



Is Education a Fundamental Right?

The history of an obscure Supreme Court ruling sheds light on the ongoing debate over schooling and immigration.

By [Jill Lepore](#)

Before sunrise on a morning just after Labor Day, 1977, Humberto and Jackeline Alvarez, Felix Hernandez, Rosario and Jose Robles, and Lidia and Jose Lopez huddled together in the basement of the United States Courthouse in Tyler, [Texas](#), the Rose City, to decide just how much they were willing to risk for the sake of their children, for the sake of other people's children, and for the sake, really, of everyone. Among them, the Alvarazes, Hernandez, the Robleses, and the Lopezes had sixteen children who, the week before, had been barred from entering Tyler's public schools by order of James Plyler, Tyler's school superintendent. On the first day of school, Rosario Robles had walked her five children to Bonner Elementary, where she was met by the principal, who asked her for the children's birth certificates, and, when she couldn't provide them, put her and the kids in his car and drove them home.

This hadn't been the principal's idea, or even Plyler's. In 1975, when Texas passed a law allowing public schools to bar undocumented immigrants, Plyler ignored it. "I guess I was soft-hearted and concerned about the kids," he said. Also, there weren't many of them. About sixteen thousand children went to the schools in the East Texas city of Tyler, which considered itself the rose-growing capital of America and was named for John Tyler, the President of the United States who had pushed for the annexation of Texas in 1844, which led to a war with Mexico in 1846. Of those sixteen thousand students, fewer than sixty were the children of parents who had, without anyone's permission, entered the United States from Mexico by crossing a border established in 1848, when the war ended with a treaty that turned the top half of Mexico into the bottom third of the United States. Jose Robles worked in a pipe factory. Humberto Alvarez worked in a meatpacking plant. They paid rent. They owned cars. They paid taxes. They grew roses.

Nevertheless, in July of 1977 Tyler's school board, worried that Tyler would become a haven for immigrants driven away from other towns, insisted that undocumented children be kicked out of the city's schools unless their parents paid a thousand dollars a year, per child, which few of them could afford, not even the Robleses, who owned their own home. Turned away from Bonner Elementary, the Robleses sent some of their kids to a local Catholic school—Jose did yard work in exchange for tuition—but they were put in touch with the Mexican American Legal Defense and Educational Fund, which sent an attorney, Peter Roos, who filed a lawsuit in the U.S. Eastern District Court of Texas. It was presided over by a judge whose name was Justice. "There were two judges in Tyler," Roos liked to say. "You got Justice, or no justice."

Participating in a lawsuit as an undocumented immigrant is a very risky proposition. In a closed-door meeting, Roos asked that the parents be allowed to testify in chambers and so avoid revealing their identities, which could lead to deportation. They had come to the courthouse knowing that, at any moment, they could be arrested, and driven to Mexico, without so much as a goodbye. Judge William Wayne Justice refused to grant the protective order. "I am a United States magistrate and if I learn of a violation of the law, it's my sworn duty to disclose it to the authorities," he said. Roos went down to the basement, near the holding cells, to inform the families and give them a chance to think it over. They decided to go ahead with the suit, come what may. Justice did make efforts to protect them from publicity, and from harassment, decreeing that the proceeding would start before dawn, to keep the press and the public at bay, and that the plaintiffs' names would be withheld.

Roos filed a motion requesting that the children be allowed to attend school, without paying tuition, while the case unfolded, which was expected to take years. "An educated populace is the basis of our democratic institutions," his brief argued, citing *Brown v. Board of Education*. "A denial of educational opportunities is repugnant to our notions that an informed and educated citizenry is necessary to our society." The case was docketed as *Doe v. Plyler*. "This is one that's headed for the United States Supreme Court," Justice told his clerk. Five years later, the appeal, [Plyler v. Doe](#), went to Washington.

Some Supreme Court decisions are famous. Some are infamous. *Brown v. Board*, *Roe v. Wade*. But *Plyler v. Doe*? It's not any kind of famous. Outside the legal academy, where it is generally deemed to be of limited significance, the case is little known. (Earlier this year, during testimony before Congress, [Betsy DeVos](#), the Secretary of Education, appeared not to have heard of it.) The obscurity of the case might end soon, though, not least because the Court's opinion in *Plyler v. Doe* addressed questions that are central to ongoing debates about both education and immigration and that get to the heart of what schoolchildren and undocumented migrants have in common: vulnerability.

Plyler is arguably a controlling case in *Gary B. v. Snyder*, a lawsuit filed against the governor of Michigan, Rick Snyder, by seven Detroit schoolchildren, for violating their constitutional right to an education. According to the complaint, "illiteracy is the norm" in the Detroit public schools; they are the most economically and racially segregated schools in the country and, in formal assessments of student proficiency, have been rated close to zero. In *Brown*, the Court had described an education as "a right which must be made available to all on equal terms." But the Detroit plaintiffs also cite *Plyler*, in which the majority deemed illiteracy to be "an enduring disability," identified the absolute denial of education as a violation of the equal-protection clause, and ruled that no state can "deny a discrete group of innocent children the free public education that it offers to other children residing within its borders." Dismissed by a district court in June, the case is now headed to the Sixth Circuit on appeal.

Plyler's reach extends, too, to lawsuits filed this summer on behalf of immigrant children who were separated from their families at the U.S.-Mexico border. In June, the Texas State Teachers Association called on the governor of the state to make provisions for the education of the detained children, before the beginning of the school year, but has so far received no reply. Thousands of children are being held in more than a hundred detention centers around the country, many run by for-profit contractors. Conditions vary, but, on the whole, instruction is limited and supplies are few. "The kids barely learn anything," a former social worker reported from Arizona.

Directions: For the following questions, please format your responses in the ACE style (answer-cite-explain) fashion. In other words, answer the question. Cite and include textual support. Explain how the textual support backs your answer.

1. Explain the role of **logos** in the article.

2. Explain the utilization of **pathos** in the article.

3. Explain the employment of **ethos** in the article.

Place the following terms in the correct locations (on Aristotle's Rhetorical Triangle). See next page.

Ethos

Pathos

Logos

Audience

Speaker/Writer

Text

Aristotle's Model | Rhetorical Triangle

