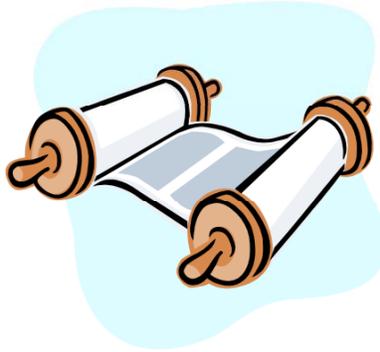


# NATIONAL CONSTITUTION DAY



September 17, 2008

## TEACHING MODULE

*Plyler v. Doe*: Public Education and Immigrant Students

WRITTEN BY MARYAM AHRANJANI, ADJUNCT PROFESSOR AT AMERICAN UNIVERSITY  
WASHINGTON COLLEGE OF LAW, ON BEHALF OF THE MARSHALL-BRENNAN  
CONSTITUTIONAL LITERACY PROJECT

THE MARSHALL-BRENNAN PROJECT TRAINS TALENTED UPPER-LEVEL LAW STUDENTS TO TEACH CONSTITUTIONAL RIGHTS AND RESPONSIBILITIES TO PUBLIC HIGH SCHOOL STUDENTS IN THE DISTRICT OF COLUMBIA AND IN OTHER CITIES ACROSS AMERICA AND THE WORLD. FOR MORE INFORMATION, PLEASE VISIT OUR WEBSITE - [HTTP://WWW.WCL.AMERICAN.EDU/MARSHALLBRENNAN/](http://www.wcl.american.edu/marshallbrennan/).

# PUBLIC EDUCATION AND IMMIGRANT STUDENTS

Description: This is an excellent unit to teach during the week beginning on Monday, September 15. The goal is to honor the Constitution by teaching students about its central importance in structuring the rights and responsibilities of young people in the school environment.

Objectives:

- 1) To learn how the Supreme Court has interpreted the Fourteenth Amendment's Equal Protection Clause with regard to immigrant students' right to public education; and
- 2) To understand how actions of the legislative branch sometimes affect actions of the judicial branch and vice versa.

Length of Lesson: 1-3 class periods. Students should be assigned *Plyler v. Doe* after completing the class activity.

Supplies Needed: This packet

Contents of Packet: Background discussion of immigration reform, class activity, vocabulary list and discussion questions to accompany *Plyler* excerpt, and *Plyler* excerpt.

Age Group: High school and college students

## Background

What do all young people across America have in common, regardless of where they live and who they live with? School! Can you imagine being a young person and NOT going to school? Perhaps this would be a dream come true for you.

But think about what it takes to be successful in our society. Think about your favorite teachers and how they have influenced you, think about the skills you have acquired in school, consider all the friends you have made in school. Do you think you could be an active citizen – have a good job, pay all your bills, and vote in elections – without any formal education? Do you believe all residents of the United States should have access to public education? Why or why not? What do you think the Supreme Court has said about this issue?

Immigration policy has been a hot topic in American history since our country's inception. Young people generally do not choose where they live; they tend to move with their parents. So when their parents leave their home countries and enter another country, legally or without legal status, their children accompany them. The question becomes whether children who do not have legal status in the United States may attend public schools, which are primarily financed by state property taxes. In the last thirty years, the Supreme Court has considered two cases relating to the right of children to obtain a public education.

In 1973, the Supreme Court decided a case call *San Antonio Independent School District v. Rodriguez*, which involved a challenge by Demetrio Rodriguez to Texas's system of funding public schools. Mr. Rodriguez, a U.S. military veteran, and other Mexican American parents challenged the property tax-based system of financing schools in Texas as a violation of the fundamental right to education. They argued that under this funding scheme, wealthy school districts had nearly twice as much funding than poorer districts. The Supreme Court rejected their Equal Protection claim, holding that wealth-based classifications do not warrant any special scrutiny and that education is not a fundamental right under the Equal Protection Clause.

In 1982, in a case called *Plyler v. Doe*, the Supreme Court struck down a Texas state law that prohibited students without legal status from attending public school. The Supreme Court did not go so far as to overturn *Rodriguez* and find that education is a fundamental right, but it did find that this law violated the Equal Protection rights of young people without legal status. Taken together, the two cases indicate that while depriving poor children of a public education does not violate the Equal Protection Clause because there is no Constitutional right to education, non-citizens may not be discriminated against in achieving a public, K-12 education.

What about non-citizen students who graduate from high school and want to pursue higher education? Ten states allow them to attend community colleges and four-year institutions and pay in-state tuition, but currently there is no path to legalization for these students. Although there are a few limited options for some students who wish to obtain permanent legal status, such as through marriage to a U.S. Citizen or through employer sponsorship, because immigration laws are so complex, these options are

often unattainable. Some students who return to their home countries and attempt to re-enter the U.S. as international students, may be able to do so, depending on their individual circumstances, but most are often prevented from doing so.

In the last several years, Congress worked on passing comprehensive immigration reform, including provisions for non-citizens to gain legal status after serving in the military or obtaining a higher education. Although comprehensive reform was unsuccessful, advocates attempted to pass separate, specific legislation to address undocumented youth who want to stay in the U.S. However, on October 24, 2007, the U.S. Senate voted to reject an attempt to move ahead with a bill to allow illegal immigrants under age 30 to remain in the United States and gain legal status if they attend college or join the military. The vote to move ahead on the Act obtained 52 votes, eight short of the 60 needed. The bill would have allowed illegal immigrants, if they passed background checks and became permanent legal residents, to qualify for lower in-state tuition rates at state colleges and universities, which is a natural consequence of being a permanent legal resident.

To be eligible for relief under the DREAM Act, the undocumented immigrants would have to have been 15 years old or younger when they arrived in the United States.<sup>1</sup> According to the National Immigration Law Center, each year 65,000 U.S.-raised students would benefit from the DREAM Act. These young people are honor rolls students, juvenile delinquents, homecoming kings and queens, truants, and aspiring professionals. They have lived in the U.S. since they were young, and our current immigration law provides no path to legalization for them. Applying your knowledge of students in the K-12 context, you will engage in a class activity about the DREAM Act, which involves rights of undocumented students in the higher education (post-high school) context. You and your classmates will re-enact the Senate vote to move ahead with the Act.

Many observers expect the next President to revive the issue of comprehensive immigration reform in general and the DREAM Act in particular.



---

<sup>1</sup> Tom Curry, “Lessons of the Dream Act defeat: Senate vote reveals staying power of illegal immigration issue,” Oct. 24, 2007, available at <http://www.msnbc.msn.com/id/21456667/>, last visited June 29, 2008.

## ACTIVITY

### U.S. Senate Hearing on the Development, Relief, and Education for Alien Minors (DREAM) Act

**Description of the Act<sup>2</sup>:**

To qualify for immigration relief under the DREAM Act, a student must have been brought to the U.S. more than 5 years ago when he or she was 15 years old or younger and must be able to demonstrate good moral character. In the Senate version, the student must also be under 30 years old on the date the DREAM Act is signed into law. Under the DREAM Act, once such a student graduates from high school, he or she would be permitted to apply for conditional status, which would authorize up to 6 years of legal residence. During the 6-year period, the student would be required to graduate from a 2-year college, complete at least 2 years toward a 4-year degree, or serve in the U.S. military for at least 2 years. Permanent residence would be granted at the end of the 6-year period if the student has met these requirements and has continued to maintain good moral character.

**Instructions:**

Half of the class will prepare arguments in favor of the DREAM Act and half the class will prepare arguments against. Two Senators will be selected from each group to present arguments to the entire class. After the presentations, students will vote for or against passage of the Act.

Possible arguments in favor of DREAM Act	Possible Arguments against DREAM Act
Education is a human right recognized by the U.N.'s Convention on the Rights of the Child.	There is no federally-recognized right to public education in the United States.
The U.S. Supreme Court supports public education for undocumented students in the K-12 context.	Educating non-citizens is a waste of public dollars.
If education is not provided, people who would participate in Democratic society in a positive way may instead turn to crime.	As it is, many citizens do not vote and our democracy has not crumbled.
Children most often did not decide to enter the country illegally.	The U.S. government does not owe unauthorized immigrant children a college education.
Offering support for college education to law-abiding, unauthorized immigrant students is fair and in the best interests of the country.	More people will immigrate illegally to this country if an incentive (higher education, jobs in the military) is provided.
Providing publicly funded higher education does not provide special privileges; it merely removes artificial barriers erected by accident of birth country.	Providing funding for undocumented students necessarily means less funds for legal citizens.

<sup>2</sup> National Immigration Law Center, "DREAM Act: Basic Information," October 2007, available at [http://www.nilc.org/immlawpolicy/DREAM/dream\\_basic\\_info\\_0406.pdf](http://www.nilc.org/immlawpolicy/DREAM/dream_basic_info_0406.pdf), last visited August 10, 2008; James Jay Carafano, "The DREAM Act: Senate Could Soon Vote on 'Stealth' Amnesty Bill," October 23, 2007, available at <http://www.heritage.org/Research/Immigration/wm1674.cfm>, last visited on August 10, 2008.

## **VOCABULARY**

(to accompany *Plyler v. Doe*)

<b>Equal Protection Clause of the 14<sup>th</sup> Amendment</b>	“[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.”
<b>Class action</b>	A lawsuit in which a large group of people with a common interest and complaint join together to sue.
<b>Invidious discrimination</b>	Discrimination that is objectionable and offensive, usually involving prejudice and stereotyping.
<b>Beneficence</b>	Doing good, performing acts of kindness
<b>Onus</b>	Responsibility or burden
<b>Prerogative</b>	Right, power or privilege
<b>Colorable</b>	Valid or genuine
<b>Diminution</b>	Diminishing, decreasing

**PLYLER v. DOE**  
Supreme Court of the United States  
Argued December 1, 1981  
Decided June 15, 1982

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.

**I**

... 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** 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....

**II**

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. 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....

...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.

**III**

**A**

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....

...[This law] is directed against children, and imposes its discriminatory burden on the basis of a legal characteristic over which children have little control. It is thus difficult to conceive of a rational justification for penalizing these children for their presence in the United States. Yet that appears to be precisely the effect of [the law].

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. In addition, education provides the basic tools by which individuals may 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....

#### B

...[This law] 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....

#### V

...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 [the provision].

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, [this law] 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, 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, 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. [T]he 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.” ...[B]arring 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...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....

## VI

...Accordingly, the judgment of the Court of Appeals in each of these cases is *Affirmed*.

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.

The Court makes no attempt to disguise that it is acting to make up for Congress' lack of "effective leadership" in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across our borders. ...However, it is not the function of the Judiciary to provide "effective leadership" simply because the political branches of government fail to do so.

... 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.

... 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.

## DISCUSSION QUESTIONS

While you read the case excerpt, consider the following questions:

1. According to Justice Brennan, is public education a “right” granted to individuals by the Constitution?
2. According to Justice Brennan, what is an enduring disability?
3. What are the three state interests that support the existing Texas law?
4. In his dissent, what does Justice Burger say about the role of the judicial branch when compared with the role of the legislative branch?
5. What do you think about the constitutionality of the DREAM Act after reading *Plyler v. Doe*?