**Plyler v. Doe**

457 U.S. 202 91982)

**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, 8 U.S.C. § 1325, and those who have entered unlawfully are subject to deportation, 8 U.S.C. §§ 1251, 1252 (1976 ed. and Supp.IV). 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.

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.

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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." (Emphasis added.) 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. Shaughnessy v. Mezei, 345 U.S. 206 (1953); Wong Wing v. United States, 163 U.S. 228 (1896); Yick Wo v. Hopkins, 118 U.S. 356 (1886). 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. Mathews v. Diaz, 426 U.S. 67 (1976).

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."10 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." Yick Wo, supra, at 369.

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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." F. S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920). 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." Tigner v. Texas, 310 U.S. 141 (1940). 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.

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." Trimble v. Gordon, 430 U.S. 762 (1977). 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.

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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.

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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. See San Antonio Independent School Dist. v. Rodriguez. 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.

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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. Graham v. Richardson, 403 U.S. 365 (1971)…

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,23 § 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. 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…

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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.

[The concurring opinions of Justices Marshall, Blackmun, and Powell are omitted.]

**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.

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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 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.

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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. Ante, at 220, 223-224. 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. Ibid. See also ante, at 2406 (POWELL, J., concurring).4 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,5 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 Court does not presume to suggest that appellees' purported lack of culpability for their illegal status prevents them from being deported or otherwise "penalized" under federal law. Yet would deportation be any less a "penalty" than denial of privileges provided to legal residents?

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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. Indeed, it is never made clear what the Court's opinion means on this score.

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. In San Antonio Independent School Dist. Justice POWELL, speaking for the Court, expressly rejected the proposition that state laws dealing with public education are subject to special scrutiny under the Equal Protection Clause. 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?

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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.

The State contends primarily that § 21.031 serves to prevent undue depletion of its limited revenues available for education, and to preserve the fiscal integrity of the State's school-financing system against an ever-increasing flood of illegal aliens—aliens over whose entry or continued presence it has no control. Of course such fiscal concerns alone could not justify discrimination against a suspect class or an arbitrary and irrational denial of benefits to a particular group of persons. Yet I assume no Member of this Court would argue that prudent conservation of finite state revenues is per se an illegitimate goal…The significant question here is whether the requirement of tuition from illegal aliens who attend the public schools—as well as from residents of other states, for example—is a rational and reasonable means of furthering the State's legitimate fiscal ends.

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…

It is significant that the Federal Government has seen fit to exclude illegal aliens from numerous social welfare programs, such as the food stamp program, the old-age assistance, aid to families with dependent children, aid to the blind, aid to the permanently and totally disabled, and supplemental security income programs, the Medicare hospital insurance benefits program, and the Medicaid hospital insurance benefits for the aged and disabled program. Although these exclusions do not conclusively demonstrate the constitutionality of the State's use of the same classification for comparable purposes, at the very least they tend to support the rationality of excluding illegal alien residents of a state from such programs so as to preserve the state's finite revenues for the benefit of lawful residents.

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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.

Congress, "vested by the Constitution with the responsibility of protecting our borders and legislating with respect to aliens," (POWELL, J., concurring), bears primary responsibility for addressing the problems occasioned by the millions of illegal aliens flooding across our southern border. Similarly, it is for Congress, and not this Court, to assess the "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." While the "specter of a permanent caste" of illegal Mexican residents of the United States is indeed a disturbing one, see ante, it is but one segment of a larger problem, which is for the political branches to solve. I find it difficult to believe that Congress would long tolerate such a self-destructive result—that it would fail to deport these illegal alien families or to provide for the education of their children. Yet instead of allowing the political processes to run their course—albeit with some delay—the Court seeks to do Congress' job for it, compensating for congressional inaction. It is not unreasonable to think that this encourages the political branches to pass their problems to the Judiciary.

The solution to this seemingly intractable problem is to defer to the political processes, unpalatable as that may be to some.