

■ *Plyler v. Doe*

Date: June 15, 1982

Author: U.S. Supreme Court; William J. Brennan, Jr.

Genre: court opinion

Summary Overview

With its ruling in *Plyler v. Doe*, the Supreme Court struck down a Texas law that denied public schooling to undocumented immigrant children, emphasizing that all children, regardless of immigration status, deserve access to education. This decision underscored the belief in equal treatment under the law and the moral responsibility of society to provide opportunities for all individuals to succeed.

By 1980 estimates on the number of immigrants illegally in the United States hovered between a low of about two million and a high of around four million. Naturally this became a political issue with the debate largely centering on economics, especially whether this large labor force was a drain on the American economy or had a positive effect. Arguments for the former usually centered around the idea that, in the words of a Cornell University study, “Illegal immigrants compete for employment and income opportunities with citizen workers, usually low-wage-earning minorities, women, and youth.” Arguments in favor of illegals having a positive effect mostly reasoned that they “took jobs Americans did not want” and contributed to the economy through increasing demand for products and the payment of sales and other taxes for which they received little if any benefits.

Another concern was that the increase in people illegally in the country created a large a growing class open to exploitation because they were largely without enforceable rights. As the Cornell study phrased it: “Some of the jobs are substandard. Employers often take advantage of people who are grateful for anything they receive. Those illegal immigrants who work under exploitive conditions take jobs that most of our citizens would not tolerate, so they are not taking food off a citizen’s table per se. Yet this is certainly no excuse for allowing their mistreatment to continue, nor is it reason to condone the existence of explicitly illegal job classes. If it is legally and morally wrong for citizens to work under unfair conditions, it is also wrong for illegal aliens to do so.”

These arguments dominated the debate well into the 1980s, eventually having an effect on the 1986 Immigration Reform and Control Act designed by the administration of President Ronald Reagan as an attempt to address the issue by providing an “amnesty” for illegals with no other criminal record while at the same time attempting stricter enforcement of immigration laws in the future.

Defining Moment

The rise in the number of immigrants in the country illegally had an uneven effect on individual states since some had very few within their borders while others saw that population surge. Among the latter was Texas. Between 1970 and 1980 the number of foreign-born residents in Texas increased by 176.1 percent from 310,000 to 856,000. According to Immigration and Naturalization Service estimates, between 420,000 and 450,000 of these latter numbers were in the country illegally. This placed a strain on public services, housing, competition for employment

(especially among the lower economic classes), and various other socio-economic institutions including public education.

By the early 1970s it was estimated that the largest cost to the state of Texas from illegal immigration was in the expense incurred in educating children in the country without authorization. Faced with rising costs, in May 1975 the state legislature adopted a new education law denying enrollment to children not “legally admitted” to the country and at the same time authorizing the withholding of state funding from any such students. When, subsequently, Superintendent James

Plyler of the Tyler Independent School District ruled a student unable to prove their citizenship or legal resident status would have to pay a \$1,000 tuition, a group of students from Mexico filed a class action suit in federal court to overturn the requirement because it violated their right to a free public education. Known as *Plyler v. Doe*, the U.S. Supreme Court handed down its decision in the case on June 15, 1982.

Author Biography

The author of the court's majority opinion was Justice William J. Brennan, Jr. Born in Newark, New Jersey, to Irish parents in 1906, he graduated from Harvard Law School. After working as a trial attorney focusing on labor cases he served as an officer in the U.S. Army during World War II. Following the war the New Jersey governor appointed him to the state's Superior Court in 1949 and its Supreme Court two years later. Despite being a liberal Democrat, he was appointed to the U.S. Supreme Court by Republican President Dwight D. Eisenhower in 1956.

Brennan quickly established a record of support for civil rights, the one-person one-vote principle, and

Roe v. Wade, while opposing the death penalty. Brennan once explained his approach to the bench: "We current Justices read the Constitution in the only way that we can: as twentieth century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be: What do the words of the text mean in our time. For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs." He was what many today might call an "activist judge" who looked to modern applications rather than original intent and in that respect has been criticized by some for "legislating from the bench." He was also criticized for his rulings in two cases where he found that desecration of the American flag was protected as a First Amendment free speech. Following his retirement in 1990 he taught at Georgetown University Law Center until 1994 and was awarded the Presidential Medal of Freedom by President Bill Clinton in 1993. He died in Arlington, Virginia, on July 24, 1997.



Historical Document

Plyler v. Doe

The question presented by these cases is whether, consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas may deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens.

Since the late 19th century, the United States has restricted immigration into this country. Unsanctioned entry into the United States is a crime, and those who have entered unlawfully are subject to deportation. But despite the existence of these legal restrictions, a substantial number of persons have succeeded in unlawfully entering the United States, and now live within various States, including the State of Texas.

In May 1975, the Texas Legislature revised its education laws to withhold from local school districts any state funds for the education of children who were not “legally admitted” into the United States. The 1975 revision also authorized local school districts to deny enrollment in their public schools to children not “legally admitted” to the country. These cases involve constitutional challenges to those provisions.

This is a class action, filed in the United States District Court for the Eastern District of Texas in September 1977, on behalf of certain school-age children of Mexican origin residing in Smith County, Tex., who could not establish that they had been legally admitted into the United States. The action complained of the exclusion of plaintiff children from the public schools of the Tyler Independent School District. The Superintendent and members of the Board of Trustees of the School District were named as defendants; the State of Texas intervened as a party-defendant. After certifying a class consisting of all undocumented school-age children of Mexican origin residing within the School District, the District Court preliminarily enjoined defendants from denying a free education to members of the plaintiff class. In December 1977, the court conducted an extensive hearing on plaintiffs’ motion for permanent injunctive relief.

In considering this motion, the District Court made extensive findings of fact. The court found that neither § 21.031 nor the School District policy implementing it had “either the purpose or effect of keeping illegal aliens out of the State of Texas.” Respecting defendants’ further claim that § 21.031 was simply a financial measure designed to avoid a drain on the State’s fisc, the court recognized that the increases in population resulting from the immigration of

Mexican nationals into the United States had created problems for the public schools of the State, and that these problems were exacerbated by the special educational needs of immigrant Mexican children. The court noted, however, that the increase in school enrollment was primarily attributable to the admission of children who were legal residents. It also found that while the “exclusion of all undocumented children from the public schools in Texas would eventually result in economies at some level,” funding from both the State and Federal Governments was based primarily on the number of children enrolled. In net effect then, barring undocumented children from the schools would save money, but it would “not necessarily” improve “the quality of education.” The court further observed that the impact of § 21.031 was borne primarily by a very small subclass of illegal aliens, “entire families who have migrated illegally and—for all practical purposes—permanently to the United States.” Finally, the court noted that under current laws and practices “the illegal alien of today may well be the legal alien of tomorrow,” and that without an education, these undocumented children, “[a]lready disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices, ... will become permanently locked into the lowest socio-economic class.”

The District Court held that illegal aliens were entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment, and that § 21.031 violated that Clause. Suggesting that “the state’s exclusion of undocumented children from its public schools ... may well be the type of invidiously motivated state action for which the suspect classification doctrine was designed,” the court held that it was unnecessary to decide whether the statute would survive a “strict scrutiny” analysis because, in any event, the discrimination embodied in the statute was not supported by a rational basis. The District Court also concluded that the Texas statute violated the Supremacy Clause.

The Court of Appeals for the Fifth Circuit upheld the District Court’s injunction. The Court of Appeals held that the District Court had erred in finding the Texas statute pre-empted by federal law. With respect to equal protection, however, the Court of Appeals affirmed in all essential respects the analysis of the District Court, concluding that § 21.031 was “constitutionally infirm regardless of whether it was tested using the mere rational basis standard or some more stringent test.” We noted probable jurisdiction.

In re Alien Children Education Litigation

During 1978 and 1979, suits challenging the constitutionality of § 21.031 and various local practices undertaken on the authority of that provision were filed in the United States District Courts for the Southern, Western, and Northern Districts of Texas. Each suit named the State of Texas and the Texas Education Agency as defendants, along with local officials. In November

1979, the Judicial Panel on Multi-district Litigation, on motion of the State, consolidated the claims against the state officials into a single action to be heard in the District Court for the Southern District of Texas. A hearing was conducted in February and March 1980. In July 1980, the court entered an opinion and order holding that § 21.031 violated the Equal Protection Clause of the Fourteenth Amendment. *In re Alien Children Education Litigation*, the court held that “the absolute deprivation of education should trigger strict judicial scrutiny, particularly when the absolute deprivation is the result of complete inability to pay for the desired benefit.” The court determined that the State’s concern for fiscal integrity was not a compelling state interest; that exclusion of these children had not been shown to be necessary to improve education within the State; and that the educational needs of the children statutorily excluded were not different from the needs of children not excluded. The court therefore concluded that § 21.031 was not carefully tailored to advance the asserted state interest in an acceptable manner. While appeal of the District Court’s decision was pending, the Court of Appeals rendered its decision. Apparently on the strength of that opinion, the Court of Appeals, on February 23, 1981, summarily affirmed the decision of the Southern District. ...

The Fourteenth Amendment provides that “[n]o State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Appellants argue at the outset that undocumented aliens, because of their immigration status, are not “persons within the jurisdiction” of the State of Texas, and that they therefore have no right to the equal protection of Texas law. We reject this argument. Whatever his status under the immigration laws, an alien is surely a “person” in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as “persons” guaranteed due process of law by the Fifth and Fourteenth Amendments. Indeed, we have clearly held that the Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government.

Appellants seek to distinguish our prior cases, emphasizing that the Equal Protection Clause directs a State to afford its protection to persons within its jurisdiction while the Due Process Clauses of the Fifth and Fourteenth Amendments contain no such assertedly limiting phrase. In appellants’ view, persons who have entered the United States illegally are not “within the jurisdiction” of a State even if they are present within a State’s boundaries and subject to its laws. Neither our cases nor the logic of the Fourteenth Amendment supports that constricting construction of the phrase “within its jurisdiction.” We have never suggested that the class of persons who might avail themselves of the equal protection guarantee is less than coextensive with that entitled to due process. To the contrary, we have recognized that both provisions were fashioned to protect an identical class of persons, and to reach every exercise of state authority.

“The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: ‘Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’ These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the protection of the laws is a pledge of the protection of equal laws.”

In concluding that “all persons within the territory of the United States,” including aliens unlawfully present, may invoke the Fifth and Sixth Amendments to challenge actions of the Federal Government, we reasoned from the understanding that the Fourteenth Amendment was designed to afford its protection to all within the boundaries of a State. Our cases applying the Equal Protection Clause reflect the same territorial theme. “Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction. It is there that the equality of legal right must be maintained. That obligation is imposed by the Constitution upon the States severally as governmental entities,—each responsible for its own laws establishing the rights and duties of persons within its borders.”

There is simply no support for appellants’ suggestion that “due process” is somehow of greater stature than “equal protection” and therefore available to a larger class of persons. To the contrary, each aspect of the Fourteenth Amendment reflects an elementary limitation on state power. To permit a State to employ the phrase “within its jurisdiction” in order to identify subclasses of persons whom it would define as beyond its jurisdiction, thereby relieving itself of the obligation to assure that its laws are designed and applied equally to those persons, would undermine the principal purpose for which the Equal Protection Clause was incorporated in the Fourteenth Amendment. The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation. That objective is fundamentally at odds with the power the State asserts here to classify persons subject to its laws as nonetheless excepted from its protection.

Although the congressional debate concerning § 1 of the Fourteenth Amendment was limited, that debate clearly confirms the understanding that the phrase “within its jurisdiction” was intended in a broad sense to offer the guarantee of equal protection to all within a State’s boundaries, and to all upon whom the State would impose the obligations of its laws. Indeed, it appears from those debates that Congress, by using the phrase “person within its jurisdiction,” sought expressly to ensure that the equal protection of the laws was provided to the alien population. Representative Bingham reported to the House the draft resolution of the Joint Committee of Fifteen on Reconstruction that was to become the Fourteenth Amendment. Two days later, Bingham posed the following question in support of the resolution:

“Is it not essential to the unity of the people that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States? Is it not essential to the unity of the Government and the unity of the people that all persons, whether citizens or strangers, within this land, shall have equal protection in every State in this Union in the rights of life and liberty and property?”

Senator Howard, also a member of the Joint Committee of Fifteen, and the floor manager of the Amendment in the Senate, was no less explicit about the broad objectives of the Amendment, and the intention to make its provisions applicable to all who “may happen to be” within the jurisdiction of a State:

“The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. ... It will, if adopted by the States, forever disable every one of them from passing laws trenching upon those fundamental rights and privileges which pertain to citizens of the United States, and to all persons who may happen to be within their jurisdiction.”

Use of the phrase “within its jurisdiction” thus does not detract from, but rather confirms, the understanding that the protection of the Fourteenth Amendment extends to anyone, citizen or stranger, who is subject to the laws of a State, and reaches into every corner of a State’s territory. That a person’s initial entry into a State, or into the United States, was unlawful, and that he may for that reason be expelled, cannot negate the simple fact of his presence within the State’s territorial perimeter. Given such presence, he is subject to the full range of obligations imposed by the State’s civil and criminal laws. And until he leaves the jurisdiction—either voluntarily, or involuntarily in accordance with the Constitution and laws of the United States—he is entitled to the equal protection of the laws that a State may choose to establish.

Our conclusion that the illegal aliens who are plaintiffs in these cases may claim the benefit of the Fourteenth Amendment’s guarantee of equal protection only begins the inquiry. The more difficult question is whether the Equal Protection Clause has been violated by the refusal of the State of Texas to reimburse local school boards for the education of children who cannot demonstrate that their presence within the United States is lawful, or by the imposition by those school boards of the burden of tuition on those children. It is to this question that we now turn.

The Equal Protection Clause directs that “all persons similarly circumstanced shall be treated alike.” But so too, “[t]he Constitution does not require things

which are different in fact or opinion to be treated in law as though they were the same.” The initial discretion to determine what is “different” and what is “the same” resides in the legislatures of the States. A legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill. In applying the Equal Protection Clause to most forms of state action, we thus seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose.

But we would not be faithful to our obligations under the Fourteenth Amendment if we applied so deferential a standard to every classification. The Equal Protection Clause was intended as a restriction on state legislative action inconsistent with elemental constitutional premises. Thus we have treated as presumptively invidious those classifications that disadvantage a “suspect class,” or that impinge upon the exercise of a “fundamental right.” With respect to such classifications, it is appropriate to enforce the mandate of equal protection by requiring the State to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest. In addition, we have recognized that certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances we have sought the assurance that the classification reflects a reasoned judgment consistent with the ideal of equal protection by inquiring whether it may fairly be viewed as furthering a substantial interest of the State. We turn to a consideration of the standard appropriate for the evaluation of § 21.031.

Sheer incapability or lax enforcement of the laws barring entry into this country, coupled with the failure to establish an effective bar to the employment of undocumented aliens, has resulted in the creation of a substantial “shadow population” of illegal migrants—numbering in the millions—within our borders. This situation raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents. The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law.

The children who are plaintiffs in these cases are special members of this underclass. Persuasive arguments support the view that a State may withhold its beneficence from those whose very presence within the United States is the product of their own unlawful conduct. These arguments do not apply with the same force to classifications imposing disabilities on the minor children of such illegal entrants. At the least, those who elect to enter our territory by stealth and in violation of our law should be prepared to bear the consequences, including, but not limited to, deportation. But the children of those

illegal entrants are not comparably situated. Their “parents have the ability to conform their conduct to societal norms,” and presumably the ability to remove themselves from the State’s jurisdiction; but the children who are plaintiffs in these cases “can affect neither their parents’ conduct nor their own status.” Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.

“[V]isiting ... 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.”

Of course, undocumented status is not irrelevant to any proper legislative goal. Nor is undocumented status an absolutely immutable characteristic since it is the product of conscious, indeed unlawful, action. But § 21.031 is directed against children, and imposes its discriminatory burden on the basis of a legal characteristic over which children can have little control. It is thus difficult to conceive of a rational justification for penalizing these children for their presence within the United States. Yet that appears to be precisely the effect of § 21.031.

Public education is not a “right” granted to individuals by the Constitution. But neither is it merely some governmental “benefit” indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction. The “American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance.” We have recognized “the public schools as a most vital civic institution for the preservation of a democratic system of government,” and as the primary vehicle for transmitting “the values on which our society rests.” “[A]s ... pointed out early in our history, ... some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” And these historic “perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists.” In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.

In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit. Paradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. But more directly, “education prepares individuals to be self-reliant and self-sufficient participants in society.” Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause. What we said 28 years ago in *Brown v. Board of Education*, still holds true:

“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

These well-settled principles allow us to determine the proper level of deference to be afforded § 21.031. Undocumented aliens cannot be treated as a suspect class because their presence in this country in violation of federal law is not a “constitutional irrelevancy.” Nor is education a fundamental right; a State need not justify by compelling necessity every variation in the manner in which education is provided to its population. But more is involved in these cases than the abstract question whether § 21.031 discriminates against a suspect class, or whether education is a fundamental right. Section 21.031 imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation. In determining the rationality of § 21.031, we may appropriately take into account its costs to the Nation and to the innocent children who are its victims. In light of these countervailing costs, the

discrimination contained in § 21.031 can hardly be considered rational unless it furthers some substantial goal of the State.

It is the State's principal argument, and apparently the view of the dissenting Justices, that the undocumented status of these children *vel non* establishes a sufficient rational basis for denying them benefits that a State might choose to afford other residents. The State notes that while other aliens are admitted "on an equality of legal privileges with all citizens under non-discriminatory laws," the asserted right of these children to an education can claim no implicit congressional imprimatur. Indeed, in the State's view, Congress' apparent disapproval of the presence of these children within the United States, and the evasion of the federal regulatory program that is the mark of undocumented status, provides authority for its decision to impose upon them special disabilities. Faced with an equal protection challenge respecting the treatment of aliens, we agree that the courts must be attentive to congressional policy; the exercise of congressional power might well affect the State's prerogatives to afford differential treatment to a particular class of aliens. But we are unable to find in the congressional immigration scheme any statement of policy that might weigh significantly in arriving at an equal protection balance concerning the State's authority to deprive these children of an education.

The Constitution grants Congress the power to "establish an uniform Rule of Naturalization." Drawing upon this power, upon its plenary authority with respect to foreign relations and international commerce, and upon the inherent power of a sovereign to close its borders, Congress has developed a complex scheme governing admission to our Nation and status within our borders. The obvious need for delicate policy judgments has counseled the Judicial Branch to avoid intrusion into this field. But this traditional caution does not persuade us that unusual deference must be shown the classification embodied in § 21.031. The States enjoy no power with respect to the classification of aliens. This power is "committed to the political branches of the Federal Government." Although it is "a routine and normally legitimate part" of the business of the Federal Government to classify on the basis of alien status, and to "take into account the character of the relationship between the alien and this country," only rarely are such matters relevant to legislation by a State.

As we recognized in *De Canas v. Bica*, the States do have some authority to act with respect to illegal aliens, at least where such action mirrors federal objectives and furthers a legitimate state goal. In *De Canas*, the State's program reflected Congress' intention to bar from employment all aliens except those possessing a grant of permission to work in this country. In contrast, there is no indication that the disability imposed by § 21.031 corresponds to any identifiable congressional policy. The State does not claim that the conservation of state educational resources was ever a congressional concern in restricting immigration. More importantly, the classification reflected in § 21.031 does not operate harmoniously within the federal program.

To be sure, like all persons who have entered the United States unlawfully, these children are subject to deportation. But there is no assurance that a child 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. In light of the discretionary federal power to grant relief from deportation, a State cannot realistically determine that any particular undocumented child will in fact be deported until after deportation proceedings have been completed. It would of course be most difficult for the State to justify a denial of education to a child enjoying an inchoate federal permission to remain.

We are reluctant to impute to Congress the intention to withhold from these children, for so long as they are present in this country through no fault of their own, access to a basic education. In other contexts, undocumented status, coupled with some articulable federal policy, might enhance state authority with respect to the treatment of undocumented aliens. But in the area of special constitutional sensitivity presented by these cases, and in the absence of any contrary indication fairly discernible in the present legislative record, we perceive no national policy that supports the State in denying these children an elementary education. The State may borrow the federal classification. But to justify its use as a criterion for its own discriminatory policy, the State must demonstrate that the classification is reasonably adapted to “the purposes for which the state desires to use it.”

Appellants argue that the classification at issue furthers an interest in the “preservation of the state’s limited resources for the education of its lawful residents.” Of course, a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources. The State must do more than justify its classification with a concise expression of an intention to discriminate. Apart from the asserted state prerogative to act against undocumented children solely on the basis of their undocumented status—an asserted prerogative that carries only minimal force in the circumstances of these cases—we discern three colorable state interests that might support § 21.031.

First, appellants appear to suggest that the State may seek to protect itself from an influx of illegal immigrants. While a State might have an interest in mitigating the potentially harsh economic effects of sudden shifts in population, § 21.031 hardly offers an effective method of dealing with an urgent demographic or economic problem. There is no evidence in the record suggesting that illegal entrants impose any significant burden on the State’s economy. To the contrary, the available evidence suggests that illegal aliens under-utilize public services, while contributing their labor to the local economy and tax money to the state fisc. The dominant incentive for illegal entry into the State of Texas is the availability of employment; few if any illegal immigrants come to this country, or presumably to the State of Texas, in order to

avail themselves of a free education. Thus, even making the doubtful assumption that the net impact of illegal aliens on the economy of the State is negative, we think it clear that “[c]harging tuition to undocumented children constitutes a ludicrously ineffectual attempt to stem the tide of illegal immigration,” at least when compared with the alternative of prohibiting the employment of illegal aliens.

Second, while it is apparent that a State may “not ... reduce expenditures for education by barring [some arbitrarily chosen class of] children from its schools, appellants suggest that undocumented children are appropriately singled out for exclusion because of the special burdens they impose on the State’s ability to provide high-quality public education. But the record in no way supports the claim that exclusion of undocumented children is likely to improve the overall quality of education in the State.” As the District Court in No. 80-1934 noted, the State failed to offer any “credible supporting evidence that a proportionately small diminution of the funds spent on each child [which might result from devoting some state funds to the education of the excluded group] will have a grave impact on the quality of education.” And, after reviewing the State’s school financing mechanism, the District Court in No. 80-1538 concluded that barring undocumented children from local schools would not necessarily improve the quality of education provided in those schools. Of course, even if improvement in the quality of education were a likely result of barring some number of children from the schools of the State, the State must support its selection of this group as the appropriate target for exclusion. In terms of educational cost and need, however, undocumented children are “basically indistinguishable” from legally resident alien children.

Finally, appellants suggest that undocumented children are appropriately singled out because their unlawful presence within the United States renders them less likely than other children to remain within the boundaries of the State, and to put their education to productive social or political use within the State. Even assuming that such an interest is legitimate, it is an interest that is most difficult to quantify. The State has no assurance that any child, citizen or not, will employ the education provided by the State within the confines of the State’s borders. In any event, the record is clear that many of the undocumented children disabled by this classification will remain in this country indefinitely, and that some will become lawful residents or citizens of the United States. It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation.

If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here. Accordingly, the judgment of the Court of Appeals in each of these cases is Affirmed.



Glossary

appellant: a person who appeals a judicial decision to a higher court

Equal Protection Clause: this is a reference to Section 1 of the Fourteenth Amendment which prohibits any state from enacting any law to “deny to any person within its jurisdiction the equal protection of the laws”

fisc: From the Latin word “fiscus” which referred to the state treasury; today this is usually used in legal documents and refers to a treasury

in re: a legal term meaning “in the matter of” when referring to a law or legal case

injunction: a court order preventing a person or entity from undertaking some action. For example, an “injunction” might be used to prevent a strike or to prevent a law from being enforced while it undergoes court review

vel non: a legal term referring to the existence or nonexistence of an issue requiring judicial resolution

Document Analysis

Justice Brennan framed the case in *Plyler v. Doe* as a question of whether denying the school-age children of parents who were not legal residents of the United States a free public education violated the Equal Protection Clause of the Fourteenth Amendment. As context for the issue, he recognized that United States law regulated entry into the country; hence, anyone in the country who was not legally there was committing a crime and thus subject to deportation. Despite this, a large number of people were nevertheless in the country illegally, especially in Texas where the legislature addressed the economic problem this created by requiring that state funds for education could only be used to support legal residents. Anyone else would be required to pay tuition.

Looking at an earlier decision, Brennan noted that the U.S. District Court for the Eastern District of Texas had found that the law in question was not intended to keep illegal aliens out of the state and that the rationale of fiscal savings had not been proven. In that decision the District Court determined that most of the increase in cost to the school district in question came from the enrollment of the children of legal residents and the number of children of illegal immigrants was small enough as to not make a significant difference, especially since federal and state funding was based on student population. Therefore, children of parents who were not legally in the country were counted in the formula for state aid and did not constitute a significantly large expense to the district. Further, the court found no reason to believe the Texas law would result in any improvement to overall “the quality of education.” With these findings of “fact,” the District Court concluded that “illegal aliens were entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment,” that the discrimination resulting from the Texas law had no “rational basis,” and that the Texas law also violated the Supremacy Clause of the Constitution by making laws regarding immigration which was the purview of the federal government. This ruling was later upheld by the Court of Appeals for the Fifth Circuit which, though denying that the Texas statute conflicted with federal law, agreed that the plaintiffs were entitled to equal protection.

One of the main arguments in favor of the Texas law was that the children of illegal aliens were not within the “jurisdiction” of the United States since they did not have legal status to be in the country. The court found this argument baseless since, as it said, “Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” It further affirmed that the Fourteenth Amendment “is not confined to the protection of citizens. The court then went on to provide historical precedents to support its conclusions, including quotations from the debates that took place surrounding the adoption of the Fourteenth Amendment.

The Fourteenth Amendment was specifically made applicable to the various states to preclude them from adopting any measures that conflicted with the guarantees provided in the Constitution. The court’s ruling continues on to assert that the “lax enforcement of the laws” resulted in “the creation of a substantial ‘shadow population’ of illegal migrants” the result is a “permanent caste of undocumented resident aliens.” This condition creates a class which the state of Texas was attempting to exempt from the Equal Protection Clause because of the statute at least in part the result of failure to enforce federal immigration law. Failing to provide this group equal protection was therefore discriminatory. While the court opined that “Persuasive arguments support the view that a State may withhold its beneficence from those whose very presence within the United States is the product of their own unlawful conduct,” this was not the case with the children of illegal aliens since their residence in the country was not of their own volition but that of their parents. In other words, it was not the children who chose to enter illegally, it was their parents, thus the children were here “through no fault of their own” and should not be penalized.

Although the court found that education was not a “right” granted under the Constitution, it was so fundamental to the institutions and social fabric of the nation that to deprive a group of educational opportunity was equivalent to saddling that group with a

permanent disadvantage. For support the court quoted from the momentous *Brown v. Board of Education* decision of 1954: “Today, education is perhaps the most important function of state and local governments. ... It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

Essential Themes

In 1965 the Higher Education Act required that federal financial aid be provided only to legal residents of the United States. The *Plyler v. Doe* decision was by the slimmest 5-4 margin and was limited in effect to K-12 public education, thus it did not directly overturn the 1965 statute dealing with post-secondary education. This division continued in the Illegal Immigration Reform and Immigrant Responsibility Act (1996) which required that “an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.” This was reinforced in the same year by the Personal Responsibility and Work Opportunity Reconciliation Act by which “An alien who is not a qualified alien is not eligible for any Federal public benefit” including “postsecondary education.” Despite these prohibitions, some states have adopted laws to circumvent the restrictions by basing assistance not on residence but on having successfully completed high school.

Despite the *Plyler* decision, since 1982 some states have attempted to circumvent the ruling. In 1994 California voters adopted Proposition 187, which

prohibited the enrollment of illegal aliens in an public elementary or secondary school, but this was later overturned by a federal court. In 2006 a school district in Illinois attempted to deny attendance to a student illegally in the country, but backed down when threatened with the withholding of state funding. In 2001 Alabama adopted a law requiring that school officials verify the legal immigration status of any alien students, but enforcement of the legislation was blocked by the federal courts. In 2025, the Tennessee General Assembly entertained legislation that seeks to challenge the case. Similar attempts will no doubt continue as long as the federal government continues to refrain from enforcement of the immigration laws and the expense of educating the children of those in the country illegally continues to pose a financial burden on state and local communities.

—Salem Press

Bibliography and Additional Reading

- Borkowski, John W. *Legal Issues for School Districts Related to the Education of Undocumented Children* (Washington, D.C.: The National School Boards Association and the National Education Association, 2009).
- Doty, Roxanne L. *The Law into Their Own Hands: Immigration and the Politics of Exceptionalism* (Tucson: University of Arizona Press, 2009).
- Lopez, Maria Pabon. “Reflections on educating Latino and Latina undocumented children: Beyond Plyler v. Doe,” *Seton Hall Law Review*, Vol. 35, no. 4 (2005),———.
- Olivas, Michael A. “The Story of Plyler v. Doe, The Education of Undocumented Children, and The Polity,” in *Immigration Stories*, eds. David Martin and Peter Schuck (Eagan, MN: Foundation Press, 2005).
- Soltero, Carlos R. “Plyler v. Doe (1982) and Educating Children of Illegal Alien,” in *Latinos and American Law: Landmark Supreme Court Cases* (Austin, TX: University of Texas Press, 2006), 118–32.