

Plyler V. Doe

Where Are the Undocumented Students in Higher Education?

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On June 15th, 2022, the 1982 *Plyler v. Doe* Supreme Court case celebrated its 40th anniversary. The anniversary marks 40 years since the Supreme Court ruled that undocumented children could not be denied access to a free K-12 public education. Although it is celebrated as a landmark case in immigrant rights, the legislative aftermath of *Plyler v. Doe* has highlighted its shortcomings. In this paper, I synthesize the existing literature to demonstrate that, in practice, the landmark immigrant rights case has failed to further opportunities in the realm of higher education for undocumented students. The federal and state legislation implemented throughout 1994-2014 support this argument. To analyze this claim, I will first provide some background on the *Plyler v. Doe* case. I will elaborate on efforts to expand *Plyler v. Doe* into the postsecondary realm. Then, I will discuss California's 1994 ballot initiative, Proposition 187, which sought to deny virtually all state benefits to any undocumented individual in the state. I contend that these efforts set in motion further attempts at restrictive legislation designed to exclude undocumented students from accessing higher education, namely the Personal Responsibility and Reconciliation Act (PROWRA) of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Finally, I will examine the period of 2001-2014 in which state legislatures have either expanded or further restricted higher education opportunities for undocumented students.

In order to better understand the significance of *Plyler v. Doe* it is important to understand the circumstances that led to this landmark case. The legal battle that developed throughout the 1970s in Texas highlights the overt discrimination undocumented students and their families faced. In 1975 the State of Texas updated the Texas Education Code, implementing a new regulation that allowed Independent School Districts (ISD) in Texas to charge a tuition rate of \$1,000 to undocumented students or

flat out deny them enrollment.¹ The statute made it clear that those districts who would not comply with the new law would simply not qualify for state funding.² Following the enactment of section 21.031 in 1977, a group of undocumented Mexican children attempted to enroll at Tyler Independent School District, then led by Superintendent James Plyler, but were ultimately denied admission since they could not prove lawful presence.³ After a series of litigation battles fought by Peter Roos and Vilma Martinez of the Mexican American Legal Defense and Educational Fund (MALDEF), the *Plyler v. Doe* case finally reached the Supreme Court of the United States in 1981 for initial hearings.⁴ Finally, in 1982 the Supreme Court, in a 5-4 decision, ruled in favor of undocumented students. Justice Brennan, who gave the majority opinion, declared the Texas Education Code statute unconstitutional because it discriminated against students based on their immigration status. This was a clear violation of the Fourteenth Amendment's Equal Protection Clause which the Supreme Court determined included undocumented students.⁵ While the Court held that education is not a constitutional right, they acknowledged the vital role of education in American society. Justice Brennan declared, "The deprivation of education is not like the deprivation of some other governmental benefit. Public education has a pivotal role in maintaining the fabric of our society and in sustaining our political and cultural heritage..."⁶ Of similar importance was Justice Brennan comment on the position of undocumented children which held that the Texas statute "imposes a lifetime of hardship on a discrete class of children not accountable for their disabling status."⁷ In other words, undocumented children should not bear the burden of their parents' mistakes.

Building on the landmark victory of the *Plyler v. Doe* case, efforts were continued to expand undocumented students' access to educational opportunities, especially those in higher education. Peter Roos, one of the key actors in the *Plyler* case, aimed his sights at the possibility of taking *Plyler* to college. Seeing as many of the students and beneficiaries of the *Plyler v. Doe* case would eventually graduate high school and be forced to grapple with their inability to attend college, it made sense to question how the case could expand educational benefits for undocumented students in the post-secondary realm. An example of the limited futures faced by undocumented students is Laura Alvarez's, a beneficiary of the *Plyler v. Doe* case. While Alvarez was given the opportunity to freely access a K-12 education despite her immigration status, "what was supposed to happen afterward for undocumented children like her was a

1 Michael A. Olivas, *No Undocumented Child Left Behind: Plyler v. Doe and the Education of Undocumented Schoolchildren*. (New York: New York University Press, 2012): 9.

2 David H.K. Nguyen and Zelideh R. Martinez Hoy, "'Jim Crowing' Plyler v. Doe: The Resegregation of Undocumented Students in American Higher Education Through Discriminatory State Tuition and Fee Legislation" *Cleveland State Law Review* 63:2 (2015): 358.

3 Nguyen and Martinez Hoy, 358.

4 Olivas, 19.

5 Olivas, 19.

6 *Plyler v. Doe*, 457 U.S. 202 (1982).

7 *Plyler v. Doe*, 457 U.S. 202 (1982).

little vague.”⁸ In fact, Alvarez admits that she never gave herself the opportunity to dwell on the possibility of attending college.⁹ While she attended the occasional class at Tyler Junior College, with the hope that one day she would be able to pursue her dream of becoming a teacher, Alvarez shifted her focus on finding a job that could sustain her and later, her family.¹⁰ The cases fought by Roos and others in California and throughout the nation regarding the matter produced differing verdicts. The majority of these cases ultimately denied relief to undocumented students in higher education.¹¹ However, a notable case fought by Peter Roos in 1985 deserves mention. The case, *Leticia A. v. Regents of the University of California* involved a group of undocumented youth who had been granted admission to the University of California. The students slated to start college in the fall of 1984 were notified they’d have to pay non-resident tuition, despite residing in California for over 3 years.¹² Ultimately the Superior Court of California ruled that undocumented students were allowed “to establish in-state residency for tuition purposes and to apply for Cal Grants.”¹³ This decision was short-lived—overturned in 1991.¹⁴ The *Plyler v. Doe* case, with which Roos and others hoped to use as a basis to extend relief to undocumented students pursuing or hoping to pursue higher education clearly did not provide a strong enough foundation. Even when undocumented students were granted some kind of relief, there was never any certainty that it would last. This would ring true for future cases.

Efforts to expand educational access for undocumented students collided with federal and state legislative challenges and complex societal attitudes towards immigration. In 1994, California’s ballot initiative, Proposition 187 sought to deny “virtually all state-funded benefits, including public education, to undocumented aliens.”¹⁵ Motivated by personal interests, Pete Wilson, Governor of California at the time, found that by backing Proposition 187 and encouraging nativist anti-immigrant sentiment he could “build a bi-partisan coalition ensuring his reelection and the initiative’s passage.”¹⁶ Support for the initiative did not fit neatly into typical partisan views on U.S. immigration policy. In fact, Proposition 187 received almost 60% of the vote, supported by individuals on both sides of the political spectrum.¹⁷ While many sections of this initiative were struck down by the federal district court, including the provision meant to deny undocumented children access to K-12 education, the ban on post-secondary residency benefits remained. As David H.K. Nguyen and Zelideh R.

8 Olivas, 7.

9 Olivas, 7.

10 Olivas, 7.

11 Olivas, 32.

12 Olivas, 15.

13 Nancy Guarneros Cyndi Bendezu, Lindsay Perez Huber, Veronica N. Velez, and Daniel G. Solorzano, “Still Dreaming: Legislation and Legal Decisions Affecting Undocumented AB 540 Students.” *Latino Policy and Issues Brief*. 23:1 (. 2009.): 1.

14 Guarneros et al.

15 Olivas, 32.

16 Olivas, 40.

17 Olivas, 32.

Martinez Hoy, education scholars argue, this kind of spectacle “renewed the intense debate and brought it back to the forefront.”¹⁸

Surely enough, debates surrounding the matter further developed around the Personal Responsibility and Work Reconciliation Act (PROWRA) of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. These acts, largely the result of a Republican-controlled Congress, but supported by Democrat President Bill Clinton, “changed the federal social welfare and health benefits for undocumented immigrants.”¹⁹ While these changes are no doubt significant, for the purposes of this essay, I will only focus on the effects of PROWRA and IIRIRA on undocumented students in post-secondary education. PROWRA was significant because it denied federal funding to “unqualified” non-citizens such as undocumented immigrants. This statute extended to local and state benefits as well, making it clear that “unless the state passes an affirmative law making them explicitly eligible,”²⁰ postsecondary benefits would remain unavailable to undocumented students. Another significant PROWRA provision restricts undocumented immigrants’ eligibility for occupational licensure.²¹ The Higher Ed Immigration Portal notes “Over 1,100 different occupations require a license and approximately 25 percent of all workers nationwide are required to obtain a license to work in their occupation.”²² Comprehensive access to occupational licensure is only available to undocumented immigrants in 5 states, including Illinois.²³ The presence of 427, 345 undocumented students in higher education makes this number incredibly troubling.²⁴ The enactment of PROWRA has presented significant barriers of affordability and access to employment opportunities for undocumented students in higher education.

Furthermore, the obstacles presented by PROWRA have been exacerbated by additional limitations introduced by IIRIRA which have further restricted educational and professional opportunities available to undocumented students. The IIRIRA provision that directly impacted undocumented students read that they could “not be eligible on the basis of residence within a State... for any postsecondary education benefit unless a citizen or national of the United States [is] also eligible for such benefit... without regard to whether the citizen or national is a resident.”²⁵ This federal provision detailed that states, despite enacting legislation in accordance with PROWRA, could not grant undocumented students in-state tuition unless non-resident citizen students could also be afforded the same benefits. Fourteen years after *Plyler*, the matter had

18 Nguyen and Martinez Hoy, 360.

19 Nguyen and Martinez Hoy, 361.

20 Higher Ed Immigration Portal. (n.d.) Federal Policies. *Higher Ed Immigration Portal*. (accessed 14 March 2024)

21 Higher Ed Immigration Portal

22 Higher Ed Immigration Portal

23 Higher Ed Immigration Portal (n.d.) Professional and Occupational Licensure. *Higher Ed Immigration Portal*. (accessed 14 March 2024)

24 Higher Ed Immigration Portal (n.d.) Tuition and Financial Aid Equity for Undocumented Students. *Higher Ed Immigration Portal*. (accessed 14 March 2024)

25 Illegal Immigration Reform and Immigrant Responsibility Act, 8 U.S.C. § 505 (1996).

finally been settled: undocumented students were clearly not welcome in higher education. Without financial relief or secure employment opportunities after graduation, PROWRA and IIRIRA effectively worked to discriminate against undocumented students—keeping many of them from accessing higher education and facing limited futures after high school and in some cases, college.

While federal legislation had determined its stance on undocumented students in higher education, diverse responses have occurred at the state level. These responses illustrate the ongoing struggle of undocumented students pursuing higher education. From 2001-2014, 28 state legislatures have found effective legal avenues to expand access to higher education for undocumented students or further restrict.²⁶ Out of the 28 states, only 19 state legislatures enacted legislation during this time meant to afford undocumented students in-state tuition.²⁷ The criteria for these benefits have been based on a number of eligibility requirements including attendance at an in-state high school rather than the residency requirements prohibited by IIRIRA. In this manner, both undocumented students and documented non-resident students have an equal opportunity at accessing in-state tuition so long as they are able to prove that they attended and received a diploma from an in-state high school. Unfortunately, this “inclusive” legislation is limited and worse, it is always in legal limbo. For example, in 2014 Virginia lawmakers passed legislation that extended in-state tuition to undocumented students, but limited beneficiaries to those who were part of the federal Deferred Action for Childhood Arrivals (DACA) program.²⁸ Undocumented students without DACA would still be subject to non-resident tuition rates. Furthermore, the DACA program which has been in legal limbo since its inception, has never been a permanent solution. Since 2017, DACA has found itself continuously in and out of the courts. The latest ruling given by the U.S. District Judge Andrew Hanen on September 13, 2023, established that the program is still illegal. Thus, it is not always guaranteed that DACA recipients will exist, making Virginia’s 2014 attempt at addressing post-secondary benefits for undocumented students limited and insubstantial. Moreover, undocumented students are never guaranteed that legislation meant to afford them in-state tuition won’t suddenly be repealed. In 2009, Governor Jim Doyle of Wisconsin passed a law that granted eligible undocumented students access to in-state tuition.²⁹ This victory was largely the result of years-long organizing and advocacy work done by members and supporters of Voces de la Frontera and Students United for Immigrants Rights (SUFIR).³⁰ However, in 2011, Governor Scott Walker repealed the law and extended restrictions to include DACA recipients.³¹ In doing so, Governor Walker added Wisconsin to the list of states including Arizona, Georgia, South Carolina, Indi-

26 Nguyen and Martinez Hoy, 365-368.

27 Nguyen and Martinez Hoy, 365.

28 Nguyen and Martinez Hoy, 365.

29 Christine Neumann and Voces de la Frontera Staff. (n.d.) Voces de la Frontera History.

Voces de la Frontera. <https://vdlf.org/about/>

30 Neumann et al.

31 Higher Ed Immigration Portal. (n.d.) Wisconsin. *Higher Ed Immigration Portal*. (accessed 14 March 2024)

ana, Alabama, and North Carolina with state actions aimed at banning undocumented students from accessing in-state tuition or enrollment altogether.³² The case of Wisconsin shows the ever-changing reality undocumented students throughout the nation face. Even when a state legislature enacts “inclusionary” laws, their permanence is never guaranteed.

The evidence presented suggests that the legislative consequences of *Plyler v. Doe* have resulted in limited, piecemeal, and temporary educational and employment opportunities for undocumented students. Despite bold efforts, the relief has not extended beyond K-12 education and has left many undocumented students without access to postsecondary education opportunities. Legislation and societal attitudes opposing immigration have also contributed to an ongoing debate on immigrants’ rights including discussion on whether undocumented students have a right to postsecondary education benefits. Although some state legislatures, with pressure from immigrants’ rights activists and advocacy groups, have successfully found legal ways to circumvent PROWRA and IIRIRA, data from 2001-2014 shows that even the most “inclusive” state legislative efforts remain insubstantial to address the current needs of undocumented students in higher education. Without a permanent comprehensive solution, the futures of undocumented students both with and without DACA remain uncertain. Until then, they will be left at the mercy of state legislatures who at any moment could revoke their ability to access higher education and viable employment opportunities.

32 Nguyen and Martinez Hoy, 366.