Racial Justice in Multilingual Education

2025
Volume 1, Issue 1

Plyler v. Doe: Threats, Opportunities, and Commitments to Public Schooling for Immigrant Youth

Trish Morita-Mullaney

Abstract

Plyler v. Doe (1982) is a landmark Supreme Court case that argued schools cannot bar undocumented children from receiving a public education. The case argued that denying enrollment to undocumented students violated the Fourteenth Amendment of the U.S. Constitution and its equal protection clause. Yet current movements in the lower federal district courts are gaining traction to overturn *Plyler*, returning to many of the original arguments for the exclusion of undocumented children from schooling including 1) financial burdens that immigrant youth place upon schools and greater society; 2) need for schools to be extensions of immigration enforcement; and 3) birthright citizenship and belonging. In this paper, I situate *Plyler* within its historical context to understand the current logics of the *Plyler* push-back which are nested within a larger project of birthright citizenship disproportionally impacting minoritized communities of color. I conclude with actionable steps to ensure *Plyler's* durability and maintenance.

DOI: https://www.doi.org/10.58117/5wmg-dx75

Plyler v. Doe: Still the Law of the Land

As a former English Learner/Bilingual district administrator, *Plyler v. Doe* (1982) was one of my tools for reminding front office staff, teachers and administrators that all students, regardless of their or their parent's immigration status, had the right to a free and public education. Fifteen years ago, our district social worker placed posters in every school which stated, "You have the right to attend school, regardless of your

immigration, health, class or ability." Powered by the Supreme Court case of *Plyler* and the printed posters for reinforcement, I was disheartened to see the posters slowly disappear, demonstrating that while it is unlawful to deny enrollment to immigrant families, ideologically some school staff did not agree and conceived the Supreme Court case as something distant and not intended for smaller Midwestern immigrant communities. Furthermore, there was no one enforcing *Plyler*: No district, state nor federal entity had told them to comply, and I was an irritant because the school building's direct supervisors did not require its implementation, despite my constant advocacy. Notably, some immigrant families slipped into an unschooled stratosphere, believing that the office secretary and principal were right to deny their student access to school. In some situations, these families would come to me or our social worker; in others, we would find them during our home visits and return them back to the campuses they were turned away from; reinforcing *Plyler's* requirements. I continued to return to the language of Plyler to support my resolve, and to reinforce language from the case.

> *Plyler v. Doe (1982): A Texas statute which withholds from local school districts any state funds for the education of children who were not "legally admitted" into the United States, and which authorizes local school districts to deny enrollment to such children, violates the Equal Protection Clause of the Fourteenth Amendment [of the U.S. Constitution].*

Plyler is based on the U.S. Constitution; the cases that the Supreme Court takes on; giving it the strongest legal strength. Yet as the above vignette shows; violation of constitutional laws does not change ideologies and subsequent practices. Today, such behaviors persist in our schools, but with greater subtlety and nuance. For example, administrative assistants may ask for birth certificates to verify date of birth but use it as a tool to mark children as non-U.S. born and thereby infer that they are undocumented, denying or troubling their enrollment. Also, I observe families being asked for proof of residence which includes a current bill, such as electricity, but then being asked for a "residency or green card" because the term residency extends itself beyond a mere bill. With increasing pressure on high school graduation rates for accountability, which is part of the federal Every Student Succeeds Act (ESSA, 2015), immigrant youth are being recommended for adult school, so as not to disrupt graduation rates. While these are new mechanisms of exclusion and still a violation of *Plyler*, because there is presently ideological support for its dissolution at the Supreme Court, alongside of accountability pressures for achievement, and what counts as citizenship, the defiance we are facing at the local level is real and likely to grow.

The purpose of this *Plyler* policy brief is threefold: 1) To situate *Plyler* within its historical context; 2) to understand the logics of the *Plyler* push-back; and 3) to identify actionable steps to ensure *Plyler's* durability and maintenance.

History of Plyler v. Doe

In 1976, the state of Texas declared that no state tuition dollars would be distributed to districts admitting "illegal students." If citizenry or legal residency could not be proven, students were either denied enrollment, or the district would charge the family tuition (Roos, 2020). The outcome was variable throughout the state with places like Tyler charging tuition and others outright denying enrollment. The Fifth Circuit Court of Appeals determined that Texas' state amendment, Section 21.031 of the Texas Education Code was a violation of the U.S. Constitution as articulated in the earliest version of Plyler called Doe v. Plyler (1977). A small district in Tyler, Texas became the center of attention as they intended to charge tuition to undocumented students since they would receive no such funding from the state. Doe, the immigrant and unnamed plaintiffs (against the defendant, James Plyler, the Tyler school Superintendent) argued that they had the right to a public education as articulated in the equal protection clauses of the U.S. Constitution; namely, the Fourteenth Amendment. The Fifth Circuit federal court sided with the plaintiffs that they should be protected under the equal protection clause within the Fourteenth Amendment, using similar arguments used in the Brown v. Board of Education (1954) case: All children should be afforded the 'same' education regardless of race or other minoritized statuses.

The logic supporting the young, undocumented children within schools was twofold. First, the children were residents living within the domicile of the given school district and were therefore regarded as people with legal protections. Secondly, as residents of the domicile, they were entitled to due process and their cases would be taken up in the courts and their perspectives considered and argued. Judge Johnson declared "all aliens, even those illegally within the territorial boundaries of the United States are entitled to the equal protection of the laws" (Author footnotes 23). Judge Johnson's logics clearly contested the aforementioned rationale by the state of Texas as summarized in the far right column (Table 1).

Table 1. State of Texas' and Judge Johnson's arguments in Doe v. Plyler (1977): The Precursor to Plyler v. Doe (1982)

Table 1. Judge Johnson's arguments against the state of Texas

State and District Arguments	Description of Argument	Construct of Argument	Judge Johnson's Appeal
Education is the domain of the state	States can operate on their own accord and argue who is	Decentralization	Education is the domain of the federal government

	eligible for a public education		
Undocumented children promote illegal immigration	Admission of undocumented children to schools is a mechanism for promoting and scaling illegal immigration	Deterrence method	Addressing the employer of parents is best way to deter illegal immigration; not the schools
Immigrant children harm the school	Documented or children of citizenry can be harmed by undocumented children	Separate and exclusionary	Contact and integration enhances the perspectives of all children regardless of legal status
Immigrant children are less likely to be vaccinated	Low immunization profiles of undocumented children will cause harm to documented or citizen children and educators	Separate, exclude and quarantine	Treatment for any health condition can be remedied
Immigrant children are a suspect class	Immigrant children have histories of illegality, augmented by their parents' undocumented status	Separate, exclude and evaluate for documentable risk	No documentable risk among young children and setting such precedents would create future conditions for exclusion and surveillance

Judge Johnson's multiple refutations of the state's arguments then moved from the Fifth Court of Appeals to the Supreme Court, in the Plyler v. Doe (1982) case. Importantly, we see how long it took to move from Tyler, Texas in 1977 to its oral arguments in 1981 and later being decided on June 15, 1982.

Plyler v. Doe (1982)

One of the Mexican American Legal Defense and Education Fund (MALDEF)'s lawyers was Peter Roos; the lead counsel in Plyler v. Doe. Roos argued many of the same points articulated by Judge Johnson in the lower Fifth Circuit Court of Appeals, but he paid careful attention to procedural due process and equal protection clauses within the Fourteenth Amendment.

Procedural due process. Roos had to argue that the life, liberty, or property of the plaintiffs was being disrupted. As Judge Johnson in the lower court of appeals had

already argued, the children were eligible for a due process as they were "of the domicile" and were regarded as countable persons within their school community. Additionally, Roos had to argue that the undocumented children were not a credible risk to documented children. In the oral arguments before the Supreme Court, Roos argued that "undocumented children are similarly situated to their permanent resident and citizen classmates" (Plyler v. Doe oral arguments, December 1, 1981).

Roos described the children as being long-term residents of the community and thereby established within the domicile. Roos went on to argue that while some would ascribe them as a suspect class of risk, the families were tax paying members of the community and thereby eligible for due process.

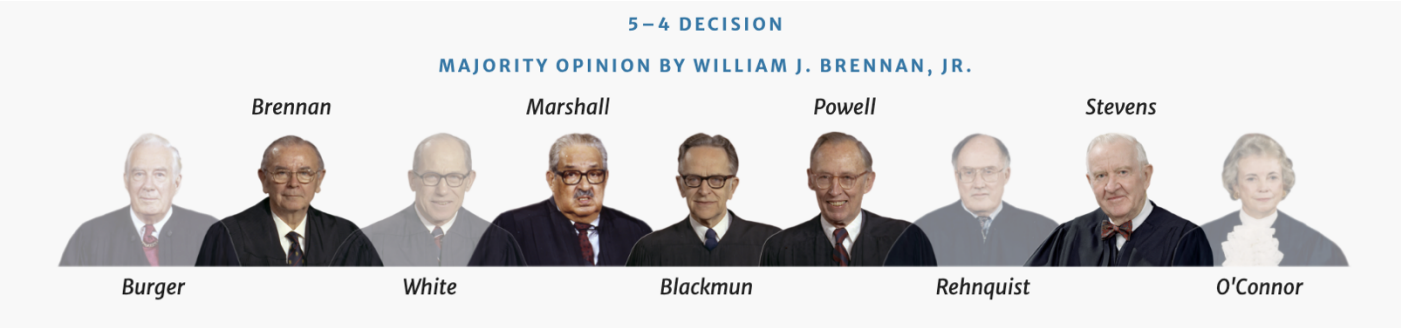
Equal Protection Clause. Roos argued that the young children who were long term residents or domiciliaries of Tyler were being discriminated against due to their undocumented status and in some cases, the documentation of their parents. Thus, any laws should attend to alleviating such barriers to schooling. Strict scrutiny went a step further, with Roos arguing that the suspect class status ascribed to the children was wholly discriminatory and the law needed to be narrowly tailored and articulated so that their inclusion in schooling was guaranteed and comprehensive.

On June 15,1982, Roos and MALDEF celebrated the Supreme Court decision making the legal status of children and/or their caregivers immaterial: All students should be enrolled and educated regardless of legal status. Further, the charging of tuition for undocumented students and/or families was unlawful (Roos, 2020). Yet this victory was tempered by its slim margin in a 5-4 Supreme Court decision. Only 5 Justices: Blackmun, Brennan, Powell, Stevens, and Marshall found that the oral arguments for the Doe plaintiffs proved that undocumented children had to be legally humanized.

Dissenters Claim an Overreach of the Courts

Justices opposing the case were Burger, O'Connor, Renquist and White with Justice Burger writing the dissenting opinion. Burger and his fellow justices agreed that depriving children of an education was problematic stating, "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" (Dissent: footnote 4/1). Similar language appears throughout the dissenting opinion, restating that there was limited contestation about the inherent value of undocumented children receiving an education, but that siding with the plaintiffs extends beyond the authority of the judiciary. Burger and colleagues argued that it was a legislative authority—the U.S. Congress to address. They contended that the five supporting justices for Plyler were overreaching their authority and creating a social policy when it was the U.S. Congress that should arbitrate such decisions. In short, they argued the wrong branch of governance was developing policy in this situation.

Figure 1. Plyler v. Doe (1982) Decision by Supreme Court Justices. (Source: https://www.oyez.org/cases/1981/80-1538)



Plyler v. Doe Today

Today, we return to many of the same concerns expressed by Texas and Tyler Schools. More conservative leaning states, yet not exclusively, are concerned about the 1) financial burdens that immigrant youth place upon schools and greater society; 2) need for schools to be extensions of immigration enforcement; and 3) birthright citizenship and belonging.

Economic Arguments: Financial Burdens to States and Schools

The education outlet EdWeek has developed a Plyler tracker, identifying states that have proposed legislation with the consent of their legal counsel to proceed with local state cases contesting Plyler (Najarro & Franco Brown, 2025). Six states introduced legislation that holds much of the same discourse and legal rationale from the 1977 arguments in Tyler, Texas (Table 3).

Table 2. Plyler opposition proposals by state

State	**Schools require documentation of citizenship or immigration status**	**Undocumented students pay tuition for school services (e.g. instruction, transport)**	**Schools are mandatory reporters**	**Status**
Indiana	x		x	Died in committee
Idaho	x			No hearing
New Jersey	x	x		Action proposed
Oklahoma	x		x	Action proposed
Tennessee	x	x	x	Action paused
Texas	x	x		Action proposed
Construct	*Getting in*	*Staying in*	*Putting out*	

Adapted from (Najarro & Franco Brown, 2025)

Tennessee's is the most restrictive, arguing that undocumented youth will be responsible for paying for bus transportation and ineligible for vouchers in their school choice programs, further resegregating students by class, race, nationality, and language (Embury, 2025). Oklahoma's "Superintendent Ryan Walters has cited an estimated $450 million burden on taxpayers, signaling a potential effort to justify new restrictions on access to public education for undocumented children" (Embury, 2025, p. 2). Yet, Walters will not detail how he arrived at formulating this tax burden.

Armchair Enforcers: Schools Deputized to Serve as Immigration Officers

Indiana, Oklahoma and Tennessee's proposals all argue that schools become agents of immigration, requiring students to supply documentation status at the time of enrollment and that students' countries of origin are reportable to an immigration enforcement entity. The specificity as to how this will be collected is yet to be determined, but state educational agencies are already reporting that districts are creating their own systems of collection, prepared and founded on their ideologies of who belongs in schools.

Birthright Citizenship: Who Belongs?

The United States has one of the farthest-reaching provisions for birthright citizenship; a du solis policy or of the soil (American Immigration Council, 2025). Regardless of where the parents or guardians are from, their children become "of the soil" and if born on U.S. soil, they are U.S. citizens, meaning Plyler does not apply to them. Yet current proposals and movements in the lower federal district courts are gaining traction, moving us more toward a du sanguinis policy (of blood), considering the legal status of their parents. If parents are non-citizens, then their children born in the U.S. could potentially have their citizenship removed.

President Donald Trump's Executive Order 14160 challenges the foundation of birthright citizenship moving us to categorical identities by bloodline or descent instead of by soil, holding important implications for the durability and implementation of Plyer. In Trump's January 20, 2025 executive order, he posits that the Fourteenth Amendment of the U.S. Constitution has been misinterpreted and over identifies who is eligible for equal protections. His order states,

> Section 1. Purpose. The privilege of United States citizenship is a priceless and profound gift. The Fourteenth Amendment states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." That provision rightly repudiated the Supreme Court of the United States's shameful decision in Dred Scott v. Sandford, (1857) which misinterpreted the Constitution as permanently excluding people of African descent from eligibility for United States citizenship solely based on their race (Trump, 2025).

Trump uses the *Dred Scott v. Sandford* (1857) case to argue that birthright citizenship was only intended for formerly enslaved Blacks. The order continues:

> But the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States. The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not "subject to the jurisdiction thereof." Consistent with this understanding, the Congress has further specified through legislation that "a person born in the United States, and subject to the jurisdiction thereof" is a national and citizen of the United States at birth, 8 U.S.C. 1401, generally mirroring the Fourteenth Amendment's text.

This concocted matrix of the du solis of the children and du sangris of the parents, mapped onto the children, posits the un-documentation of children born on U.S. soil. This proposed change within the stated Executive Order enlarges a vulnerable class of children to be put out of school or charged tuition to attend school if *Plyler* is overturned. Our U.S. history has demonstrated the stretch from a du solis to du sangris ancestry platform with the large-scale incarceration of Japanese Americans during World War II, 80 years ago. The Alien Enemies Act of 1798, used to justify Japanese Americans' imprisonment based on ancestry or blood alone, has been re-invoked in this present-day effort to reduce who is classified as humans eligible for a due process and equal protections. An erosion of the constitutional application of due process and belonging is presently at stake. Understanding the history and the interpretation of birthright citizenship conceptually and technically is a necessary and essential step in combatting constructions of belonging that are presently being galvanized in the lower courts and used to forward the overturning of *Plyler*. It is a larger project of de-citizenry.

Our Collective Actions: Opportunities and Commitments

In the opening of this brief, you learned about the advocacy to ensure all children were admitted to school, specifically undocumented children as constitutionally permissible as argued in the Plyler case. While being an irritant is an important component of advocacy for emergent bilingual families, it is now wholly inadequate and requires that we spread our attention and wings to more explicit messages of activism.

Federal and State Congressional Focus

Remember the Supreme Court Justices who dissented the original *Plyler* decision in 1982? The dissenting Justices stated that the Plyler decision was an overreach and should not fall to the Supreme Court (judiciary), but to Congress (legislative). Understanding the history and present interpretation of *Plyler* can help you

contextualize the story for your local setting. Thereafter, contact your federally elected state representatives and senators and your state representatives and senators.

Education is a Public Good. An educated population regardless of immigration status strengthens our country. President George Bush Senior and President Ronald Reagan in 1980 agreed that having an educated population creates a solid democracy further arguing that U.S. labor demands create the conditions for immigration. Focusing on immigration and employment reforms should be the central focus and not arguing over children attending schools.

Quantifying Cumulative Financial Losses. In addition to arguing that education is a democratic ideal, cumulative financial losses would ensue should undocumented children be turned away from school or be made to pay tuition. For example, in a school district with a population of 8,000 students with 2,400 being undocumented (30%), then over 100 educators would lose their jobs, school buildings would have to be closed, and employers of their parents and caregivers would be hampered with a stressed workforce attempting to make educational provisions for their children. Should the definition of birthright citizenship map further to U.S. born children whose parents are undocumented immigrants, this number would increase substantially.

There is complexity in quantifying losses for legislators as humans should not be counted as fixed entities with a financial value, but using this logic addresses the larger system of a working economy with schools and its educators being a part of it. In some contexts, schools may be the largest employer in a community and having a stable teaching workforce is part of teaching the children within it; undocumented students included.

Families Focusing on Families

While it is important for primary narratives of immigrant families to be understood by federal and state legislators, there is great risk in asking undocumented families to share their stories directly. So, mediate such decisions in community with families. For example, when speaking with immigrant families, invite them to identify what they value within schooling. Second, consider how the education of everyone is enriched by including all students within schools. By representing these narratives from the perspective of immigrant families and in relationship to your experiences, the story is constructed as shared.

Beyond School Focus

Schools and its educators are often foregrounded as the problem solvers for social policies, including Plyler. But schools have also been sites of social reproduction, where inequities are reproduced that mirror the inequities of the greater society (Anyon, 2005). Remember the poster-removers? Schools have a long history of

engineering morality that dismisses the identities of linguistically minoritized and racialized youth and families. Thus, working with community centers that have a history of advocacy and have a more direct pulse on the lived realities of immigrant families can be helpful in our 1) own education; and 2) working collaboratively to develop social stances in support of *Plyler's* maintenance.

Most community agencies hold a tax exempt status or a 501(c)(3) status and thereby are able to participate in some forms of lobbying that include issue advocacy or opposing or supporting legislation (Chung, 2025). Community agencies can participate in the development of white papers (George Mason University, 2024); a paper that presents policy problems and solutions, forwarding a number of possibilities for policymakers and legislators to review. Various state affiliates of Teaching English to Speakers of Other Languages (TESOL) have developed white papers with school advocates; as is the case with Indiana TESOL. The white papers have resulted in policies related to emergent bilingual youth, including funding, minimum instructional provisions, and adoption of language proficiency standards (Morita-Mullaney & Albrecht, 2017; Morita-Mullaney et. al, 2021). Identify the local agencies in your communities with whom you can collaboratively advocate.

Commitments

As educational policy interpreters and implementers, committing to these three strategic approaches and making them comprehensible to our federal and state legislators is best done in community with our immigrant families and local agencies. Historicizing the original purpose of Plyler ensures that racially and linguistically minoritized students are continually protected by the Fourteenth Amendment of the Constitution. #KeepPlylerAlive

References

American Immigration Council. (2025). *Birthright Citizenship*. Author. https://www.americanimmigrationcouncil.org/about-immigration/birthright-citizenship

Anyon, J. (2005). *Radical possibilities: Public policy, urban education, and a new social movement*. Routledge.

Chung, J. C. (2025). *Tax-exempt organizations under Internal Revenue Code Section 501(c): Political activity restrictions*. https://www.congress.gov/crs-product/RL33377

Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)

Embury, M. (2025). *Defending Plyler v. Doe's Legacy in 2025*. ContentEngine LLC.

Every Student Succeeds Act, Pub. L. No. Public Law 114-95, (2015).

George Mason University Writing Center. (2024). *White Papers*. https://writingcenter.gmu.edu/writing-resources/different-genres/white-papers

Menken, K. (2008). *English learners left behind: Standardized testing as language policy*. Multilingual Matters Ltd. http://www.loc.gov/catdir/toc/fy0803/2007040068.html

Najarro, I., & Franco Brown, D. (2025, May 9). *Which states are challenging undocumented students' right to free education?* EdWeek. https://www.edweek.org/policy-politics/which-states-are-challenging-undocumented-students-right-to-free-education/2025/03

Plyler v. Doe, 628 F.2d 448, 454 (5th Cir. 1980), cert. granted, 49 U.S.L.W. 3819 (1981).

Roos, P. D. (2020). *Putting my mind and heart to educational equity: Memoirs of an advocate*. Center for Applied Linguistics.

Spolsky, B. (2017). Language Policy in Education: Practices, Ideology, and Management. In S. May & T. L. McCarty (Eds.), *Language Policy and Political Issues in Education* (3rd ed.). Springer International Publishing.

U.S. Reports (1981): *Plyler v. Doe*, 457 U.S. 202

Morita-Mullaney, T., & Albrecht, D. (2017). *English Language Learner (ELL) preparation for Indiana school educators: A White paper*. In Indiana Teachers of English to Speakers of Other Languages (Ed.). Indianapolis, IN.

Morita-Mullaney, T., Albrecht, D., Frischkorn, H., & Samuelson, B. (2021). *INTESOL Policy Brief on HB 1001 Budget Formula for the Non English Speaking Program*.https://intesol.org/resources/Documents/INTESOL%20Policy%20Brief_Biennium2022-2024.pdf

Additional Resources

Najarro, I., & Franco Brown, D. (2025, May 9, 2025). Which States Are Challenging Undocumented Students' Right to Free Education? EdWeek. https://www.edweek.org/policy-politics/which-states-are-challenging-undocumented-students-right-to-free-education/2025/03

TIME Magazine. (1980, April 4). George H.W. Bush and Ronald Regan Debate on Immigration in 1980. [Video]. YouTube. https://www.youtube.com/watch?v=YsmgPp_nlok