrants, including foreign students, to be eligible for in-state benefits. In every case in which this Court has applied the strict scrutiny standard to review a state classification affecting aliens, the challenged statue or practice discriminated against permanent resident aliens. The lower courts in the instant case erroneously included nonimmigrant aliens within the category of resident aliens. Resident aliens pay taxes and may be called into the armed forces. Nonimmigrant aliens do not exhibit such similarities to citizens. Moreover, so many aliens are elibile for in-state status at the University that it is

irrational to contend that the in-state policy denies its benefits on the basis of alienage. In-state tuition is not a necessity of life, and, as the Chief Justice noted in Foley v. Connelie, 435 U.S. 291, 295 (1978), all of the Court's cases applying strict scrutiny in this area have involved such necessities. Strict scrutiny is not appropriate when the state scheme is consistent with federal immigration law. The two members of the Court who dissented in the Elkins opinion indicated that the rational relation test is the appropriate one for this case.

The court's supremacy clause decision intruded into the area of state regulation, for the same reasons that only rational relation analysis is appropriate. The decision below fashioned a rule automatically invalidating on supremacy clause grounds every asserted discrimination against an alien subclass. It wrongly suggests that a supremacy clause violation can be justified upon the showing of a compelling interest. Moreover, this regulation has no impact on immigration.

The lower courts' use of the irrebuttable presumption refused to give effect to this Court's decision and embraced a constitutional doctrine disfavored by this Court. "Toll left no room for the lower courts to conclude that the district court's 1976 opinion any longer governed. . . . If this Court wanted to reach that result, it would have affirmed the 1977 per curiam opinion of the court of appeals, or dismissed the writ of certiorari as improvidently granted." The Court instead concluded that Vlandis is inapplicable to this litigation.

That no irrebuttable presumption exists was the law of the case and not subject to reexamination by the lower courts. It is inconsistent to draw a constitutional difference on the basis of the University resolution.

To deny review in this case, after it has acquired a history among courts and commentators, would be an open invitation to judges to begin reapplying the disfavored irrebuttable presumption docrine. Review is necessary to avoid lower court confusion on the condition of the irrebuttable presumption doctrine.

When this Court vacated the first court of appeals opinion and remanded to the district court, it vacated the earlier order of the district court. The old order was a nullity and the state's waiver of Eleventh Amendment immunity was ended. The terms under which refunds were to be available under the stay order were not met.

Forty-four states have filed a brief as amici curiae. They express concern about application of the irrebuttable presumption doctrine, noting that the Court has declined every invitation to apply the doctrine to invalidate rationally-based classifications not affecting fundamental liberties. Most courts have announced the death-knell of the doctrine. See e.g., Sakol v. Commissioner, 574 F.2d 694 (CA2 1978). In rejecting the cost-equalization basis for the policy, the lower courts impermissibly chose between primary and secondary rationales for a governmental classification. Finding an irrebuttable presumption only prior to the 1978 resolution reduces the doctrine to a rule of pleading

and practice. This case offers the Court an opportunity to overrule Vlandis.

The application of suspect class analysis to nonimmigrant aliens would result in financial hardship for many public universities and colleges. The lower courts failed to recognize that Mauclet involved resident aliens, who are obligated to pay their full share of the taxes that support the assistance programs. Under the lower courts decisions, large numbers of nonimmigrant aliens may qualify for in-state tuition. The courts are divided on the question of whether individual categories of nonimmigrants can acquire a domicile in the United States.

The American Council on Education, the National Association of State Universities and Land-Grant Colleges, The American Association of State Colleges and Universities, and the American Association of Community and Junior Colleges have also filed an amicus brief expressing the same concerns.

Resps assert that the lower courts' holding that the University's policy violates the equal protection clause is based on established precedent. State classifications based on alienage are inherently suspect. The University policy on its face treats a sub-class of aliens differently from citizens and immigrant aliens. The classification is between two kinds of Maryland domiciliaries: citizens and immigrant aliens on one hand and nonimmigrant aliens on the other. Mauclet requires strict scrutiny in such a case. In addition, the decision affects only the relatively few nonimmigrant aliens who can be domiciled in Maryland.

The supremacy clause holding does not present a substantial question warranting review. The courts below merely applied the standard of Examining Board v. Flores de Otero, 426 U.S. 572. Moreover, because the supremacy clause holding was an additional ground for the same result, it does not raise a significant issue.

Because the irrebuttable presumption analysis was limited to a two-year period, it does not warrant this Court's review. Moreover, Elkins made clear that Vlandis squarely governed this case. Toll did not remove the issue.

The Eleventh Amendment issue turns on the construction of representation made by the University to obtain a stay of the original 1976 order and thus presents no question of general significance meriting review by this Court.

4. DISCUSSION: Because this case has already produced two opinions from the Court and because of the importance of the questions presented, I would recommend a grant. The Eleventh Amendment issue is so fact-specific that it could, I think, be eliminated, unless the Court wishes to offer guidance on the effect of its vacating a CA opinion and remanding to the district court. The supremacy clause issue, as an alternate holding, may also not merit review. The apparent confusion over the due process and equal protection issues do, however, seem to call for this Court's attention. The parties agree that the alienage cases pending before the Court, Cabel v. Chavez-Salido, No. 80-990, cert granted, 101 S.Ct. 1511, and Plyler v. Doe, No.

80-1538, cert granted, 101 S.Ct. 2044, will not resolve the issues here.

There is a response.

August 29, 1981 Aprill Op. in app. to petn.

Probably Grant

meb 09/10/81 Helpful memo Secy Note

To: Mr. Justice Powell

From: Mary

Prob. U. of Maryland

In Re: No. 80-2178, Toll v. Moreno

New Note

9/25: Petrs have filed a reply brief. It adds nothing. Mary

Holders of G-4 visas are non-immigrant aliens who do not pay taxes. Typically, they are children of foreign nationals employed by, e.g., World Bank.

The last time this case was here, Elkins v. Moreno, 435 U.S. 647 (1977), the Univ. of Md. had a rule that only those domiciled in Md. could get in-state tuition rates. This was based solely on the Univ.'s understanding of state "domicile" law and not on any policy regarding the propriety of giving holders of G-4 visas in-state tuition. This Court noted that the holder of a G-4 visa can, under federal immigration law, intend to remain in this country indefinitely (unlike other visa holders who cannot, by definition, have an intent to stay). The Univ. policy was challenged as an irrebutable presumption, and the Court remanded to certify to the Md. courts the question whether a G-4 visa holder could have a Md. domicile.

We remanded on this Q

The Md. courts held they could. See Toll v. Moreno, 284 Md. 425, 397 A.2d 1009 (1979).

Md S/Ct said the aliens could acquire domicile.

Amicus brief in favor of Grant. They stress financial burden CA4 would impose on states and danger of broad use of strict scrutiny with alienage

Meanwile, on June 23, 1978, the Univ. changed its policy and said that it would not give G-4 visa holders in-state tuition rates regardless of the meaning of domicile under Md. law. The new policy was based on a desire to give in-state rates only to a group with a closer nexus to the state and more likely to benefit it economically in the future than the G-4 group.

The courts below held that prior to the policy change, the Univ. had an irrebuttable presumption, thus violating due process, and that after the policy change, the Univ. violated the equal-protection and supremacy clauses. The State was ordered to refund tuition "over-charges" because it had waived the eleventh amendment earlier in these proceedings.

The eleventh-amendment issue is probably not certworty because it depends of the meaning of a specific waiver made in this litigation. The other issues do appear certworthy. The Court considered the irrebutable presumption claim certworthy when it granted Moreno. The lower courts erred in their equal-protection and supremacy-clause analysis, basing both on strict scrutiny.

The strongest argument in support of the lower courts' outcome would probably be on the basis of the supremacy clause, but, even if adopted, it would not resemble the rationale below. Given the past history of this case (having already been before this Court on one occaision) and the interest it has aroused among commentators, a denial of cert would probably be interpreted as agreement with the decisions below.

GRANT
Schlueter

G

I'd also grant cert

SEP 28 1981

~~Summer List 23, Sheet 4~~

No. 80-2178

TOLL, President, U. Md.

v.

MORENO, et al.

Motion of American Council on Education, et al. for Leave to File a Brief as Amici Curiae

CA 4

SUMMARY: Four nonprofit organizations[1/] move to file an amicus brief in support of the petn for cert. Petrs have consented to the filing; resps have not.[2/]

CONTENTIONS: As the nation's principal associations of colleges and universities, the movants urge that they are especially qualified

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1/American Council on Education (ACE), National Assoc. of State Universities and Land-Grant Colleges (NASULGC), American Association of State Colleges and Universities (AASCU), and American Association of Community and Junior Colleges (AACJC).

2/One of the organizations, ACE had appeared with the consent of both parties when the case was first before this Court. Elkins v. Moreno, 435 U.S. 647 (1978).

Vote Vote

You have indicated you will probably grant cert on merits. If ~~so~~ (Conference does take care,) there is no need to grant this motion to file a brief arguing that result. If the Conference is not inclined to grant ~~cert~~, cert, perhaps the cert petn should be relisted and this motion granted. Mary

to speak to the issues presented in this case. In particular they claim that in a time of pressing financial crises it is essential to "preserve rational systems of according preferential tuition rates, fees, and admission to in-state students" such as those in effect at the University of Maryland (petrs). They further urge this Court to reverse the CA 4's decision and overrule Vlandis v. Kline, 412 U.S. 441 (1973). (State school may not deny students opportunity to show that they are bona-fide in-state residents.)

DISCUSSION: As organizations whose memberships include most of the nation's publicly-supported universities and colleges, these movants have a direct interest in this litigation and can provide an important perspective on the constitutional issues presented.

9/25/81 Schlueter

PJC

September 28, 1981

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 80-2178

TOLL, PRESIDENT, UNIV. OF MD.

vs.

MORENO

CJ thinks CA4 is wrong. But W & B would (who wrote R.C. before) deny. Bryan thinks decision is doubtful – Grant in E/P 11th Amend. issue is frivolous

Grant.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓											
Brennan, J.			✓										
Stewart, J.		✓											
White, J.		✓											
Marshall, J.		✓	✓										
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.						?							
Stevens, J.													
O'Connor, J.		✓											

80-2178 TOLL v. MORENO

Argued 3/2/82

U. of Maryland's non-immigration alien case

Zarnock (ant AG - Md)

2nd Time case here.

Controlling issue is "equal protection"

There are up to [redacted] about 500 non-immigrant aliens at U of Md. This case involves all non-immigrant aliens — not merely G-4 aliens. The "classification" at issue is all "non-immigrant" aliens

491 in class

Only

WJB expressed interest in preemption

State excludes from [redacted] reduced tuition all non-immigrant aliens whether or not they may establish domicile.

Don't have to over-rule Vlandis

University budget income is from state income tax - not properly taxed

Tuition is subsidized substantially for all students

Differential between resident & non resident tuition is $900 ($1600 vs 700)

One fourth of State budget income comes from income tax. One 8th from Sales Tax

Bieke (Reps)

Most non aliens are excluded by fed ~~law~~ law from obtaining domicile.

Only class certified are G-4 non-alien class – 78/79 people in class.

(On its face, U/md policy applies to all non-immigrant aliens – about 4.97. But most of these are unlike G-4's in that only G-4s ~~are~~ may acquire domicile

G-4s are ~~entitled~~ entitled to welfare & medicaid.

(See p 24 for argument that the classification is not ~~rational~~ substantially related to the interest relied on)

G-4s do not have diplomat immunity.

~~Rational~~ Some form of heightened scrutiny should be applied.

Preemption: Congress has decided G-4's may reside in U.S., & are excluded from state & fed. income taxes. State may not penalize G-4s on basis of a benefit granted by Congress. Graham & other cases relied on Supremacy Clause

80-2178 Toll v Moreno 3/4

Aff'm – Preemption

Congress ~~had~~ has decided G-4 (non-immigrant aliens) may reside in U.S. free from fed & state taxes.

Md. may not penalize G-4s because of this benefit conferred by Congress under its undoubted power over immigration & aliens. Graham & other cases relied on part on Supremacy Clause. (De Canas)

E/Protection (Close Q)

No reasonable relation between this classification & leg. state interests.

Many students pay no state income taxes.

State derives revenue from variety of sources.

Aff 6-3

No. 80-2178, Toll v. Moreno Conf. 3/5/82

The Chief Justice Rev.

State interests are sufficient -
State has no obligation here
Not convinced as to Preemption

Justice Brennan Affirm

On preemption

University's policy interferes with ~~Intended~~ International Agreement

Don't reach Vlandis issue.

But as to 11th Amend. issue, agree with CA 4 that there was waiver.
No argument that only the legislature could ~~accept~~ waive it.

Justice White Affirm

Agree with WJB on Supremacy Clause

If we reach E/P, would Rev. These aliens are not a suspect class.

Justice Marshall

Aff'm
Preemption

Justice Blackmun

Aff'm
Preemption

Justice Powell

Aff'm
Preemption /
Agree with WJB re 11th Amend.

Justice Rehnquist Rev

No preemption

No denial of E/P

Justice Stevens Aff

Agree with LFP

Justice O'Connor Rev - tentative

Preemption is close & not at rest.

If we decide on E/P, would apply rational basis + reverse.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 9, 1982

Re: No. 80-2178 Toll v. Moreno

Dear Chief:

I will be happy to undertake a dissent in this case.

Sincerely,

WHR

The Chief Justice

cc: The Conference

[RE APR 15 1982]

David –

Congratulations!

No wonder you wanted me to "vote" Him way. I'll now join.

Shall we cite your note, with your name, in Plyler?

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: APR 15 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2178

JOHN S. TOLL, PRESIDENT, UNIVERSITY OF MARYLAND ET AL., PETITIONERS, *v.* JUAN CARLOS MORENO ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[April ——, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The State-operated University of Maryland grants preferential treatment for purposes of tuition and fees to students with "in-state" status. Although citizens and immigrant aliens may obtain in-state status upon a showing of domicile within the State, nonimmigrant aliens, even if domiciled, are not eligible for such status. The question in this case is whether the University's in-state policy is invalid under the Supremacy Clause of the Constitution, insofar as the policy categorically denies in-state status to domiciled nonimmigrant aliens who hold G–4 visas.

I

The factual and procedural background of this case, which has prompted two prior decisions of this Court, requires some elaboration. The focus of the controversy has been a policy adopted by the University in 1973 governing the eligibility of students for in-state status with respect to admission and fees. The policy provides in relevant part:

"1. It is the policy of the University of Maryland to grant in-state status for admission, tuition and charge-differential purposes to United States citizens, and to

Recommend "join" gets a citation!

DL

My law review note finally

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: APR 15 1982

Recirculated: _____

Received
Join
4/15

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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> "1. It is the policy of the University of Maryland to grant in-state status for admission, tuition and charge-differential purposes to United States citizens, and to

immigrant aliens lawfully admitted for permanent residence in accordance with the laws of the United States, in the following cases:

"a. Where a student is financially dependent upon a parent, parents, or spouse domiciled in Maryland for at least six consecutive months prior to the last day available for registration for the forthcoming semester.

"b. Where a student is financially independent for at least the preceding twelve months, and provided the student has maintained his domicile in Maryland for at least six consecutive months immediately prior to the last day available for registration for the forthcoming semester." App. to Pet. for Cert. 167a–168a.

In 1975, when this action was filed, respondents Juan Carlos Moreno, Juan Pablo Otero, and Clare B. Hogg were students at the University of Maryland. Each resided with, and was financially dependent on, a parent who was a nonimmigrant alien holding a "G–4" visa. Such visas are issued to nonimmigrant aliens who are officers or employees of certain international organizations, and to members of their immediate families. 8 U. S. C. § 1101(a)(15)(G)(iv).[1] Despite respondents' residence in the State, the University denied them in-state status pursuant to its policy of excluding all nonimmigrant aliens. Seeking declaratory and injunctive relief, the three respondents filed a class action against the University of Maryland and its President.[2] They contended

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[1] The international organizations covered by the provision are those that are entitled to enjoy the privileges, exemptions, and immunities conferred under the International Organizations Immunities Act, 59 Stat. 669, 22 U. S. C. § 288 *et seq.* At the time suit was brought, the named plaintiffs in this case were dependents of employees of either the Inter-American Development Bank or the International Bank for Reconstruction and Development (World Bank).

[2] A fourth individual, Rene Otero, Jr., a respondent in this Court, was made a named plaintiff in 1980 when a supplemental complaint was filed.

that the University's policy violated various federal laws, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the Supremacy Clause.

The District Court granted partial summary judgment in favor of the three named plaintiffs and the class of G–4 visaholders represented by them.[3] In the view of the District Court, the University's denial of in-state status to these plaintiffs rested upon an irrebutable presumption that a G–4 alien cannot establish Maryland domicile. Concluding that the presumption was "not universally true" as a matter of either federal or Maryland law, the District Court held that under *Vlandis* v. *Kline*, 412 U. S. 441 (1973), the in-state policy violated the Due Process Clause of the Fourteenth Amendment. *Moreno* v. *University of Maryland*, 420 F. Supp. 541, 559 (Md. 1976). Accordingly, in an order dated July 13, 1976, the District Court enjoined the President of the University[4] from denying respondents the opportunity to establish in-state status *solely* on the basis of an "irrebutable presumption of non-domicile." 420 F. Supp., at 565.[5] The court stayed its order pending appeal in reliance on the University's representation that it would make appropriate refunds "in the event the Court's Order of July 13,

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[3] The court certified a class of G–4 visaholders or their dependents who, "residing in Maryland, . . . are current students at the University of Maryland, or . . . chose not to apply to the University of Maryland because of the challenged policies but would now be interested in attending if given an opportunity to establish 'in-state' status, or . . . are currently students in senior high schools in Maryland." *Moreno* v. *University of Maryland*, 420 F. Supp. 541, 563 (Md. 1976).

[4] Citing *Monroe* v. *Pape*, 365 U. S. 167 (1961), the District Court dismissed the claim against the University itself. 420 F. Supp., at 548–550. The plaintiffs did not appeal that dismissal.

[5] The District Court did not order the University to grant the named plaintiffs in-state status. Rather, it merely barred the University from denying them and the members of the class "the opportunity to demonstrate that they or any of them are entitled to 'in-state' status for purposes of tuition and charge differential determinations." 420 F. Supp., at 565.

1976, were finally affirmed on appeal." App. to Pet. for Cert. 100a. The Court of Appeals for the Fourth Circuit affirmed, adopting the reasoning of the District Court. *Id.*, at 102a.[6]

We reviewed the case on writ of certiorari. *Elkins* v. *Moreno*, 435 U. S. 647 (1978). We held that "[b]ecause petitioner makes domicile the 'paramount' policy consideration and because respondents' contention is that they can be domiciled in Maryland but are conclusively presumed to be unable to do so, this case is squarely within *Vlandis* as limited by [*Weinberger* v.] *Salfi*, [422 U. S. 749 (1975)]." 435 U. S., at 660.[7] It was therefore necessary to decide whether the presumption was universally true. With respect to federal law, we concluded that G–4 visaholders could "adopt the United States as their domicile." *Id.*, at 666.[8] We were thus left with the "potentially dispositive" question whether G–4 aliens are as a matter of state law incapable of becoming domiciliaries of Maryland. We certified this question to the Maryland Court of Appeals.[9] The state court answered the certified question in the negative, advising us that "nothing

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[6] The Court of Appeals stayed its mandate "on the same terms as the district court originally granted its stay." App. to Pet. for Cert. 103a–104a.

[7] *Salfi* limited *Vlandis* "to those situations in which a State 'purport[s] to be concerned with [domicile, but] at the same time den[ies] to one seeking to meet its test of [domicile] the opportunity to show factors clearly bearing on that issue.'" *Elkins* v. *Moreno*, 435 U. S. 647, 660 (1978), quoting *Weinberger* v. *Salfi*, 422 U. S. 749, 771 (1975).

[8] We noted that as to some categories of nonimmigrant aliens, Congress had "expressly conditioned admission . . . on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States." 435 U. S., at 665. See, *e. g.*, 8 U. S. C. § 1101(a)(15)(B), (F), (H). With respect to G–4 nonimmigrant aliens, however, we concluded that Congress had deliberately declined to "impose restrictions on intent," thereby permitting them to "adopt the United States as their domicile." 435 U. S., at 666.

[9] The certified question was phrased as follows:

"Are persons residing in Maryland who hold or are named in a visa under 8

in the general Maryland law of domicile renders G–4 visa holders, or their dependents, incapable of becoming domiciled in this State." *Toll* v. *Moreno*, 284 Md. 425, 444, 397 A. 2d 1009, 1019 (1979).

After our certification, but before the state court's response, the University adopted a "clarifying resolution" concerning its in-state policy.[10] By its terms the resolution did not offer a new definition of "in-state" students; rather, it purported to "reaffirm" the existing policy.[11] The resolution indicated, however, that the University's policy, "insofar as it denies in-state status to nonimmigrant aliens, serves a number of substantial purposes and interests, whether or not it conforms to the generally or otherwise applicable definition of domicile under the Maryland common law." App. to Pet. for Cert. 173a. The interests assertedly served by the policy were described in the following terms:

> "(a) limiting the University's expenditures by granting a higher subsidy toward the expenses of providing educational services to that class of persons who, as a class, are more likely to have a close affinity to the State and to contribute more to its economic well-being;
>
> "(b) achieving equalization between the affected classes of the expenses of providing educational services;

U. S. C. § 1101(a)(15)(G)(iv) (1976 ed.), or who are financially dependent upon a person holding or named in such a visa, incapable as a matter of state law of becoming domiciliaries of Maryland?" 435 U. S., at 668–669.

[10] It was entitled "A Resolution Clarifying the Purposes, Meaning, and Application of the Policy of the University of Maryland for Determination of In-State Status for Admission, Tuition, and Charge-Differential Purposes, Insofar as It Denies In-State Status to Nonimmigrant Aliens." App. to Pet. for Cert. 172a.

[11] "*Reaffirmation of In-State Policy.* Regardless of whether or not the policy approved by the Board of Regents on September 21, 1973, conforms with the generally or otherwise applicable definition of domicile under the Maryland common law, the Board of Regents reaffirms that policy . . . ." *Id.*, at 174a.

"(c) efficiently administering the University's in-state determination and appeals process; and

"(d) preventing disparate treatment among categories of nonimmigrants with respect to admissions, tuition, and charge-differentials." *Id.*, at 174a.

Following the Maryland Court of Appeals' decision, the case returned to this Court. But we declined to restore the case to the active docket for full briefing and argument, concluding that the University's clarifying resolution had "fundamentally altered the posture of the case." *Toll* v. *Moreno*, 441 U. S. 458, 461 (1979) (*per curiam*). We noted that "if domicile [was] not the 'paramount' policy consideration of the University, this case [was] no longer 'squarely within *Vlandis* as limited by *Salfi*,'" and thus raised "new issues of constitutional law which should be addressed in the first instance by the District Court." *Id.*, at 461–462, quoting *Elkins* v. *Moreno*, 435 U. S., at 660.[12] Accordingly, we vacated the judgment of the Court of Appeals and remanded the case "to the District Court for further consideration in light of our opinion and judgment in *Elkins*, the opinion and judgment of the Maryland Court of Appeals in *Toll*, and the Board of Regents' clarifying resolution of June 23, 1978." 441 U. S., at 462.

On remand, the District Court determined that the clarifying resolution constituted a change in the University's position. Before that resolution, the University's primary concern had in fact been domicile; after the resolution, domicile

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[12] We further noted:

"Our decision in *Elkins* rests on the premise that 'the University apparently has no interest in continuing to deny in-state status to G–4 aliens as a class if they can become Maryland domiciliaries since it has indicated both here and in the District Court that it would redraft its policy "to accomodate" G–4 aliens were the Maryland courts to hold that G–4 aliens can' acquire such domicile. 435 U. S., at 661. After the clarifying resolution, this premise no longer appears to be true." 441 U. S., at 461.

was no longer "the paramount consideration in the University's policy." 480 F. Supp. 1116, 1124 (Md. 1979). Thus, with respect to the period preceding the issuance of the resolution, the District Court reaffirmed its earlier determination that insofar as the policy precluded G–4 aliens (or their dependents) from acquiring in-state status, it denied due process under *Vlandis*. 480 F. Supp., at 1122–1125. With respect to the period following the promulgation of the resolution, however, the court held that *Vlandis* did not control: The University had abandoned its position that G–4 aliens could not establish domicile in Maryland. *Id.*, at 1125. Nevertheless, the District Court concluded that the revised in-state policy was constitutionally infirm, basing its conclusion on two alternative grounds. First, the court held that the policy ran afoul of the Equal Protection Clause of the Fourteenth Amendment. According to the court, the challenged portion of the University's policy contained a classification based on alienage, requiring strict scrutiny, an analysis which the policy did not survive, since the policy did not further any compelling interest. 489 F. Supp. 658, 660–667 (1980). Alternatively, the court held that the in-state policy violated the Supremacy Clause by encroaching upon Congress' prerogatives with respect to the regulation of immigration. *Id.*, at 667–668.[13]

The Court of Appeals affirmed for "reasons sufficiently stated" by the District Court. *Moreno* v. *University of Maryland*, 645 F. 2d 217, 220 (1981) (*per curiam*). We granted certiorari. —— U. S. —— (1981). For the reasons that follow, we hold that the University of Maryland's in-state policy, as applied to G–4 aliens and their dependents,

[13] The District Court's preemption holding rested in part on its equal protection analysis; according to the court, "the standard utilized to uphold a state regulation dealing with benefits to be accorded to aliens is essentially the strict scrutiny analysis" of equal protection. 489 F. Supp., at 668.

violates the Supremacy Clause of the Constitution,[14] and on that ground affirm the judgment of the Court of Appeals. We therefore have no occasion to address the question whether the policy violates the Equal Protection Clause.

II

Our cases have long recognized the preeminent role of the Federal Government with respect to the regulation of aliens within our borders. See, *e. g.*, *Mathews* v. *Diaz*, 426 U. S. 67 (1976); *Graham* v. *Richardson*, 403 U. S. 365, 377–380 (1971); *Takahashi* v. *Fish & Game Comm'n*, 334 U. S. 410, 418–420 (1948); *Hines* v. *Davidowitz*, 312 U. S. 52, 62–68 (1941); *Truax* v. *Raich*, 239 U. S. 33, 42 (1915). Federal authority to regulate the status of aliens derives from various sources, including the Federal Government's power "[to] establish [a] uniform Rule of Naturalization," U. S. Const., Art. I, § 8, cl. 4, its power "[t]o regulate Commerce with foreign Nations", *id.*, cl. 3, and its broad authority over foreign affairs, see *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 318 (1936); *Mathews* v. *Diaz*, *supra*, at 81, n. 17; *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952).

Not surprisingly, therefore, our cases have also been at pains to note the substantial limitations upon the authority of the States in making classifications based upon alienage. In *Takahashi* v. *Fish & Game Comm'n*, *supra*, we considered a California statute that precluded aliens who were "ineligible for citizenship under federal law" from obtaining commercial fishing licenses, even though they "met all other state requirements" and were lawful inhabitants of the State. 334

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[14] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl. 2.

U. S., at 414.[15] In seeking to defend the statute, the State argued that it had "simply followed the Federal Government's lead" in classifying certain persons as "ineligible for citizenship." *Id.*, at 418. We rejected the argument, stressing the delicate nature of the federal-state relationship in regulating aliens:

> "The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution the states are granted no such powers; they 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. *State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid.*" *Id.*, at 419 (emphasis added) (citation and footnote omitted).[16]

The decision in *Graham* v. *Richardson*, 403 U. S. 365 (1971), followed directly from *Takahashi*. In *Graham* we

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[15] At the time *Takahashi* was decided, federal law "permitted Japanese and certain other non-white racial groups to enter and reside in the country, but . . . made them ineligible for United States citizenship." 334 U. S., at 412.

[16] While preemption played a significant role in the Court's analysis, the actual basis for invalidation of the California statute was apparently the Equal Protection Clause of the Constitution. Commentators have noted, however, that many of the Court's decisions concerning alienage classifications, such as *Takahashi*, are better explained in preemption than equal protection terms. See, *e. g.*, Perry, Modern Equal Protection: A Conceptualization and Appraisal, 79 Colum. L. Rev. 1023, 1060–1065 (1979); Note, The Equal Treatment of Aliens: Preemption or Equal Treatment?, 31 Stan. L. Rev. 1069 (1979).

held that a State may not withhold welfare benefits from resident aliens "merely because of their alienage." *Id.*, at 378. Such discrimination, the Court concluded, would violate not only the Equal Protection Clause, but would also encroach upon federal authority over lawfully admitted aliens. In support of the latter conclusion, the Court noted that Congress had "not seen fit to impose any burden or restriction on aliens who become indigent after their entry into the United States," *id.*, at 377, but rather had chosen to afford "lawfully admitted resident aliens . . . the full and equal benefit of all state laws for the security of persons and property," *id.*, at 378. The States had thus imposed an "auxiliary [burden] upon the entrance or residence of aliens" that was never contemplated by Congress. *Id.*, at 379.

Read together, *Takahashi* and *Graham* stand for the broad principle[17] that "state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress." *De Canas* v. *Bica*, 424 U. S. 351, 358, n. 6 (1976).[18] To be sure, when Congress has done nothing more than permit a class of aliens to enter the country temporarily, the proper application of the principle is likely to be a matter of some dispute. But the instant case does not present such a situation, and there can be little

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[17] Our cases do recognize, however, that a State, in the course of defining its political community, may, in appropriate circumstances, limit the participation of noncitizens in the States' political and governmental functions. See, *e. g.*, *Cabel* v. *Chavez-Salido*, —— U. S. —— (1982); *Ambach* v. *Norwick*, 441 U. S. 68, 72–75 (1979); *Foley* v. *Connelie*, 435 U. S. 291, 295–296 (1978); *Sugarman* v. *Dougall*, 413 U. S. 634, 646–649 (1973).

[18] In *De Canas*, we considered whether a California statute making it unlawful in some circumstances to employ *illegal* aliens was invalid under the Supremacy Clause. In rejecting the preemption claim, we determined that Congress intended that the States be allowed, "to the extent consistent with federal law, [to] regulate the employment of illegal aliens." 424 U. S., at 361.

doubt regarding the invalidity of the challenged portion of the University's in-state policy.

The Immigration and Nationality Act of 1952, 66 Stat. 163, as amended, 8 U. S. C. § 1101 *et seq.*, represents "a comprehensive and complete code covering all aspects of admission of aliens to this country, whether for business or pleasure, or as immigrants seeking to become permanent residents." *Elkins* v. *Moreno*, 435 U. S., at 664. The Act recognizes two basic classes of aliens, immigrant and nonimmigrant.[19] With respect to the nonimmigrant class, the Act establishes various categories, the G–4 category among them. For many of these nonimmigrant categories, Congress has precluded the covered alien from establishing domicile in the United States. *Id.*, at 665.[20] But significantly, Congress has allowed G–4 aliens—employees of various international organizations, and their immediate families—to enter the country on terms permitting the establishment of domicile in the United States. *Id.*, at 666. In light of Congress' explicit decision not to bar G–4 aliens from acquiring domicile, the State's decision to deny "in-state" status to G–4 aliens, *solely* on account of the G–4 alien's federal immigration sta-

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[19] Immigrant aliens are subject to stricter qualitative tests than nonimmigrant aliens. See Harper, Immigration Laws of the United States 228 (3d ed. 1975). And whereas there are no quantitative restrictions on the admission of nonimmigrant aliens, there are, with a few exceptions, quota limitations for immigrant aliens. See 8 U. S. C. § 1151(a); Harper, *supra*, at 228. As we noted in *Elkins* v. *Moreno*:

"Congress defined nonimmigrant classes to provide for the needs of international diplomacy, tourism, and commerce, each of which requires that aliens be admitted to the United States from time to time and all of which would be hampered if every alien entering the United States were subject to a quota and to the more strict entry conditions placed on immigrant aliens." 435 U. S., at 665.

[20] See, *e. g.*, 8 U. S. C. § 1101(a)(15)(B) (temporary visitors for pleasure or business); *id.*, § 1101(a)(15)(C) (aliens in transit); *id.*, § 1101 (a)(15)(F) (foreign students); *id.*, § 1101(a)(15)(H) (temporary workers).

tus, surely amounts to an ancillary "burden not contemplated by Congress" in admitting these aliens to the United States. We need not rely, however, simply on Congress' decision to permit the G–4 alien to establish domicile in this country; the Federal Government has also taken the additional affirmative step of conferring special tax privileges on G–4 aliens.

As a result of an array of treaties, international agreements, and federal statutes, G–4 visaholders employed by the international organizations described in 8 U. S. C. § 1101(a)(15)(G)(iv) are relieved of federal, and in many instances, state and local taxes, on the salaries paid by the organizations. For example, the international agreements governing the international banks for which respondents' parents are employed specifically exempt respondents' parents from all taxes on their organizational salaries. See Articles of Agreement of the International Bank for Reconstruction and Development, Art. VII, § 9(b), 60 Stat. 1440, T.I.A.S. No. 1502 (1945) ("No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals."); Agreement Establishing the Inter-American Development Bank, Art. XI, § 9(b), 10 U. S.T. 3029, T.I.A.S. No. 4397 (1959) ("No tax shall be levied on or in respect of salaries or emoluments paid by the Bank to . . . employees of the Bank who are not local citizens or other local nationals.").[21] Not only have some of the specific tax exemp-

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[21] Among the similar agreements pertaining to other international organizations are the following: Articles of Agreement of the International Finance Corporation, Art. VI, § 9(b), 7 U.S.T. 2197, T.I.A.S. No. 3620 (1956) ("No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to . . . employees of the Corporation who are not local citizens, local subjects, or other local nationals."); Articles of Agreement of the International Development Association, Art. VIII, § 9(b), 11 U.S.T. 2284, T.I.A.S. No. 4607 (1960) ("No tax shall be levied on or in respect of salaries and emoluments paid by the Association to . . . employees of the

tions contained in international agreements been incorporated into a federal statute, see 22 U. S. C. § 286(h), but the International Organizations Immunities Act has explicitly afforded a federal tax exemption for those G–4 visaholders employed by international organizations for which no treaty or international agreement has provided a tax exemption for foreign employees.[22] Section 4(b), 59 Stat. 670, 26 U. S. C. § 893 ("Wages, fees, or salary of any employee [except citizens of the United States and of the Republic of the Philippines] of . . . an international organization . . . , received as compensation for official services to such . . . international organization shall not be included in gross income and shall be exempt from [federal] taxation.").

In affording G–4 visaholders such tax exemption, the Federal Government has undoubtedly sought to benefit the employing international organizations by enabling them to pay salaries not encumbered by the full panoply of taxes, thereby lowering the organizations' costs. See 41 Op. Att. Gen'l 170, 172–173 (1954). The tax benefits serve as an inducement for these organizations to locate significant operations in the United States. See, *e. g.*, H.R. Rep. No. 1203, 79th Cong., 1st Sess., 2–3 (1945); S. Rep. No. 861, 79th Cong., 1st Sess., 2–3 (1945). By imposing on those G–4 aliens who are domi-

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Association who are not local citizens, local subjects, or other local nationals."); Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Art. 24, § 2, 17 U.S.T. 1270, T.I.A.S. No. 6090 (1965) ("Except in the case of local nationals, no tax shall be levied . . . on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officals or employees of the Secretariat."); Articles of Agreement of the International Monetary Fund, Art. IX, § 9(b), 60 Stat. 1401, T.I.A.S. No. 1501 (1945) ("No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to . . . employees of the Fund who are not local citizens, local subjects, or other local nationals.").

[22] And by virtue of Md. Ann. Code, Art. 81, § 280(a), this group of G–4 visaholders is able to shield organizational income from Maryland income tax.

ciled in Maryland higher tuition and fees than are imposed on other domiciliaries of the State, the University's policy frustrates these federal policies. Petitioners' very argument in this Court only buttresses this conclusion. One of the grounds on which petitioners have sought to *justify* the discriminatory burden imposed on the respondents is that the salaries their parents receive from the international banks for which they work are exempt from Maryland income tax. Indeed, petitioners suggest that the "dollar differential . . . at stake here [is] an amount roughly equivalent to the amount of state income tax an international bank parent is spared by treaty each year." Brief for Petitioners 23. But to the extent this is indeed a justification for the University's policy with respect to the respondents, it is an impermissible one: The State may not recoup indirectly from respondents' parents taxes that the Federal Government has expressly barred the State from collecting.[23]

In sum, the Federal Government has not merely admitted G–4 aliens into the country; it has also permitted them to establish domicile and afforded significant tax exemptions on organizational salaries. In such circumstances, we cannot conclude that Congress ever contemplated that a State, in the operation of a university, might impose discriminatory tuition charges and fees solely on account of the federal immigration classification.[24] We therefore conclude that insofar

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[23] Petitioners point out that the international banks for which respondents' parents work provide reimbursement for the difference between in-state and out-of-state tuition. Certainly, this fact does not assist—but undermines—petitioners' argument. Such reimbursements only add to the employment costs of the international organizations, thereby frustrating the federal intention of benefiting the international organizations.

[24] It is important to note, however, that this case does not involve a State's imposition of a burden on all individuals sharing a common relevant characteristic, of whom only some are aliens. Our cases do not suggest that where a lawfully admitted alien possesses a certain characteristic, he would be immune from the burden imposed on all who share that charac-

as it bars domiciled G–4 aliens (and their dependents) from acquiring in-state status, the University's policy violates the Supremacy Clause.

III

Finally, we must address petitioners' contention that the Eleventh Amendment precluded the District Court from ordering the University to pay refunds to various class members who would have obtained in-state status but for the stay of the District Court's original order of July 13, 1976. As petitioners concede, in seeking a stay of that order the University made the representation to the District Court that in the event the 1976 order was "finally affirmed on appeal," it would make appropriate refunds. This representation was incorporated in the stay orders of both the District Court and Court of Appeals. It is petitioners' contention, however, that the 1976 order was "effectively" vacated when this Court, in *Toll* v. *Moreno*, *supra*, vacated the judgment of the Court of Appeals and remanded the case to the District Court for reconsideration. Petitioners therefore conclude that the terms of the University's waiver of sovereign immunity can no longer be satisfied.

Petitioners' argument is not persuasive. We do not interpret *Toll* as having vacated the judgment of the District Court. In *Toll* the Court recognized that the University had altered its position through the promulgation of the clarifying resolution, raising "new issues of constitutional law which should be addressed in the first instance by the District Court." 441 U. S., at 462. The Court declined, however, to decide whether the District Court, in issuing its 1976 order, had improperly relied on due process grounds, and whether continuation of the order was justified on equal protection or

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teristic. As such, this would be a wholly different case if, for example, as a matter of federal law, the G–4 alien could not establish domicile in the United States and the University made domicile its sole requirement for in-state status.

preemption grounds. Thus, while we vacated "the judgment of the Court of Appeals," *ibid.*, we left the judgment of the District Court undisturbed.[25] And contrary to petitioners' suggestion, a vacatur of the District Court's judgment was not necessary to give the District Court jurisdiction to reconsider the case. See *Goldberg* v. *United States*, 425 U. S. 94, 111–112 (1976); *Campbell* v. *United States*, 365 U. S. 85, 98–99 (1961); 28 U. S. C. §2106 ("The Supreme Court . . . may affirm, modify, vacate, set aside or reverse any judgment . . . and may . . . require such further proceedings to be had as may be just under the circumstances.").[26]

IV

For the foregoing reasons, the judgment of the Court of Appeals is

Affirmed.

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[25] Petitioners note, however, that whereas the District Court's 1976 order was based solely on due process grounds, the District Court, on remand, held the in-state policy as it operated during the period following the clarifying resolution invalid on two different grounds—equal protection and preemption. In our view, this fact is of little moment. Just as a respondent is entitled to defend in this Court a judgment on grounds different from those relied on by the court below, *e. g.*, *Colautti* v. *Franklin*, 439 U. S. 379, 397, n. 16 (1979), respondents in this case were entitled, following our remand, to support a reaffirmance of the earlier order on grounds previously urged but not relied on.

[26] Even if we were to assume that the judgment of the District Court was indeed vacated, we could not say that the terms of the University's waiver of sovereign immunity—that the District Court's order be "finally affirmed on appeal"—would not be satisfied. Petitioners have not prevailed on the merits in a single court, despite the numerous decisions that this litigation has prompted. By its original order, the District Court held that the University's in-state policy was invalid insofar as it discriminated against G–4 aliens. Today, we reaffirm that conclusion.

April 16, 1982

80-2178 Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 16, 1982

Re: 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Respectfully,

JPS

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1982

Re: 80-2178 - Toll v. Moreno

Dear Bill,

I agree.

Sincerely yours,

Byron

Justice Brennan

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 16, 1982

Re: 80-2178 Toll v. Moreno, et al.

Dear Bill,

My vote at Conference was tentative. You have written persuasively on the preemption ground and I may eventually join, but for the present time I will await the dissent.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 16, 1982

Re: No. 80-2178 Toll v. University of Maryland

Dear Bill:

In due course I will circulate a dissent.

Sincerely,

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1982

Re: No. 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1982

Re: No. 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 19, 1982

Re: No. 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1982

Re: 80-2178 - Toll v. Moreno

Dear Bill:

I join your dissenting opinion dated June 10, 1982.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
	3/8/82							
Join w HR 6/10/82	1st draft 4/15/82	agree 4/16/82	Join w JB 4/19/82	Join WJB 4/16/82	Join w JB 4/16/82	will dissent 5/9/82	Join w JB 4/16/82	await dissent 4/16/82
	2nd draft 4/19/82			typed draft Conference 6/21/82		will dissent 4/16/82		1st draft Con in part + dissenting in part 6/21/82
	3rd draft 6/14/82			1st printed draft 6/21/82		1st draft 6/10/82		
	4th draft 6/22/82					2nd draft 6/21/82		
						3rd draft 6/23/82		
				80-2178 Toll v. Moreno				