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The Right of Undocumented Alien Children to Basic Education: An Overview of *Plyler v. Doe*

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Summary

In *Plyler v. Doe* (457 U.S. 202 (1982)), the Supreme Court held that it was unconstitutional for Texas to deny illegal alien children who were residing in the state equal access to its elementary and secondary schools. Though the vote was close (5-4), *Plyler* remains good law and continues to be cited for the proposition that illegal aliens are not beyond protection under the Constitution.

However, while *Plyler* set limits on state power, it clearly suggested that constitutional restrictions on the ability of states to discriminate against illegal aliens may be influenced by Congress. The case further implied that states have broader power to discriminate when children and basic education rights are not at stake. For example, cases since *Plyler* have upheld state laws that discriminate against illegal aliens in providing higher education.

The majority opinion. Much of the five-justice majority opinion in *Plyler* addressed how strong a justification Texas needed to sustain its law. Under the Equal Protection Clause of the fourteenth amendment, the standard generally applied to state laws that treat different groups of individuals differently – the "rational basis" test – is a relatively easy one for states to meet. By contrast, if distinctions among groups disadvantage a "suspect class" or relate to a "fundamental right," the courts require that a state show that the distinctions drawn are required by compelling state interests. This heightened barrier has been insurmountable in public services cases.

In 1971, the Supreme Court held in *Graham v. Richardson* (403 U.S. 365) that state distinctions broadly based on alienage were "suspect" and struck down residency requirements for aliens under state welfare laws. However, the majority in *Plyler* held that the more targeted class of "illegal aliens" cannot be considered a suspect class because of the illegality of their presence here. Following earlier cases, the majority also held that education is not a "fundamental right" for equal protection purposes, fundamental rights being generally limited to voting and rights based in the Constitution itself. Still, the majority was uneasy in applying a "rational basis" test to a law that it

viewed as "impos[ing] a lifetime hardship on a discrete class of children not accountable for their disabling status." Consequently, the majority insisted that Texas show that "substantial state interests" underlay its discrimination.

The majority went on to find that Texas had not met this burden. The majority began its "substantial interest" analysis by addressing whether an illegal alien's unlawful presence as such was a sufficient basis for state discrimination. Departing from earlier equal protection cases, the majority indicated that congressional policy could affect how far a state may go in singling out illegal aliens for discriminatory treatment. Nevertheless, the majority found that the federal government's treatment of illegal aliens had failed to provide clear guidance on where the balance should lie in assessing state authority to deny illegal aliens education. Regarding Texas's justification of its law as a deterrent to illegal migration and a cost saver, the majority focused not so much on whether these reasons could ever justify discriminatory treatment as on the evidence supporting them. According to the majority, there was insufficient evidence that illegal migrants significantly burdened Texas's economy, that denying education was a significant or effective deterrent to entry, or that excluding illegal alien children would enhance the quality of education available to others. The majority felt that under then current immigration practice, many illegal children within the state were likely to remain for a long time and possibly would adjust to a lawful status (a prediction proved true under 1986 legislation), and that creating an underclass of illiterates in the state could prove costly in the long run in terms of welfare and crime.

The minority opinion. In the view of the four dissenting justices, the issue "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." As is evident in this excerpt, the dissenters believed that the appropriate equal protection analysis was the rational basis test usually applied when neither a fundamental right nor a suspect class is involved. Therefore, in the dissenters' opinion, Texas's discrimination could be sustained if it could show that singling illegal aliens out for different treatment was a reasonable means of furthering the state's legitimate fiscal ends. The dissent further found that "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." The dissent also cited the denial of many federal benefits to illegal aliens as supporting state authority to discriminate.

Plyler and Congress. During the 104th Congress, the House twice approved education restrictions on illegal alien children. These restrictions never became law. However, the 104th Congress did pass a major new welfare reform law (P.L. 104-193) that directly denied illegal aliens most federal, state, and local benefits, and a major new immigration law (P.L. 104-208, Division C) that focused on curtailing illegal migration. These and other, more recent congressional stands against the continued presence of illegal aliens generally have been upheld by the courts. In doing so, the courts have, at least implicitly, recognized the power of Congress to influence the legal relationship between noncitizens and the states. Still, the courts have not ventured beyond the terms of these recent laws to extrapolate an overriding congressional intent to overturn the *Plyler* decision.

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