



Triumphs and Challenges on the 30th Anniversary of *Plyler v. Doe*

A Landmark Supreme Court Case on Providing Education to Immigrant Children Under Threat

Marshall Fitz, Philip E. Wolgin, and Ann Garcia

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Introduction and summary

Thirty years ago the Supreme Court ruled on a profound question in American life: whether states could bar undocumented children from receiving public education. On June 15, 1982, in the case of *Plyler v. Doe*, the Court struck down a Texas statute that permitted local school districts to charge tuition to undocumented students. In doing so, it guaranteed that all children in the United States would receive a basic education.¹

That seminal ruling extended the 14th Amendment's guarantee of equal protection to undocumented immigrants, and it prevented a generation of immigrant children from being pushed to the margins of society. It effectively blocked states from relegating these kids to the lowest socioeconomic rung merely because of their immigration status, and it ensured that a generation of children would grow up as Americans, not as castoffs. Finally, it protected the nation's own economic and social self-interest by ensuring that all children have the ability to become educated, well integrated, and economically productive.

This week is *Plyler's* 30th anniversary and there is much to praise about the opinion. In particular, we celebrate the decision's affirmation that the constitutional values of fair and equal treatment supersede a state's desire to marginalize undocumented immigrants. We celebrate its moral contribution to our national identity by elevating the humanity of these young people over their immigration status. And we celebrate its positive social impact in helping integrate these immigrant children and their families into our schools and communities.

Plyler v. Doe at a glance

- Decided 30 years ago on June 15, 1982.
- Struck down a Texas law authorizing school districts to charge tuition to undocumented immigrants. Justice William J. Brennan wrote the 5-4 majority opinion.
- Held for the first time that undocumented immigrants may benefit from the equal protection clause of the 14th Amendment.
- Concluded that undocumented children residing in the United States cannot be denied K-12 education on the basis of their immigration status.
- Challenged by states' recent efforts to pursue legislation designed to discourage undocumented immigrants' public school attendance. The *Plyler* decision has been under attack since it was passed.

Unfortunately, despite the Court's ruling and the concrete moral foundation on which it rests, *Plyler* has been and remains under attack by immigration restrictionists. After three decades in which the courts have rightfully overturned any attack on undocumented children's education, today well-funded anti-immigration groups have hatched a plan to encourage the Supreme Court to revisit and overturn both the *Plyler* ruling and other well-settled legal questions about the limits of a state's power in the immigration realm.

At any other time attacking *Plyler* would be a futile exercise because, under a hallowed judicial doctrine of precedence known as *stare decisis*, a Supreme Court ruling binds future rulings in all but the most extraordinary cases. Later this month the Court will announce its decision on the constitutionality of Arizona's anti-immigrant law, S.B. 1070, and we will get our first insight into how today's conservative Court will approach state involvement in the immigration arena.² But the conservative justices on today's Supreme Court already appear relatively unconstrained by precedent and more than willing to revisit firmly established cases—the *Citizens United* case overturning restrictions on political money from businesses and corporations is but one example—leaving the fate of *Plyler* up in the air.³

Against this urgent backdrop, we first briefly revisit the landmark *Plyler* ruling and its analytical underpinnings. We then review the major challenges leveled against it and the fresh ones on the horizon. Lastly, we consider what life would be like without *Plyler*—including the devastating effect on our children and on our nation as a whole—to underscore the importance of the current debate.

A recap of the *Plyler v. Doe* decision

The controversy that would make its way to the Supreme Court in *Plyler* began when Texas passed a law that allowed public school districts to charge tuition for unauthorized immigrant children. Four families (identified only by the pseudonym “Doe”) filed suit against Superintendent James Plyler of the Tyler, Texas School District, winning a positive verdict in the district court and in the U.S. Court of Appeals for the Fifth Circuit. In 1982 the Supreme Court agreed to hear the case, combining it with a similar case from Houston.⁴

Writing for the Court’s 5-4 majority, Justice Brennan’s opinion in *Plyler* incorporated his typical blend of common sense, moral clarity, and bold reasoning. At its core Brennan anchored his opinion to the principle that the Constitution’s guarantees of fairness and equality extend to, as he wrote, “anyone, citizen or stranger, who is subject to the laws of a State.”⁵

The Court held for the first time that the 14th Amendment’s equal protection clause applied to all people within the United States, including undocumented immigrants. And it rebuffed the state of Texas’s attempt to argue that undocumented immigrants were not subject to the state’s “jurisdiction,” and as such were a class of people not protected by the Constitution.

As Brennan eloquently put it:

*The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation. That objective is fundamentally at odds with the power the State asserts here to classify persons subject to its laws as nonetheless excepted from its protection.*⁶

The 14th Amendment’s application in this context signaled the reach of the Constitution’s protection. But the decision’s real hallmark, which has resonated across the intervening decades, was its determination that undocumented chil-

dren cannot be punished for their parents' immigration violations and that denying them an education is a severe and debilitating punishment.

Brennan reasoned that the Texas statute:

[I]mposes 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 [the Texas statute], 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 [the statute] can hardly be considered rational unless it furthers some substantial goal of the State.⁷

Importantly, the Court rejected Texas's contention that its desire to stop a wave of unauthorized migration—the basis of excluding children from public education—justified marginalizing undocumented minors.

Describing this immigration control strategy as “ludicrously ineffectual,”⁸ Brennan maintained that this policy of denying children public education was not adequately tailored to advance Texas's interest in preventing unauthorized migration. And it certainly did not provide a compelling reason to justify the discriminatory treatment of unauthorized immigrant children.

The Court also rejected the state's argument that the cost of educating these children justified imposing a special burden on them. It concluded that state's fiscal integrity did not provide a legitimate basis for discriminating against these kids.

With this ruling, Justice Brennan and the Supreme Court effectively guaranteed that the right to public education would not be abridged for any group or class of children in the United States. But as we detail in the next section, the ruling and the values that permeate it have been squarely under attack in three decades since.

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Plyler v. Doe under attack since 1982

Since the *Plyler* decision in 1982, restrictionists have repeatedly attempted to challenge it and to either limit or do away with its protections completely.

Two main challenges in the mid-1990s failed: California's Proposition 187, which would have barred any and all state benefits to unauthorized immigrants, and an attempt by Rep. Elton Gallegly (R-CA) to pass an amendment allowing states to ban public education to unauthorized immigrants.

In recent years, however, *Plyler* opponents have changed tactics. Instead of challenging outright the ability of unauthorized immigrants to attend public schools, they are probing the law in other ways, such as through Alabama's recent immigration law that forces schools to collect information about the legal status of their students. Groups like the Immigration Reform Law Institute (part of the Federation for American Immigration Reform, which the Southern Poverty Law Center has labeled a hate group) acknowledge that these laws will be challenged in the courts. But they see them as a means to an end: a way to force today's more conservative Supreme Court to revisit and overturn the *Plyler* decision.⁹

Let's look at the major challenges to *Plyler* in more detail:

The 1990s: Proposition 187 and the Gallegly amendment

Restrictionist opposition to *Plyler* coalesced in California in 1994 with the passage of Proposition 187. Gov. Pete Wilson (R) watched the rise of anti-immigrant sentiment in the state and sought to turn around his sinking poll numbers with a sharp right turn on immigration. Wilson railed against unauthorized immigrants' use of public services such as education and health care, alleging in particular that public education of unauthorized immigrants cost the state \$1.5 billion each year.¹⁰

Proposition 187 itself dealt with a wide variety of issues in addition to public education, denying all public services outside of emergency health care to people without status and creating a state mechanism to verify that applicants for service had legal status. Even with opposition from Latino groups and the American Civil Liberties Union, the measure passed by a wide margin, 59 to 41 percent.¹¹

Unsurprisingly, the courts quickly struck down most of the proposition because of its conflict with *Plyler*.¹² As legal scholar Michael A. Olivas points out, in the wake of Proposition 187, California amended its educational statutes to clearly state, “Nothing in this chapter may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe*.”¹³

With the failure of the state effort in California, opponents turned to Congress and just two years later, *Plyler* came back into the foreground during the debates over the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The act severely strengthened immigration enforcement, hardened penalties for unauthorized entry (including, for example, re-entry bars of 3 or 10 years for unauthorized immigrants, depending on how long they had lived in the United States), and removed the authority from federal courts to hear challenges to deportations.¹⁴

During the debates over the bill, Rep. Elton Gallegly (R-CA) attempted to introduce an amendment that would overturn *Plyler* by granting states the ability to shut out unauthorized immigrant children from public education. Gallegly modeled his amendment specifically on Proposition 187 and believed that while the *Plyler* decision had stopped individual states from denying public education, it had not stopped the federal government from acting.¹⁵

A sampling of organizations opposing the Gallegly amendment

- The Fraternal Order of Police (National)
- The International Union of Police Associations
- The National Association of Police Organizations
- The International Brotherhood of Police Officers
- The Major Cities Chiefs
- The National Black Police Association
- The Police Executive Research Forum
- The National District Attorney Association
- Lost Angeles County Sheriff Sherman Block
- The Police Chiefs of: Chicago, Miami, Philadelphia, Sacramento, San Diego, San Jose, Santa Ana, and Sioux City
- Intercultural Development Research Association
- National Association of Bilingual Education
- National Education Association
- National Association of School Administrators
- American Federation of Teachers
- Council of Chief State School Officers

Sources: Marc Lacey, "Bill's Support Marked by Contradiction," *Los Angeles Times*, July 6, 1996, available at http://articles.latimes.com/1996-07-06/news/mn-21616_1_law-enforcement-officers; Dan Stein, "The Attempt to Bar the Schoolhouse Door—Principle or Politics?" *Los Angeles Times*, July 10, 1996, available at http://articles.latimes.com/1996-07-10/local/me-22761_1_illegal-immigration; Albert Cortez and Anna Alicia Romero, "Public Engagement Results in Support of Education for All Children" (San Antonio: Intercultural Development Research Association, 1996), available at http://www.idra.org/IDRA_Newsletter/November_-_December_1996_Public_Engagement/Public_Engagement_Results_in_Support_of_Education_for_All_Children/; Nancy Hill-Holtzman, Hugo Martin, and Marc Lacey, "Chick Getting Her Ducks in a Row for a Sewer-Fee Showdown," *Los Angeles Times*, July 26, 1996, available at http://articles.latimes.com/1996-07-26/local/me-28275_1_sewer-fees.

Controversy over the Gallegly amendment began almost immediately, since, as Rep. Zoe Lofgren (D-CA) put it, "Whatever you think about the behavior of adults, it is immoral to punish the minor children for the sins of their parents."¹⁶

Most major law enforcement groups agreed, with the Fraternal Order of Police, the largest police organization, stating that the Gallegly amendment would "turn innocent kids with boundless potential into wards of the street" by allowing them no access to schooling.

In addition to the numerous law enforcement groups opposing the measure, educator groups—including the National Education Association, the American Federation of Teachers, and the National Association of School Administrators—joined in opposition because of the law's attempts to limit access to public education.¹⁷

Supporters of the amendment, on the other hand, used the frame of states' rights, arguing that states should be able to decide whom they educate, and pointing to the high costs of educating these children.¹⁸

The Gallegly amendment passed the House of Representatives by a wide margin, 257 to 163. The Senate, by contrast, had no such proposal in its version of the

Illegal Immigration Reform and Immigrant Responsibility Act, and the amendment had little support: Sens. Phil Gramm (R-TX) and Kay Bailey Hutchinson (R-TX) declared their outright opposition, while President Bill Clinton publicly stated that he would veto the bill because of the attacks on *Plyler*. Under pressure, Congress stripped the amendment from the final bill, once again repelling the challenge to *Plyler*.¹⁹

Alabama and recent challenges to *Plyler*

In the past few years challenges to *Plyler* have reappeared at the state level. Nowhere is the new strategy to attack the decision clearer than with Alabama's Beason-Hammon Alabama Taxpayer and Citizen Protection Act, H.B. 56.

In June of 2011 Alabama's legislature followed the lead of states such as Arizona that had already passed harsh and punitive anti-immigrant measures. But H.B. 56 went far beyond even Arizona's model legislation, S.B. 1070, which infamously allows police to check the status of anyone they have a reasonable suspicion of being without status.²⁰ In addition, Alabama's law contains a provision that mandates public schools to check and report on the legal status of their students and their students' parents.²¹

A profile of unauthorized children today

- One million unauthorized children under the age of 18 live in the United States today.
- Four hundred thousand unauthorized immigrant children have U.S.-born citizen siblings.
- Sixty-three percent of unauthorized families have been in the United States for longer than a decade, meaning they are well settled into American life.
- Nearly 800,000 children attend public schools in Alabama. Only one half of 1 percent of them are unauthorized immigrants.

Sources: Paul Taylor and others, "Unauthorized Immigrants: Length of Residency, Patterns of Parenthood" (Washington: Pew Hispanic Center, 2011); Campbell Robertson, "Critics See 'Chilling Effect' in Alabama Immigration Law," New York Times, October 27, 2011.

Instead of directly challenging *Plyler* by barring unauthorized immigrants from public schools, H.B. 56 pushed at the fringes of the decision by asking schools to report on their students' status. But there is nothing simple about reporting requirements such as this one, especially when it comes to a population already afraid to interact with officials who could ultimately deport them or their parents.²²

Sure enough, when the first judge to hear the case, Sharon Lovelace Blackburn, failed to overturn the education provision, pandemonium broke out in the state. For two weeks—from September 28 to October 14, when the U.S. Court of Appeals for the 11th Circuit put the education provisions on hold—Alabama's public schools saw a marked drop in the number of Latino students attending. On the first day the law's provisions went into effect, more than 2,200 of the 34,000 Latino students in state public schools were absent, prompting the Department of Justice in early November to write a letter reminding state school districts that they could not bar access to public education and requesting information on the number of absent students.²³

After the Department of Justice received and reviewed the information the state of Alabama sent them, Assistant Attorney General Thomas Perez sent a new letter to the Alabama state superintendent of education on May 1, 2012, citing “significant concerns” that H.B. 56 had negatively affected schooling in the state, particularly for Latino students. The letter pointed to the significant uptick in Latino student absences and withdrawals after the law went into effect, far more than other racial and ethnic groups and far more than in previous years.

Perez concluded, “The legislation has had continuing effects on Alabama's school-children even after it was enjoined by the court.” And countering proponents' arguments that the provisions simply sought information about the unauthorized population, Perez reminded the superintendent that, consistent with *Plyler*, districts “cannot request information with the purpose *or the result* of denying students access to the public schools.”²⁴

But H.B. 56's education provision had a larger and more insidious goal hidden behind the immediate consequence of driving students from Alabama's schools. In a *New York Times* article, the author of H.B. 56's education provisions, Michael Hethmon, general counsel of the Immigration Reform Law Institute, argued that the law was “a first step in a larger and long-considered strategy” to overturn *Plyler*.

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Hethmon told the *Times* that challenges to *Plyler*, such as California's Proposition 187, had not succeeded in the courts because of a lack of hard information about the number of unauthorized immigrants in schools, which, he argued "could be compared with other sorts of performance or resource allocation issues." He attempted to prove that the education of unauthorized immigrants was too costly to the states, an argument that Justice Brennan rejected in *Plyler*.²⁵

In an op-ed for the *Denver Post*, William Perry Pendley, president of the Mountain States Legal Foundation, fleshed out the restrictionist position by arguing that "more than a quarter century after *Plyler*, the 'facts' relied on by the majority"—namely the financial burden of educating unauthorized immigrants—"have changed dramatically." Pendley concluded, "A case that challenges that ruling is long overdue."²⁶

As Hethmon's quotes illustrate, the recent and historical attempts to overturn the *Plyler* decision of course have little to do with restricting access to public schooling or with children themselves and everything to do with finding unauthorized immigrants.

Attacks on *Plyler* follow the restrictionist playbook of "attrition through enforcement." These groups believe if they make life as difficult as possible for unauthorized immigrants, they will "self-deport" back to their home countries.²⁷ As Jack Martin of the Federation for American Immigration Reform testified in 2007 (after arguing that *Plyler* only applies to secondary education):

*What must remain the focus on actions to deal with the illegal alien problem is what message it sends to illegal aliens. In the same way that the lack of adequate enforcement encourages illegal immigration to the United States, the measures adopted and enforced by a state or local government will either attract more illegal residents or deter them.*²⁸

But using children to restrict immigration is not as simple as it sounds. In the next section we turn to what life would be like if *Plyler* were to be overturned.

A nation without *Plyler*

So what would the nation look like without *Plyler*? As states like Alabama try to turn back the clock and force the Supreme Court to rehear arguments on the case, let's consider the economic, social, and practical consequences we would suffer if undocumented children were shut of our schools.

Before we do that, it is important to note that the evidence shows that unauthorized immigrants are not leaving the United States even in the face of harsh efforts to make them “self-deport.” These strategies are at the heart of the challenges to *Plyler*, which would remove the right to public education. As such, the following economic, social, and practical consequences would be felt by a large group of children across the country.²⁹

The *Plyler* protections alone do not solve the problem of large numbers of unauthorized children living in the country. As scholars such as Roberto G. Gonzalez of the University of Washington have found, while access to public K-12 education is a crucial building block in integration, without a pathway to legal status, higher education and job prospects become ever more remote.³⁰ Other protections, such as passage of the DREAM Act—which would grant legal status for people brought here at a young age who complete high school and then some college or military service—would ensure the full participation of these children in American life and the U.S. economy.³¹

The economic costs of relegating students to the “lowest socioeconomic class”

The economic implications of barring an entire group of children from the public education system would be profound. Without a K-12 education, children who were brought to this country at a young age without papers or overstayed their immigrant visas through no fault of their own would be marginalized into the

“lowest socioeconomic class,” as U.S. district court Judge William Wayne Justice wrote in an early decision on *Plyler*.³²

Lacking a high school degree, or the possibility of ever attaining one, this group would join the ranks of our nation’s high school dropouts, whose unemployment rate hovered at a staggering 13 percent in May 2012.³³ Full-time workers without a high school diploma earn nearly one-third less than workers who graduate high school (but do not attend college), and earn more than 60 percent less than workers with a bachelor’s degree. The average full-time worker who does not complete high school will have to work every week of the year, with no time off, to just barely keep a family of four above the poverty line.³⁴

Such a dramatic loss in potential household income would do more than harm individuals. Even if these uneducated youth could secure employment, their significantly lower wages would translate to lower tax receipts, which in turn would damage the fiscal health of the nation as a whole. Low wages and high rates of unemployment would simultaneously lead to higher rates of dependence on those few government assistance programs available to undocumented immigrants and their families, further burdening our nation when these individuals could have contributed to our economic progress.

Judge Justice foresaw this grave problem when he wrote, “Children raised without any education at all are likely to become burdens on the rest of society.”³⁵

With little structure left to govern their days, these young adults—whose economic potential was stunted when the doors to the schoolhouse closed to them—would be at a higher risk of incarceration. A 2009 study from Northeastern University found that the incidence of incarceration among high school dropouts was more than 63 times higher than among college graduates and more than six times higher than among high school graduates.³⁶ With the average cost to incarcerate a prisoner for a year at nearly \$29,000, the consequences of forcing children out of schools would be felt by every U.S. taxpayer.³⁷

The evidence is clear: Closing off this group’s access to an education would curtail our economic competitiveness and bring unnecessary costs to taxpayers.

Denying these children an education is also not in our nation’s self-interest down the road. Consider that the United States will soon be faced with a wave of retirees that needs to be replaced by a highly skilled, 21st century workforce. In 2011, 13

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percent of the U.S. population was 65 years old or older, but by 2030, that percentage is expected to increase to 20 percent.³⁸ Shrinking the pool of replacement workers by not educating undocumented students would seriously imperil labor-force growth, and in turn, our nation's economy.

Our country desperately needs these new Americans to replace aging baby boomers in their jobs, to buy baby boomers' homes,³⁹ and to pay taxes that will contribute to the social security system, where an income-to-costs gap—with more money leaving the system than entering it—is expected to widen as the baby boomer generation retires.⁴⁰

The social costs of unthreading the 'fabric of our society'

But the costs of barring unauthorized children from public education go beyond the economic. Justice Brennan foresaw these social costs in his majority opinion in *Plyler* when he wrote, “[Public] education has a fundamental role in maintaining the fabric of our society.”⁴¹ Pointing to the foundation that an education has in a thriving democracy, Brennan continued: “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.”

Justice Brennan's foresight is commendable. Immigrant children begin their assimilation into U.S. society at school. They acquire English-language skills, learn about the history and traditions of their new home, and are encouraged to be politically and civically active in the classroom. On the playground and in the cafeteria they mingle with their native-born classmates. After school students take these skills home, where they share them with their families, who likely are themselves going through the process of assimilation. Schools are also a key place where parents, immigrant and native born alike, interact, get a sense of their communities, and develop shared goals that will enrich their children's education. Closing schools off to a group of new Americans would inevitably handicap their integration into our society.⁴²

Our nation has made a history of incorporating new and diverse peoples—and it has blossomed as a result. Welcoming schools play a vital role in the successful assimilation of immigrants into our national identity and society, making them equal and productive members of our economy. The very fabric of our society would begin to unravel without them.

The practical consequences for all children—even citizens —of removing *Plyler*

With 16.6 million people in families with at least one undocumented immigrant, and 54 percent of these families of mixed status (composed of at least one unauthorized adult and one U.S.-born child),⁴³ the practical implications of prohibiting undocumented children from attending public schools are as complex as they are perverse.

Without *Plyler* it is easy to imagine a scenario where the younger U.S. citizen children are attending public school while their undocumented older siblings are kept out and denied the American Dream.

Take, for example, the Lopez family, who challenged the Tyler Independent School District in the *Plyler* case along with three other families.⁴⁴ Four of the Lopez siblings were born in the Mexican state of Zacatecas, while their six younger siblings were born in Tyler, Texas. The younger children were citizens and therefore exempt from the unjust Texas measure.

Without an education it would be difficult to know if the four undocumented Lopez siblings could become full and contributing members of the Tyler community. But because of the *Plyler* decision they received an education, and today one of them works at a local bank while another works for the shipping department of a grocery store chain. Two are now U.S. citizens and two others have green cards. They own their own homes and their children want to keep climbing the prosperity ladder by becoming doctors, teachers, and entrepreneurs.⁴⁵

Students banned from their schools would be ineligible for work due to their age and their lack of legal status. This would leave a significant number of youths with nothing to do but roam their neighborhoods during the day, a scenario that would surely raise alarm with any member of the law enforcement community.

On a practical level, native-born Americans too would be affected by a decision to impose barriers to public education on undocumented immigrant children. Since immigration status is not discernible by any physical or socioeconomic trait, every parent in American would be required to prove their children's legal status prior to enrolling them in public school. Under this scenario educators would also suffer as they will be forced to become immigration agents, a task they are untrained for and likely unskilled at performing.

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Conclusion

If the Supreme Court does rehear the *Plyler* decision, it will have a choice similar to the challenges to Arizona’s anti-immigration law, S.B. 1070, in *Arizona v. U.S.*: Will the justices once again serve as a bulwark against state efforts to marginalize undocumented immigrants? Or will they allow divisive, destructive state immigration enforcement schemes to be implemented? Will the Court move the country forward with a ruling that prevents racial and ethnic profiling and places the onus of immigration enforcement squarely on the federal government where it belongs? Or will the Court allow states to effectively declare war on their immigrant populations?

Clearly the economic, social, and practical costs of overturning *Plyler* are too high to be borne by the United States. The Supreme Court did the right thing 30 years ago in ensuring equal access to public education. Attacking the right to public education now will only lead to a worse America—not a better one.

Finally, it is fitting that as we look back at the *Plyler* decision, we also think ahead to the future of the children impacted by the decision who live in limbo as Americans but without the ability to work and realize their potential. The need for congressional action is compelling and indisputable. Following on *Plyler*, the next logical yet long overdue step is the passage of the DREAM Act that would ensure that immigrant youth—educated in the United States and American in all but a piece of paper—realize their full potential. The legislation opens the door to full participation in U.S. society by our nation’s undocumented immigrant youth, reaping benefits that will be priceless, powerful, and valuable to the nation. Passage of the DREAM Act would finish what *Plyler* started—an equal chance for all youth to live their American Dream.

About the authors

Marshall Fitz is Director of Immigration Policy at American Progress. Before holding his current position he served as the director of advocacy for the American Immigration Lawyers Association where he led the education and advocacy efforts on all immigration policy issues for the 11,000-member professional bar association. He has been a leader in national and grassroots coalitions that have organized to advance progressive immigration policies.

Fitz is a graduate of the University of Virginia School of Law and served on the Virginia Law Review. After graduation he clerked for Judge Bruce M. Selya on the U.S. Court of Appeals for the First Circuit. In the following years he practiced immigration law in Washington, D.C., at Hogan & Hartson, LLP.

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Wolgin has published in peer-reviewed journals as well as in online publications such as The Huffington Post, and has taught at the University of California Washington Center. He has also been involved with local D.C.-area immigration and refugee causes, volunteering with the Hebrew Immigrant Aid Society and CARECEN.

A native of New Jersey, Wolgin earned his M.A. and Ph.D. in American history from the University of California, Berkeley, and his B.A. from New York University.

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Endnotes

- 1 *Plyler v. Doe*, 457 U.S. 202 (1982).
- 2 The legal theories behind the two cases certainly differ, with equal protection claims being made in *Plyler*, and federal preemption claims being made in *Arizona v. U.S.* Nevertheless, the potential impact of overturning *Plyler* or upholding *Arizona v. U.S.* will be the same. On *Arizona v. U.S.*, see: Marshall Fitz and Jeanne Butterfield, "Arizona v. United States' in the U.S. Supreme Court" (Washington: Center for American Progress, 2012), available at http://www.americanprogress.org/issues/2012/04/az_us_supreme_court.html.
- 3 See, for example: *Citizens United v. Federal Election Committee* 558 U.S. (2010), *Berghuis v. Thompkins* 560 U.S. (2010), *Arizona v. Gant* 556 U.S. (2009), *Gross v. FBL Financial Services* 557 U.S. (2009), and *Montejo v. Louisiana* 556 U.S. 778 (2009), to name a few.
- 4 Michael A. Olivas, "Plyler v. Doe: Still Guaranteeing Unauthorized Immigrant Children's Right to Attend Public Schools" (Washington: Migration Policy Institute, 2010), available at <http://www.migrationinformation.org/feature/display.cfm?ID=795>.
- 5 *Plyler*. On the *Plyler* decision in general, see: Michael A. Olivas, *No Undocumented Child Left Behind: Plyler v. Doe and the Education of Undocumented Children* (New York: New York University Press, 2012).
- 6 *Plyler*, p. 213.
- 7 *Ibid.*, p. 223-224.
- 8 *Ibid.*, p. 228.
- 9 Campbell Robertson, "Critics See 'Chilling Effect' in Alabama Immigration Law," *New York Times*, October 27, 2011, available at http://www.nytimes.com/2011/10/28/us/alabama-immigration-laws-critics-question-target.html?_r=2; On the SPLC labeling FAIR a hate group, see: Heidi Beirich, "Federation for American Immigration Reform's Hate Filled Track Record" (Montgomery: Southern Poverty Law Center, 2007), available at <http://www.splc.org/get-informed/intelligence-report/browse-all-issues/2007/winter/the-teflon-nativists>.
- 10 Aristide R. Zolberg, *A Nation By Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), p. 402-408.
- 11 *Ibid.*
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- 13 Olivas, "Plyler v. Doe."
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