Plyler V. Doe

Where Are the Undocumented Students in Higher Education?

[Kشخصمحسمخترنبشخ شخنبتخ S. Pحجتحسجسحجتحمم-Eصمحسجحسبجنبحجسمحجتحمم]

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 after-

fat 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.

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 bene f ts for undocumented immigrants."[19] While these changes are no doubt signi f cant, for the purposes of this essay, I will only focus on the e f ects of PROWRA and IIRIRA on undocumented students in post-secondary education. PWROWRA was signi f cant because it denied federal funding to "unquali f ed" non-citizens such as undocumented immigrants. This statute extended to local and state bene f ts as well, making it clear that "unless the state passes an a f rmative law making them explicitly eligible,"[20] postsecondary bene f ts would remain unavailable to undocumented students. Another signi f cant PROWRA provision restricts undocumented immigrants' eligibility for occupational licensure.[21] The Higher Ģ The Ts Anothe ђ c

fnally been settled: undocumented students were clearly not welcome in higher education. Without fnancial relief or secure employment opportunities after graduation, PROWRA and IIRIRA e fectively 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 e fective 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 a ford undocumented students in-state tuition.[27] The criteria for these bene fts 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 bene fciaries 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-

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 Wis-