

PLYLER, SUPERINTENDENT, TYLER INDEPENDENT SCHOOL DISTRICT v. DOE

SUPREME COURT OF THE UNITED STATES

457 U.S. 202
June 15, 1982, Decided *

JUSTICE BRENNAN delivered the opinion of the Court.

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. *Tex. Educ.* These cases involve constitutional challenges to those provisions.

Plyler v. Doe

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....

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, "[already] 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 Court of Appeals for the Fifth Circuit upheld the District Court's injunction. We noted probable jurisdiction.

The Fourteenth Amendment provides that "[no] 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.

"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.*" *Yick Wo*...

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, "[the] 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. 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.

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

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. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973). 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." 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.

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 [emphasis added].**

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. 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....

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 underutilize 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 "[charging] 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. 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." 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*.

JUSTICE MARSHALL, concurring.

While I join the Court opinion, I do so without in any way retreating from my opinion in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) (dissenting opinion). I continue to believe that an individual's interest in education is fundamental, and that this view is amply supported "by the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values." Furthermore, I believe that the facts of these cases demonstrate the wisdom of rejecting a rigidified approach to equal protection analysis, and of employing an approach that allows for varying levels of scrutiny depending upon "the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn...."

CHIEF JUSTICE BURGER, with whom JUSTICE WHITE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join, dissenting.

Were it our business to set the Nation's social policy, I would agree without hesitation that it is senseless for an enlightened society to deprive any children -- including illegal aliens -- of an elementary education. I fully agree that it would be folly -- and wrong -- to tolerate creation of a segment of society made up of illiterate persons, many having a limited or no command of our language. However, the Constitution does not constitute us as "Platonic Guardians" nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, "wisdom," or "common sense." We trespass on the assigned function of the political branches under our structure of limited and separated powers when we assume a policymaking role as the Court does today....

In a sense, the Court's opinion rests on such a unique confluence of theories and rationales that it will likely stand for little beyond the results in these particular cases. Yet the extent to which the Court departs from principled constitutional adjudication is nonetheless disturbing.

I have no quarrel with the conclusion that the Equal Protection Clause of the Fourteenth Amendment *applies* to aliens who, after their illegal entry into this country, are indeed physically "within the jurisdiction" of a state. However, as the Court concedes, this "only begins the inquiry." The Equal Protection Clause does not mandate identical treatment of different categories of persons.

The dispositive issue in these cases, simply put, is whether, for purposes of allocating its finite resources, a state has a legitimate reason to differentiate between persons who are lawfully within the state and those who are unlawfully there. The distinction the State of Texas has drawn -- based not only upon its own legitimate interests but on classifications established by the Federal Government in its immigration laws and policies -- is not unconstitutional.

The Court acknowledges that, except in those cases when state classifications disadvantage a "suspect class" or impinge upon a "fundamental right," the Equal Protection Clause permits a state "substantial latitude" in distinguishing between different groups of persons. Moreover, the Court expressly -- and correctly -- rejects any suggestion that illegal aliens are a suspect class, or that education is a fundamental right. Yet by patching together bits and pieces of what might be termed quasi-suspect-class and quasi-fundamental-rights analysis, the Court spins out a theory custom-tailored to the facts of these cases.

In the end, we are told little more than that the level of scrutiny employed to strike down the Texas law applies only when illegal alien children are deprived of a public education. If ever a court was guilty of an unabashedly result-oriented approach, this case is a prime example.

The Court first suggests that these illegal alien children, although not a suspect class, are

entitled to special solicitude under the Equal Protection Clause because they lack "control" over or "responsibility" for their unlawful entry into this country. Similarly, the Court appears to take the position that § 21.031 is presumptively "irrational" because it has the effect of imposing "penalties" on "innocent" children. However, the Equal Protection Clause does not preclude legislators from classifying among persons on the basis of factors and characteristics over which individuals may be said to lack "control." Indeed, in some circumstances persons generally, and children in particular, may have little control over or responsibility for such things as their ill health, need for public assistance, or place of residence. Yet a state legislature is not barred from considering, for example, relevant differences between the mentally healthy and the mentally ill, or between the residents of different counties, simply because these may be factors unrelated to individual choice or to any "wrongdoing." The Equal Protection Clause protects against arbitrary and irrational classifications, and against invidious discrimination stemming from prejudice and hostility; it is not an all-encompassing "equalizer" designed to eradicate every distinction for which persons are not "responsible."

The second strand of the Court's analysis rests on the premise that, although public education is not a constitutionally guaranteed right, "neither is it merely some governmental 'benefit' indistinguishable from other forms of social welfare legislation." Whatever meaning or relevance this opaque observation might have in some other context, it simply has no bearing on the issues at hand.

The importance of education is beyond dispute. Yet we have held repeatedly that the importance of a governmental service does not elevate it to the status of a "fundamental right" for purposes of equal protection analysis. Moreover, the Court points to no meaningful way to distinguish between education and other governmental benefits in this context. Is the Court suggesting that education is more "fundamental" than food, shelter, or medical care?

The Equal Protection Clause guarantees similar treatment of similarly situated persons, but it does not mandate a constitutional hierarchy of governmental services. JUSTICE POWELL, speaking for the Court in *San Antonio Independent School Dist.*, put it well in stating that to the extent this Court raises or lowers the degree of "judicial scrutiny" in equal protection cases according to a transient Court majority's view of the societal importance of the interest affected, we "[assume] a legislative role and one for which the Court lacks both authority and competence." Yet that is precisely what the Court does today.

The central question in these cases, as in every equal protection case not involving truly fundamental rights "explicitly or implicitly guaranteed by the Constitution," is whether there is some legitimate basis for a legislative distinction between different classes of persons. The fact that the distinction is drawn in legislation affecting access to public education -- as opposed to legislation allocating other important governmental benefits, such as public assistance, health care, or housing -- cannot make a difference in the level of scrutiny applied.

Once it is conceded -- as the Court does -- that illegal aliens are not a suspect class, and that education is not a fundamental right, our inquiry should focus on and be limited to whether the legislative classification at issue bears a rational relationship to a legitimate state purpose.

Without laboring what will undoubtedly seem obvious to many, it simply is not "irrational" for a state to conclude that it does not have the same responsibility to provide benefits for persons whose very presence in the state and this country is illegal as it does to provide for persons lawfully present. By definition, illegal aliens have no right whatever to be here, and the state may reasonably, and constitutionally, elect not to provide them with governmental services at the expense of those who are lawfully in the state....

Denying a free education to illegal alien children is not a choice I would make were I a legislator. Apart from compassionate considerations, the long-range costs of excluding any children from the public schools may well outweigh the costs of educating them. But that is not the issue; the fact that there are sound *policy* arguments against the Texas Legislature's choice does not render that choice an unconstitutional one.....