Masthead Logo

McGeorge Law Review

Volume 16 | Issue 4

Article 12

1-1-1985

Equal Protection: Can California Offer More for Undocumented Alien Children?

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Equal Protection: Can California Offer More for Undocumented Alien Children?

Among the more pressing social problems facing the United States today is the need to develop a consistent policy toward undocumented aliens.[1] The problem is especially severe in California where the population has swollen from the steady flow of illegal migrants from Mexico and Central America.[2] In cases dealing with the various legal issues raised by this immigration, the United States Constitution has been construed to extend certain basic human rights to undocumented persons.[3] This group, however, generally has been excluded from eligibility for most state and federal entitlement programs.[4] Although the denial of public assistance benefits to undocumented aliens has been upheld repeatedly,[5] several recent decisions have employed novel interpretations of the Constitution to require an extension of benefits to this group of people.[6]

In *Plyler v. Doe*[7] the United States Supreme Court paved the way for the establishment of new rights for undocumented children. In *Plyler* the Court relied upon the equal protection clause of the fourteenth amendment[8] to invalidate a Texas statute that denied primary education to children not admitted legally to the United States.[9] The Court applied an intermediate level of scrutiny and determined that the statutory discrimination against undocumented children deprived

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1. *Immigration: Closing the Door,* NEWSWEEK, July 25, 1984, at 18. For the purposes of this comment the term "undocumented" will be used to designate all persons who, when required to provide documentation of citizenship or legal alien status, do not have this documentation on their person. The term "illegal alien" will be reserved for those aliens who are under formal order of deportation by the Immigration and Naturalization Service. *See* Dermegerdich v. Rank, 151 Cal. App. 3d 848, 851, 199 Cal. Rptr. 30, 32 (1984) (statutory construction of "illegal").

2. *See* LEGISLATURE OF THE STATE OF CALIFORNIA, REG. SESS. 1977-78, UNDOCUMENTED PERSONS: THEIR IMPACT ON PUBLIC ASSISTANCE PROGRAMS, PUBLIC HEARINGS OF THE ASSEMBLY COMMITTEE ON HUMAN RESOURCES (Nov. 9, 1977).

3. *See infra* notes 46-54 and accompanying text.

4. *See, e.g.,* 42 C.F.R. §435.402 (eligibility for Medicaid), 45 C.F.R. §233.50 (1984) (eligibility for Aid to Families with Dependent Children program).

5. *See* Comment, *Equal Protection for Undocumented Aliens,* 5 CHICANO L. REV. 29, 34-43 (1982).

6. *See infra* notes 86-99 and 112-45 and accompanying text.

7. 457 U.S. 202 (1982).

8. U.S. CONST. amend. XIV, §1.

9. *Plyler,* 457 U.S. at 230.

them of equal protection of the laws.[10] In reaching this conclusion the Court considered the importance of education and the special status of these children.[11]

An issue similar to that faced by the Court in *Plyler* recently was considered by the California Supreme Court. In *Darces v. Woods*[12] the California Supreme Court looked to the "independent vitality" of the state constitution[13] in a ruling that had the practical effect of extending benefits from the Aid to Families with Dependent Children program (AFDC) to certain undocumented children.[14] The Darces family consisted of an undocumented alien mother and her six children, the older three of whom were not lawfully admitted to the United States, while the younger three were American citizens by birth.[15] The court found that the failure of the California Department of Social Services to include the needs of the undocumented children in assessing the family budget for AFDC purposes had the practical effect of denying equal protection to the citizen children.[16] The court reached this conclusion by noting that, in reality, the aid payments would support the entire family and not just the "eligible" citizen children.[17] Thus, the Court reasoned that the exclusion of the undocumented children from eligibility for assistance deprived the eligible children of the total aid to which they were entitled.

Although the *Darces* court was more concerned with the rights of the citizen children, the effect of the ruling was to extend AFDC benefits to the sibling undocumented alien children.[18] Under the *Darces* rule, therefore, the parents in an undocumented family can render all of their children eligible for benefits simply by having one child born in the United States. The result of this case can be seen by comparing two hypothetical families. A family composed of six undocumented children and one citizen child would receive full benefits while a family of seven undocumented children would be denied benefits entirely.[19] Although *Darces* extended benefits to certain undocumented alien children, the decision created an inequity toward families com-

10. *Id.* at 223-24.
11. *Id.* at 220.
12. 35 Cal. 3d 871, 679 P.2d 458, 201 Cal. Rptr. 807 (1984).
13. *Id.* at 892, 679 P.2d at 472, 201 Cal. Rptr. at 821 (citing Serrano v. Preist, 18 Cal. 3d 728, 764, 557 P.2d 929, 950, 135 Cal. Rptr. 345, 366 (1976)).
14. *See infra* notes 114-20 and accompanying text.
15. Darces v. Woods, 35 Cal. 3d 871, 874-75, 679 P.2d 458, 460, 201 Cal. Rptr. 807, 809 (1984).
16. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
17. *Id.* at 894, 679 P.2d at 473, 201 Cal. Rptr. at 822.
18. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
19. *See infra* notes 152-53 and accompanying text.

posed entirely of undocumented aliens. The inequity created by this decision poses the question of the rights of illegal alien children to receive public assistance.

Undocumented alien children constitute a group entitled to equal protection by the California Constitution.[20] The sole basis for excluding undocumented alien children from eligibility for AFDC benefits is their undocumented status.[21] This status, however, is unrelated to the purposes of AFDC, which is to provide assistance to needy children.[22] The result of this classification is to penalize undocumented alien children for the illegal entry of their parents into the country. Although this conduct by the parents may provide an adequate basis for excluding undocumented parents from eligibility, the argument should not apply to children, who can do nothing to affect the legality of their status. Furthermore, the legitimacy of this classification of undocumented alien children may be subject to heightened judicial scrutiny because the classification involves deprivation of an important benefit. The constitutionality of excluding undocumented alien children from AFDC eligibility is questionable both because of the innocence and vulnerability of children as a class and because of the importance of the benefit they are denied.[23]

This author proposes that withholding state aid from undocumented alien children deprives them of equal protection under the California Constitution.[24] To reach this conclusion this author will discuss the evolution of the federal[25] and state[26] equal protection clauses. Pivotal in this development is the United States Supreme Court decision in *Plyler v. Doe*.[27] The *Plyler* decision is important primarily because the Court used an intermediate standard of scrutiny to review the denial of free public education to undocumented children.[28] In addition, the special status of children as a protected class will be considered.[29] This author then will show that although the California Supreme Court has not directly confronted the issue of the rights of undocumented children,[30] recent decisions by that court indicate a trend toward liberal

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20. *See infra* notes 153-66 and accompanying text.
21. CAL. WELF. & INST. CODE §11104 (excluding undocumented aliens from eligibility for AFDC).
22. *Darces*, 35 Cal. 3d at 888, 679 P.2d at 469, 201 Cal. Rptr. at 818.
23. *See infra* notes 173-76 and accompanying text.
24. *See infra* notes 146-88 and accompanying text.
25. *See infra* notes 55-99 and accompanying text.
26. *See infra* notes 102-11 and accompanying text.
27. 457 U.S. 202 (1982).
28. *See infra* notes 86-93 and accompanying text.
29. *See infra* notes 94-97 and accompanying text.
30. *See Darces*, 35 Cal. 3d at 876, 679 P.2d at 461, 201 Cal. Rptr. at 810.

construction of statutes to extend rights to the undocumented.[31] This author will show that, because the state equal protection clause has been interpreted by the California Supreme Court to be more expansive than the federal equal protection clause,[32] a basis for extension of rights to undocumented children exists in California.[33] Having made these arguments, this author will demonstrate that the California Supreme Court should extend the *Plyler* rationale to find that equal protection and fairness dictate that undocumented children are entitled to AFDC benefits. Initially, however, the nature and extent of the problem must be explored.

EXTENT OF THE PROBLEM

The "unlawful" status of undocumented immigrants keeps them out of the mainstream of society, making research on their population and impact on society difficult.[34] Estimates of the number of undocumented persons living in the United States have ranged from three and a half million to ten million.[35] As a border state, California has become home to a large percentage of these illegal entrants.[36] Therefore, California bears a major share of the direct and indirect costs resulting from the presence of undocumented persons.[37] The existing empirical data, however, indicate that undocumented persons contribute more in taxes and social security payments than they cost in social programs.[38]

Related to the difficulties in determining the extent of the problem

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31. *See, e.g. id.*, Dermegerdich, 151 Cal. App. 3d at 851, 199 Cal. Rptr. at 32.

32. *See infra* notes 102-10 and accompanying text.

33. *See infra* notes 146-88 and accompanying text.

34. *See generally* SELECTED READINGS ON U.S. IMMIGRATION POLICY AND LAW, SENATE JUDICIARY COMMITTEE, 96th Cong., 2d Sess., 6-10 (1980) [hereinafter referred to as JUDICIARY COMMITTEE READINGS]; U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST, JOINT COMMITTEE REPORT, JUDICIARY COMMITTEE OF THE HOUSE AND SENATE, 97th Cong., 1st Sess., at 35-85 (1981) (all reporting the difficulty of research).

35. *Immigration: Closing the Door,* NEWSWEEK, June 15, 1984, at 19. *See generally id.* (discussing current issues relating to undocumented aliens).

36. *See* LEGISLATURE OF THE STATE OF CALIFORNIA, REG. SESS. 1977-78 UNDOCUMENTED PERSONS: THEIR IMPACT ON PUBLIC ASSISTANCE PROGRAMS, PUBLIC HEARING OF THE COMMITTEE ON HUMAN RESOURCES, (1977) (inquiry into impact of undocumented aliens on California, and appropriate policy).

37. Increased costs result, for example, from increased burdens on police and the increased use of public facilities. *Id.*

38. *See* 123 CONG. REC. H7061-67, July 13, 1977 (testimony of Wayne A. Cornelius, Professor at Massachusets Institute of Technology, text of study entitled "Illegal Mexican Migration to the United States: Recent Research Findings and Policy Implications.") (quoted in JUDICIARY COMMITTEE READINGS, *supra* note 34, at 65). *See generally* Fogel, *Illegal Aliens: Economic Aspects and Public Policy Alternatives*, 15 SAN DIEGO L. REV. 63, 63-78 (1977) (discussing impact of undocumented aliens on social programs, labor markets and governmental policy).

of undocumented persons in the United States has been the inability of both the state and federal governments to formulate a consistent policy toward this group.[39] The United States Constitution vests exclusive authority to regulate immigration and naturalization with Congress.[40] Although standards are set for lawful immigration, the number of illegal entrants to this country indicates that enforcement of immigration laws is inadequate. Some critics have suggested that the failure to enforce vigorously immigration laws is the manifestation of an unarticulated acquiescence by the federal government to an economic system that benefits from the inexpensive labor of undocumented workers.[41] The Attorney General of the United States has explained that immigration laws are not enforced because the federal government has neither the resources, the capability, nor the motivation to uproot millions who have become "members of the community."[42] Under the supremacy clause,[43] the states have no role in the regulation of immigration.[44] The states are left, however, to deal with the swelling populations of foreign nationals within their borders.[45]

Historical Background: Rights of Aliens

While all classes of aliens, including the legally resident and the undocumented, have been accorded certain basic human rights, extension of constitutional guarantees to aliens has been a slow process.[46] Statutes have been passed, for example, giving resident aliens the right to own property[47] and to sue in the Court of Claims.[48] In addition, the fifth amendment[49] has been read to protect all aliens "within the jurisdiction" from deprivation of life, liberty, or property without

39. *See generally* Judiciary Committee Readings, *supra* note 34 at 21-77 (discussing impact of undocumented aliens).

40. U.S. Const. art. I, §8, cl. 4; *see also The Tarnished Golden Door,* U.S. Commission on Civil Rights, Sept. 1980, 13-45 (discussing current immigration policy and the role of the Immigration and Naturalization Service).

41. Hull, *Undocumented Aliens and the Equal Protection Clause: An Analysis of* Doe v. Plyler, 48 Brooklyn L. Rev. 43, 64-65 (1981); *see Plyler,* 457 U.S. at 218-19.

42. *Plyler,* 457 U.S. at 218 n.17.

43. U.S. Const. art. VI, cl. 2.

44. *See* U.S. Const. art. I, §8, cl. 4 (vesting immigration and naturalization power in Congress).

45. The clear national power over immigration and naturalization raises the possibility of federal preemption of all policy related to undocumented persons. *See id. See generally* J. Choper, Y. Kamisar, & L. Tribe, The Supreme Court: Trends and Developments 1981-82, National Practice Institute 29-30 (1983) (discussing federal preemption of immigration law).

46. *See generally* Rosberg, *Discrimination Against the "Nonresident" Alien,* 44 U. Pitt. L. Rev. 399, 399 (1983) (discussing development of rights for undocumented aliens).

47. 48 U.S.C. §1502.

48. 28 U.S.C. §2502.

49. U.S. Const. amend. V.

due process of law.[50] Despite the extension of these rights, the law is clear that aliens, whether legally present or undocumented, are not entitled to enjoy all the advantages of citizenship. Among the rights withheld from aliens is the right to vote[51] and the right to bear arms.[52] In addition, the United States Supreme Court has upheld exclusion of aliens from various occupations deemed to involve participation in "basic governmental processes."[53] The Court has found, however, that certain classifications of aliens are violative of the protections of the fourteenth amendment.[54]

A. Equal Protection

In recent years, one of the strongest constitutional protections for both citizens and aliens has been the fourteenth amendment of the Constitution.[55] This amendment states that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[56] This deceptively simple language frequently has been invoked to protect the rights of threatened groups from the "tyranny of the majority."[57] Despite liberal application of the fourteenth amendment by the Court, the equal protection clause has not been interpreted to prohibit all discrimination, but rather to prevent only unreasonable discrimination.[58] Persons challenging a statutory classification as unconstitutional first must demonstrate that they are in an equivalent legal position to those who benefit from the law. In other words, they must show that they are similarly situated with respect to the legitimate purposes of the law.[59] To determine whether persons are similarly situated, an inquiry into the purported governmental purpose of the law is necessary.[60] The classification then is tested to determine if the

50. Mathews v. Diaz, 426 U.S. 67, 77 (1976).

51. 42 U.S.C. §1971(a) (right to vote limited to citizens). *But cf.* U.S. CONST. amend. XV (guarantees right to vote to citizens).

52. 18 U.S.C. §1202 (illegal aliens cannot possess firearms).

53. Cabell v. Chavez-Salido, 454 U.S. 432, 439 (1982). The Court reasoned that certain occupations require the "bond of citizenship." *Id.* at 442.

54. *See infra* notes 82-101.

55. *See generally Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1067-1192 (1969) (discussing development of the equal protection clause).

56. U.S. CONST. amend. XIV, §1.

57. *See* J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW 585 (2d ed. 1983).

58. *See* J. CHOPER, Y. KAMISAR & L. TRIBE, *supra* note 45, at 1 ("Equal Protection: A Doctrinal Overview"); Railway Express Agency v. New York, 336 U.S. 106, 112 (1949) (Jackson, J., concurring) ("Federal Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation.").

59. Tussman & TenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 346 (1949).

60. *See id.* at 367.

discrimination is tailored appropriately to further that purpose.[61]

Certain classifications may be appropriate for one legislative purpose but not for another. A classification based on gender, for example, may be appropriate to further certain governmental purposes. Thus, affirmative action hiring quotas designed to remedy past discrimination against women probably would be upheld.[62] A gender classification will be inappropriate, however, in a statute demarcating the drinking age between men and women.[63] On the other hand, a child will not prevail in a challenge to the drinking age because the child is not similarly situated to those who are deemed mature enough to drink.[64] In that situation, the state purpose of limiting consumption of alcohol to mature persons is served by the classification. The basis of any classification must be related to the purpose of the law, which in turn must be legitimate. Thus, the equal protection clause does not bar all discrimination. Rather, the clause prohibits only unreasonable discrimination, which results from those classifications found not to be acceptably related to furthering the purpose of a law.[65]

B. Standard of Review

In assessing the constitutionality of a law containing a classification, courts have applied varying levels of scrutiny depending upon the nature of the governmental classification. Judicial review is limited to determining whether the classification is tailored appropriately to fulfill an acceptable governmental purpose.[66] The traditional test, applied to most legislation, requires only that the classification be "rationally related" to a "legitimate state interest."[67] Under this rational relation test laws are presumed valid and most laws survive review.[68]

In stark contrast to the rational relation test is the strict scrutiny standard, which will validate classifications only if they are "necessarily" related to a "compelling state interest."[69] The strict scrutiny test is very difficult to satisfy and few laws subjected to review under

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61. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 57, at 586-600.
62. *See* Califano v. Webster, 430 U.S. 313, 320 (1977).
63. Craig v. Boren, 429 U.S. 190, 213-14 (1976) (Stevens, J., concurring). In *Craig*, the Court struck down a law establishing different drinking ages for men and women.
64. *See generally* J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 57, at 586-600 (discussing the "similarly situated" requirement).
65. *See* J. CHOPER, Y. KAMISAR & L. TRIBE, *supra* note 45, at 1-2.
66. *Id.*
67. *See* Graham v. Richardson, 403 U.S. 365, 371 (1971).
68. *See Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1078 (1982).
69. *Graham*, 403 U.S. at 372.

this standard will prevail.[70] The Supreme Court has found strict scrutiny to be warranted only in ruling on classifications involving "suspect classes"[71] or statutes that impinge upon exercise of "fundamental rights."[72] In general, suspect classes have been limited to racial or ethnic minorities,[73] and fundamental rights are considered to be only those rights guaranteed by the Constitution.[74]

In the last decade a hybrid standard of review, known as intermediate scrutiny, has emerged. This quasi-strict standard requires a classification to be "substantially related" to an "important state interest."[75] The intermediate standard first emerged as a check against gender based discrimination[76] and discrimination against illegitimate children.[77] More recently, this new standard recently has been employed to scrutinize a classification of undocumented alien children.[78] This development is important because undocumented aliens historically have received little constitutional protection.[79]

C. Application of Equal Protection to Aliens

Constitutional protection for noncitizens initially was extended only to legally resident aliens.[80] The fourteenth amendment long has provided resident aliens with protection against discriminatory classifica-

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70. J. CHOPER, Y. KAMISAR & L. TRIBE, *supra* note 45, at 2; *see* Hull, *Resident Aliens and the Equal Protection Clause: The Burger Court's Retreat from* Graham v. Richardson, 47 BROOKLYN L. REV. 1, 18 (1980) (discussing retreat by the Supreme Court from broad application of strict scrutiny for classifications based on alienage).

71. *See Graham*, 403 U.S. at 372 (finding aliens to be a suspect class); Brown v. Board of Education, 347 U.S. 483, 495 (1954) (applying strict scrutiny to invalidate racial classifications in schools).

72. *See, e.g.*, Moore v. City of East Cleveland, 431 U.S. 494, 503 (1976) (right of a family to live together found fundamental); Zablocki v. Redhail, 434 U.S. 374, 380-81 (1977) (right to marry found fundamental); Shapiro v. Thompson, 394 U.S. 618, 630 (1969) (right to travel interstate found fundamental).

73. *E.g., Graham*, 403 U.S. at 372 (finding aliens to be a prime example of a discrete and insular minority, and therefore applying strict scrutiny to an Arizona law depriving most aliens of welfare).

74. *E.g.*, San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 33 (1973) (finding that education is not a fundamental right guaranteed by the Constitution).

75. Craig v. Boren, 429 U.S. at 197 (applying intermediate standard to invalidate state law prohibiting the sale of 3.2% alcohol beer to males under twenty-one and females under eighteen); *see* J. CHOPER, Y. KAMISAR & L. TRIBE, *supra* note 45, at 3 (discussing recognition of an intermediate level of scrutiny).

76. J. CHOPER, Y. KAMISAR & L. TRIBE, *supra* note 45, at 3-4.

77. Lalli v. Lalli, 439 U.S. 259, 268 (1978) (applying intermediate standard to state law excluding illegitimate children from inheriting through intestate succession).

78. *Plyler*, 457 U.S. at 216-18.

79. *See generally* G. Rosberg, *Discrimination Against the "Nonresident" Alien*, 44 U. PITT. L. REV. 399, 399-409 (1983) (discussing rights accorded undocumented aliens).

80. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 57, at 698.

tions in state law.[81] In *Graham v. Richardson*[82] the United States Supreme Court held that resident aliens were a perfect example of a "discrete and insular minority" entitled to strict scrutiny under the equal protection clause.[83] To a certain extent, the Court has retreated from this position, applying a rational basis test if the discrimination involves participation in "basic governmental processes."[84] These decisions regarding constitutional protections of aliens, however, do not apply directly to determination of appropriate protections for undocumented aliens.[85]

D. Plyler v. Doe: *Equal Protection for Undocumented Alien Children*

In the watershed case of *Plyler v. Doe*,[86] the United States Supreme Court broke new ground by considering the rights of undocumented aliens under the equal protection clause. In a close decision,[87] the Court applied an intermediate standard of scrutiny and determined that a Texas law denying free public education to undocumented alien children did not serve a "substantial state interest" and unconstitutionally deprived the children of equal protection of the laws.[88] The analysis of the Court began with the language of the fourteenth amendment and found that undocumented aliens were "within the jurisdiction" of the state of Texas.[89] The Court, however, did not find undocumented aliens to be a suspect class under equal protection

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81. *See, e.g.*, Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886) (strict scrutiny applied to invalidate law that effectively prohibited Chinese-run laundries in San Francisco); *cf.* Toll v. Moreno, 458 U.S. 1, 17 (1982) (court invalidated state law discriminating against aliens on supremacy clause grounds). *Contra Mathews*, 426 U.S. at 83-84 (1976) (because Congress has plenary power over immigration, classifications may exist under federal law that are impermissable under state law).

82. 403 U.S. 365 (1971).

83. *Id.* at 372.

84. Cabell v. Chavez-Salido, 454 U.S. at 439. Controversy continues over what constitutes participation in "basic governmental processes." *See id.* at 438-41. This standard has been applied, for example, to exclude aliens from being probation officers. *Id.* at 447. Aliens have also been excluded from being members of a police force. Foley v. Connelie, 435 U.S. 291, 300 (1978). The Court has also upheld a law disallowing aliens from being teachers in public schools. Ambach v. Norwich, 441 U.S. 68, 80-81 (1979).

85. *See generally* Comment, *Equal Protection for Undocumented Aliens*, 5 CHICANO L. REV. 29, 48-54 (1982) (proposes application of equal protection to all aliens).

86. 457 U.S. 202 (1982). *See generally* Casenote, *Right of Illegal-Alien Children to State Provided Education*, 96 HARV. L. REV. 130, 130-40 (1982) (describing the *Plyler* decision); J. CHOPER, Y. KAMISAR & L. TRIBE, *supra* note 45, at 21-32.

87. The majority opinion was written by Justice Brennan, 457 U.S. at 205, with separate concurring opinions by Justices Marshall, *id.* at 230, Blackmun, *id.* at 231, and Powell, *id.* at 236. Three justices joined the dissenting opinion of Chief Justice Burger. *Id.* at 242.

88. *Id.* at 223-30.

89. *Id.* at 212.

standards.[90] Moreover, the Court did not find education to be a fundamental right owed to all persons.[91] Thus, strict scrutiny could not be employed. Nonetheless, the court applied an intermediate standard of scrutiny, reasoning that while undocumented children were not a suspect class, their special status in society entitled them to increased protection under the Constitution.[92] In addition, the Court found that although education is not a fundamental right, the deprivation of education was serious enough to warrant heightened, or intermediate, scrutiny.[93]

The dual bases of the *Plyler* decision were the special status of undocumented alien children and the importance of education to these children. The Court analogized to the plight of illegitimate children who, like undocumented children, were not responsible for their disabling status.[94] The Court found that denial of education to undocumented children was unfair because this denial directed the "onus of the parent's misconduct" at the children.[95] Furthermore, the Court found discrimination against undocumented children an ineffective means of deterring the unlawful entry of their parents into the United States.[96] Though the Court did not find education to be a fundamental right, the *Plyler* Court looked to the critical role education plays in the development of a child, noting that deprivation of education would impose a lifetime hardship upon these children.[97] Balancing these factors, the Court concluded that Texas had not demonstrated any substantial state interest that would justify denial of education to undocumented children.[98] In particular, the Court pointed out that while a state may have an interest in controlling spending, this economizing could not be accomplished through arbitrary and discriminatory classifications.[99]

As this author has outlined, the equal protection clause of the fourteenth amendment has been employed to invalidate a wide variety of laws. In an equal protection challenge, a court must determine if a state law creates classifications that discriminate against classes

90. *Id.* at 219 n.19.
91. *Id.* at 223.
92. *Id.* at 221.
93. *Id.* at 238.
94. *Id.* at 219-20.
95. *Id.* at 220.
96. *Id.*
97. *Id.* at 223.
98. *Id.* at 230. The Court noted that "It is difficult to understand precisely what the state hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to problems and costs of unemployment, welfare and crime." *Id.*
99. *Id.* at 228-29.

of persons without adequate justification. In most instances, classifications will be upheld as rationally related to a legitimate state end. Few state laws, however, withstand the strict scrutiny test required for classifications based upon race or ethnicity or that involve deprivations of fundamental rights. Under strict scrutiny, a state must demonstrate that the allegedly discriminatory classification necessarily is related to a compelling state interest.[100] Requiring a lesser degree of justification than the strict scrutiny test is the emerging intermediate standard of review. The intermediate standard recently was applied to prohibit a classification of undocumented children that resulted in a denial of free public education.[101] The federal approach to equal protection provides a guideline for interpretation of similar clauses in state constitutions.

California Law: Equal Protection and Aliens

In addition to the guarantees of the fourteenth amendment, equal protection is provided for in the California Constitution.[102] While interpretation of the fourteenth amendment provides guidelines for state equal protection, the California Supreme Court has held that the equal protection clause of the state constitution provides "separate and distinct" safeguards.[103] California has adopted the rational basis test for most legislation and strict scrutiny if distinctions involve suspect classes or fundamental rights.[104] California courts, however, consistently have declined to adopt the intermediate standard of review,[105] opting for strict scrutiny in close cases.[106] The California Supreme Court, for example, has found gender based classifications to be suspect and subject to strict scrutiny.[107] In addition, the California Supreme Court has been more liberal than the United States Supreme Court in defining the fundamental rights protected by the constitution. Education, for example, has been included by the California Supreme Court in the enumeration of fundamental rights entitled to constitutional protection.[108] Thus, the "independent vitality" of the state constitu-

100. J. Nowak, R. Rotunda, & J. Young, *supra* note 57, at 591.
101. *Plyler*, 457 U.S. at 230.
102. Cal. Const. art. I, §7(a).
103. *See, e.g.*, Price v. Civil Service Comm'n of Sacramento County, 26 Cal. 3d 257, 284, 604 P.2d 1365, 1382, 161 Cal. Rptr. 475, 492 (1980).
104. *See, e.g.*, Molar v. Gates, 98 Cal. App. 3d 1, 12-13, 159 Cal. Rptr. 239, 246 (1979).
105. Hawkins v. Superior Court, 22 Cal. 3d 584, 607, 586 P.2d 916, 932, 150 Cal. Rptr. 435, 451 (1978) (Bird, C.J., concurring).
106. *Molar*, 98 Cal. App. 3d at 16-17, 159 Cal. Rptr. at 249.
107. *Id.*
108. Serrano v. Priest, 5 Cal. 3d 584, 610, 487 P.2d 1241, 1259, 96 Cal. Rptr. 601, 619 (1971) [hereinafter cited as *Serrano I*].

tion occasionally has been interpreted to demand an analysis different from that required by the federal standard.[109]

The fourteenth amendment to the United States Constitution establishes minimum standards for state equal protection guarantees.[110] The states are free, however, to grant additional rights and benefits beyond those accorded aliens at the national level.[111] Recent decisions indicate that the California Supreme Court may be willing to extend equal protection to ensure rights for the undocumented.

A. Darces v. Woods

In *Darces v. Woods*[112] the California Supreme Court relied upon both the analysis of the United States Supreme Court in *Plyler* and upon the equal protection language of the state constitution in a decision that effectively extended certain public benefits to undocumented alien children.[113] The facts of this case, however, did not require the court to directly address the issue of the rights of the undocumented children. This author contends that undocumented children are entitled to equal protection under the California Constitution and hence are entitled to certain public benefits.

The issue in *Darces* was whether undocumented children were to be included in the family budget for AFDC purposes.[114] Mrs. Darces was an undocumented alien and working mother with income insufficient to meet the needs of her six children. The older three children also were undocumented and therefore ineligible for assistance under the AFDC program. The younger three children, however, were United States citizens, and thus eligible for AFDC benefits. Mrs. Darces challenged a ruling by the California Department of Social Services that entitled the family to assistance based only on the needs of the three citizen children. She asserted that since her duty as a mother requires her to provide for all six children, the practical effect of this policy was to deny the eligible children the full AFDC benefits to which they were entitled.[115] The court accepted Mrs. Darces' argu-

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109. Serrano v. Priest, 18 Cal. 3d 728, 764, 557 P.2d 929, 950, 135 Cal. Rptr. 345, 366 (1976) [hereinafter cited as *Serrano II*].

110. *See* Purdy v. Fitzpatrick, 71 Cal. 2d 566, 578, 456 P.2d 645, 657, 79 Cal. Rptr. 77, 89 (1969).

111. *Serrano II*, 18 Cal. 3d at 764, 557 P.2d at 950, 135 Cal. Rptr. at 366 (1976).

112. 35 Cal. 3d 871, 679 P.2d 458, 201 Cal. Rptr. 807 (1984).

113. *See generally California—Constitutional Equal Protection for AFDC Beneficiaries*, 61 AMERICAN COUNCIL FOR NATIONALITIES SERVICE No. 35, at 728-32 (Sept. 7, 1984) (report of the *Darces* decision).

114. *Darces*, 35 Cal. 3d at 874-75, 679 P.2d at 460, 201 Cal. Rptr. at 809.

115. *Id.*

ment and concluded that the AFDC regulations unfairly discriminated against citizen children who lived with undocumented siblings.[116] The *Darces* court considered the needs of Mrs. Darces' undocumented children for AFDC purposes without directly considering the rights of these children.[117] The decision, however, did lay the groundwork for extension of rights to undocumented children.

In the *Darces* decision, the court first determined that the state AFDC program complied with federal regulations for eligibility that excluded consideration of the needs of undocumented children.[118] Under AFDC rules, the needs of an alien only may be considered if the alien is "lawfully admitted for permanent residence or is otherwise permanently residing in the United States under color of law."[119] The court concluded that this clear statutory scheme should be upheld unless violative of the state or federal constitutional requirement of equal protection.[120]

The guarantees of equal protection[121] were defined by the court as requiring that persons similarly situated with respect to the legitimate purposes of the law receive like treatment.[122] Proceeding with an equal protection analysis, the court next considered the appropriate standard of review.[123] In determining the nature of the classification, the court, as the United States Supreme Court had in *Plyler*, analogized to the plight of illegitimate children who were discriminated against solely because of the unmarried status of their parents.[124] The citizen children in *Darces* were seen in the same light because they had no control over the existence of their undocumented siblings. By adopting this classification, the state had drawn a line between AFDC-eligible children who live with undocumented siblings and eligible children who do not.[125] The classification was found to discriminate between two classes of children similarly situated with respect to the purposes of AFDC, namely, providing aid to needy children.[126] Thus, the needs of undocumented children had to be taken into account by the Department of Social Services in determining the needs of the citizen children.

116. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
117. *Id.* at 876, 679 P.2d at 461, 201 Cal. Rptr. at 810.
118. *Id.* at 883, 679 P.2d at 466, 201 Cal. Rptr. at 815.
119. CAL. WELF. & INST. CODE §11104; *see also* 45 C.F.R. §233.50; 42 U.S.C. §602(a)(33) (containing parallel federal provisions).
120. *Darces*, 35 Cal. 3d at 885, 679 P.2d at 467, 201 Cal. Rptr. at 816.
121. *See* U.S. CONST. amend. XIV, §1; CAL. CONST. art. I, §7(a).
122. *Darces*, 35 Cal. 3d at 885, 679 P.2d at 467, 201 Cal. Rptr. at 816.
123. *Id.*
124. *Darces*, 35 Cal. 3d at 887-88, 679 P.2d at 468-69, 201 Cal. Rptr. at 817-18; *Plyler*, 457 U.S. at 220.
125. *Darces*, 35 Cal. 3d at 887, 679 P.2d at 468, 201 Cal. Rptr. at 817.
126. *Id.* at 888, 679 P.2d at 469, 201 Cal. Rptr. at 818.

The court found that the discriminatory classification of undocumented alien children by the AFDC program warranted heightened judicial scrutiny.[127] Although the court acknowledged that the questioned classifications were different than those in *Plyler*, the California Supreme Court looked to the reasoning of the United States Supreme Court in that case.[128] The *Darces* court, like the *Plyler* Court, placed emphasis upon the special status of children, that entitled them to increased legal protection.[129] Among the factors relied upon by the court was the children's lack of culpability for their status;[130] they could not control their parents' illegal entry into the country.[131]

The Department of Social Services argued that the heightened scrutiny of *Plyler* was not warranted in *Darces*. The Department attempted to distinguish the two cases by asserting that the *Plyler* decision was based upon deprivation of education, not welfare. Thus, the Department of Social Services argued, heightened scrutiny was only applicable to classifications that deprived education. The *Darces* court noted, however, that the *Plyler* result was not dependent on characterization of education as a fundamental right.[132] To support the use of heightened scrutiny of discriminatory classifications in the welfare context, the court cited Justice Powell's concurrence in *Plyler*, in which he stated, "If the *resident* children of illegal aliens were denied welfare assistance, made available by government to all other children who qualify, this also—in my opinion—would be an impermissible penalizing of children because their parents' status," (emphasis added by the *Darces* court).[133] These considerations led the *Darces* court to apply not an intermediate standard of reviewing as had been employed in *Plyler*,[134] but rather a strict standard of scrutiny. The court explained that this higher level of scrutiny was justified in part by the "independent vitality" of the California equal protection clause.[135]

Finally, the *Darces* court was unpersuaded by the arguments of the state that the classification was necessary to further a compelling state interest.[136] The court stated that the classification of undocumented

127. *Id.* at 893, 679 P.2d at 472, 201 Cal. Rptr. at 821.
128. *Id.* at 890-92, 679 P.2d at 471-72, 201 Cal. Rptr. at 820-21.
129. *Id.*
130. *Id.*
131. *Id.* at 892, 679 P.2d at 472, 201 Cal. Rptr. at 821.
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.* The *Darces* majority noted that although their decision rested on the equal protection clause in the California Constitution, they believed the same result would have been reached under fourteenth amendment review. *Id.* at 895 n.25, 679 P.2d at 474 n.25, 201 Cal. Rptr. at 823 n.25.
136. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.

children was "clearly irrelevant to the goals and objectives of the AFDC program,"[137] since the objective of that program is to feed needy children. The court was equally unimpressed by the assertion of the state that budgetary concerns justified the exclusion of undocumented aliens in determining a family's need for AFDC purposes.[138] The court again cited *Plyler* for the proposition that "a concern for preservation of resources standing alone can hardly justify the classification."[139] Finally, the court rejected the argument by the state that failure to exclude these children would be a violation of federal regulations.[140] The court noted that although AFDC is a joint federal-state program, the responsibility for setting eligibility standards is left to the states, within certain guidelines.[141] In situations in which the state has more liberal eligibility standards, the only limitation is that the state must make the additional payments from the state treasury without federal matching funds.[142] In other words, the Department of Social Services can extend aid to undocumented aliens, but must do so with money solely from state funds.[143] The *Darces* court, therefore, allowed a limited extension of AFDC benefits to undocumented alien children. Unlike *Plyler*, the decision did not rely upon the equal protection of undocumented alien children, but looked to the rights of citizen children. The reliance by the *Darces* court on *Plyler*, however, indicates a recognition that undocumented alien children are denied equal protection when they are excluded from AFDC eligibility.[144]

B. *Beyond* Darces

In *Darces* the California Supreme Court looked to the "independent vitality" of the equal protection clause of the California Constitution to invalidate the separate treatment of citizen children with undocumented siblings under the AFDC program.[145] The court applied strict scrutiny[146] to this classification and the state was unable to meet the burden of showing that the classification was necessary to further a compelling state interest.[147] This decision requires the needs of undocu-

137. *Id.* at 888, 679 P.2d at 469, 201 Cal. Rptr. at 818.
138. *Id.* at 944, 679 P.2d at 473, 201 Cal. Rptr. at 822.
139. *Id.*
140. *Id.* at 894-95, 679 P.2d at 473-74, 201 Cal. Rptr. at 822-23.
141. *Id.* at 881 n.8, 679 P.2d at 464 n.8, 201 Cal. Rptr. at 813 n.8.
142. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
143. *Id.*
144. *See Id.* at 890, 679 P.2d at 471, 201 Cal. Rptr. at 820.
145. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
146. *Id.* at 892, 679 P.2d at 472, 201 Cal. Rptr. at 821.
147. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.

mented children with citizen siblings to be taken into account in determining the aid payments to a family.[148] The mixed class of citizen and undocumented alien children in this case allowed the court to extend AFDC benefits to undocumented alien children without direct consideration of the rights of the undocumented alien children.[149] The *Darces* holding, however, creates an inequity between classes of undocumented aliens. Those having citizen siblings will receive full AFDC payments yet those without will not.

This author proposes that the exclusion of undocumented alien children not living with citizen siblings from eligibility for AFDC benefits deprives those children of equal protection under the California Constitution. Although federal AFDC guidelines do not require consideration of the needs of undocumented alien children,[150] the California Supreme Court has ruled that the needs of undocumented children are to be considered when those children are residing with documented siblings.[151] While *Darces* extends benefits to undocumented children with citizen siblings, the decision creates a new disparity toward undocumented children who do not have citizen siblings. The *Darces* decision should be reassessed applying the rationale of the United States Supreme Court in *Plyler v. Doe* to extend the protections of the equal protection clause to undocumented alien children.

The *Darces* opinion can be the basis for extending the guarantees of the equal protection clause of the California Constitution to undocumented alien children. Although the *Darces* court was not confronted with this issue,[152] language in the opinion indicates a willingness by the court to find that denial of AFDC benefits to undocumented children who are not fortunate enough to have a documented sibling is, in itself, unfair discrimination.[153] In addition, the practical inequity created by the decision requires that *Darces* be reconsidered.

Although the reasoning of the California Supreme Court solved the issue presented by the facts in the *Darces* case, the decision creates serious inequities. The holding also leaves unresolved the issue of what rights undocumented alien children are entitled to under the equal protection clause of the state constitution. Practical application of the *Darces* decision results in the situation that in order for an entire family of undocumented persons to qualify for AFDC benefits, the

148. *Id.*
149. *Id.* at 876, 679 P.2d at 461, 201 Cal. Rptr. at 810.
150. *Id.* at 880, 679 P.2d at 463-64, 201 Cal. Rptr. at 812-13.
151. *Id.* at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
152. *Id.* at 876, 679 P.2d at 461, 201 Cal. Rptr. at 810.
153. *See, e.g., id.* at 892-93, 679 P.2d at 472-73, 201 Cal. Rptr. at 821-22.

parents simply need to have a child born in the United States. Aside from encouraging undocumented women to have additional children, this situation creates a serious disparity between benefits available for classes of undocumented aliens. The unfairness is clear in a comparison of two families with undocumented children. A family of six undocumented children is not entitled to receive any benefits, but a family of six undocumented children and one citizen child would be entitled to benefits for all seven children. Since these families are similarly situated in terms of the purpose of the AFDC program, which is to provide aid to needy children, this classification should be subject to greater scrutiny under the equal protection clause of the state constitution.

As noted, the equal protection clause, both in the state and federal constitutions, has been an important check against discriminatory classifications of minority groups.[154] The United States Supreme Court has developed three standards of judicial review for allegedly discriminatory classifications: rational basis, intermediate scrutiny, and strict scrutiny. The California Supreme Court has adopted the rational basis and strict scrutiny tests, but has declined to adopt the intermediate standard, opting for strict scrutiny in borderline cases.[155] The California Supreme Court also has recognized certain fundamental rights and suspect classes not currently recognized in federal law.[156] The broad protections of the California Constitution as well as the commitment of the state supreme court to the independence of the state constitution[157] leaves California poised for extension of the equal protection clause to undocumented alien children.

This author proposes that strict scrutiny is the appropriate standard of review for a classification that excludes undocumented aliens from eligibility for AFDC benefits. The combined factors of the status of children and the importance of the benefit involved requires that this classification be subject to heightened judicial review. The *Darces* decision requires that AFDC benefits be extended to one group of undocumented alien children, those with documented siblings.[158] While this decision does extend the benefits available to the undocumented, the holding also has created unfairness within that group. The resulting classification should be deemed a violation of equal protection because the classification violates the rights of undocumented children to receive

154. *See supra* notes 55-79 and accompanying text.
155. *See supra* notes 103-07 and accompanying text.
156. *See supra* notes 108-10 and accompanying text.
157. *See supra* note 109 and accompanying text.
158. *Darces*, 35 Cal. 3d at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.

AFDC benefits. An equal protection analysis will show that the special status of children, as well as the importance of AFDC benefits to those children, requires a heightened standard of review. Under strict scrutiny, the state would be unable to justify the classification with a compelling interest.

EQUAL PROTECTION ANALYSIS

Undocumented alien children are entitled to the constitutional protections accorded a suspect class. The primary reason for the extension of rights in both *Plyler* and *Darces* is the special status of children.[159] Both the United States Supreme Court and the California Supreme Court, in conferring a protected status on children, have acknowledged the vulnerability of children and the need for public benefits essential to their early growth and development. In *Plyler*, for instance, the Court pointed out that depriving children of education early in life increased the possibility that they would become burdens on society.[160] The Court recognized that because the parents brought the children across the border illegally, undocumented children were not responsible for their disabling status.[161] Thus, although the illegality of an alien's immigration status may be a valid reason for denying benefits to adults, the argument does not apply to their undocumented children. The vulnerability and innocence of the children combine to support characterization of undocumented alien children as a suspect class entitled to heightened protection.[162]

Integral to an equal protection challenge is a demonstration that the class challenging the allegedly discriminatory statute is in a similar legal position as the group benefiting from the classification. In other words, the successful challenger must show that the discriminatory classification does not further a purpose of the law, a purpose that must, in turn, be legitimate.[163] The avowed purpose of the AFDC program is to provide assistance to needy children.[164] Clearly, an

159. *See Plyler*, 457 U.S. at 237 (Powell, J., concurring); *Darces*, 35 Cal. 3d at 892, 679 P.2d at 472, 201 Cal. Rptr. at 821; (the California Supreme Court analogizes from *Plyler*, but chooses strict rather than intermediate scrutiny); *cf. Plyler*, 457 U.S. 202, 233 (although the Court declines to apply strict scrutiny for the classification of undocumented aliens, the Court does apply intermediate scrutiny).

160. *Plyler*, 457 U.S. at 230.

161. *Id.* at 220.

162. *Id.*; *Darces*, 35 Cal. 3d at 892, 679 P.2d at 472, 201 Cal. Rptr. at 821. Protection of children occurs in other areas of the law such as state prosecutions for child neglect. *See, e.g.*, CAL. PENAL CODE §270.

163. *See supra* notes 59-65 and accompanying text.

164. *See* Burnham v. Woods, 70 Cal. App. 3d 667, 673, 139 Cal. Rptr. 4, 7 (1977) (primary purpose of AFDC is to feed needy children).

undocumented child is no less in need of food, clothing, and health care than a citizen child.[165] All children, documented or undocumented, are similarly situated and should be entitled to receive welfare benefits.

Apart from designation of children as a suspect class, strict judicial scrutiny will be invoked if the interest involved is deemed "fundamental."[166] In *Darces*, the court noted that the facts of the case did not require consideration whether any fundamental rights were implicated.[167] Although welfare has not been conferred the status of a fundamental right,[168] the judiciary clearly has recognized the great importance of public assistance benefits.[169] California is free to elevate welfare to the level of a fundamental right, deprivation of which would require strict scrutiny under an equal protection analysis.[170] Short of finding receipt of AFDC funds to be a fundamental right, the *Darces* court recognized that full benefits to a family are important.[171] Clearly, the receipt of funds to fulfill basic human needs is, like education, critical to the development of a child.

In *Plyler*, a heightened level of scrutiny was fashioned because of the combination of a quasi-suspect class and implication of an "important," though not fundamental, right.[172] Although the California Supreme Court could justify the use of strict scrutiny solely on the classification of undocumented alien children, the importance of the right involved buttresses the use of strict scrutiny.[173] Like the classification in *Plyler*, the AFDC classification of undocumented alien children involves a total deprivation of an important benefit.[174] The deprivation of assistance in meeting basic human needs, like the deprivation of education, can cause lifelong damage.[175] This argument, however, loses force when applied to adult undocumented aliens, who are present in the country voluntarily and presumably capable of providing for their own needs.

A classification that is found to be discriminatory nonetheless will be upheld if the state can demonstrate a substantial interest in the

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165. *Darces*, 35 Cal. 3d at 888, 679 P.2d at 469, 201 Cal. Rptr. at 818.
166. *See supra* notes 55-111, 146-88 and accompanying text.
167. *Darces*, 35 Cal. 3d at 893 n.24, 679 P.2d at 473 n.24, 201 Cal. Rptr. at 822 n.24.
168. Dandridge v. Williams, 397 U.S. 471, 485 (1970).
169. *See id.*; *Shapiro*, 394 U.S. at 627.
170. *See generally*, Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 WASH. U.L.Q. 659, 659-87 (arguing for recognition of welfare as a fundamental right).
171. *See Darces*, 35 Cal. 3d at 895, 679 P.2d at 474, 201 Cal. Rptr. at 823.
172. *Plyler*, 457 U.S. at 221-22.
173. *See supra* notes 92-98 and accompanying text.
174. Undocumented aliens are ineligible for AFDC benefits. CAL. WELF. & INST. CODE §11104.
175. *See Darces*, 35 Cal. 3d 891, 679 P.2d at 471, 201 Cal. Rptr. at 820.

classification.[176] The primary justification generally offered by a state in support of classifications that disallow welfare payments to undocumented aliens is the interest in saving money. The courts, however, have not been entirely sympathetic to the fiscal concerns of states.[177] In *Plyler*, the Court stated that budgetary concerns were insufficient and that a state must "do more than justify its classification with a concise expression of an intention to discriminate."[178]

A related contention in *Darces* was that federal guidelines preclude consideration of the needs of undocumented children.[179] The court rejected this argument, noting that no legal barrier exists to an extension of benefits from state funds.[180] The federal AFDC statute establishes a minimum standard for benefits. The state is free, however, to allocate benefits in excess of federal requirements.[181] While *Darces* accomplishes a limited extension of benefits, this author argues that further extension is required to ensure benefits for all undocumented children.

An additional justification advanced for discriminating against undocumented persons is that most are in this country illegally. This "outlaw theory" holds that illegal immigrants have no right to benefit from their unlawful status.[182] This contention was rejected by the *Plyler* Court, which conceded that while there may be validity in denying benefits to undocumented adults, the argument is not persuasive when applied to the denial of benefits to children.[183] The Court pointed out that children have no control over their illegal entry into this country. Further, their parents are not likely to be deterred from entry by the unavailability of benefits to their children.[184] The *Plyler* Court was not persuaded by the deterrence argument, stating that "it is . . . difficult to conceive of a rational justification for penalizing [undocumented alien children] for their presence in the United States."[185] Since the children are the primary beneficiaries of the aid, withholding whatever indirect benefit flows to the parents from the

176. *Id.*
177. *Id.* at 884, 679 P.2d at 473, 201 Cal. Rptr. at 822.
178. *Plyler*, 457 U.S. at 227.
179. *Darces*, 35 Cal. 3d at 894, 679 P.2d at 473, 201 Cal. Rptr. at 822.
180. *Id.* at 894-95, 679 P.2d at 473-74, 201 Cal. Rptr. at 822-23.
181. *Id.*
182. *Plyler*, 457 U.S. at 250 (Burger, C.J., dissenting).
183. *Id.* at 219-20.
184. *See id.* at 228. Research has shown that undocumented adults do not immigrate in order to take advantage of public assistance programs; rather, they enter this country in search of employment. *See* PUBLIC HEARING, *supra* note 2, at 41.
185. *Plyler*, 457 U.S. at 220.

assistance is an insufficient reason for withholding aid through the discriminatory classification.[186]

To survive a challenge to AFDC eligibility rules the state must demonstrate a compelling reason for a classification that denies benefits to certain children. Although the state may have a legitimate interest in restraining spending or deterring illegal immigration, a court is unlikely to accept this interest as sufficient to justify discriminatory classifications.[187] Thus, a classification that denies AFDC benefits to undocumented alien children would not survive strict scrutiny under the equal protection clause and would be unconstitutional discrimination.

Conclusion

This author has established that the equal protection clause of the California Constitution requires that undocumented alien children be eligible for assistance under the state AFDC program. The historical development of the equal protection clause at both state and federal levels indicates that undocumented children are a prime example of a group deserving protection. In *Plyler v. Doe* the United States Supreme Court took the first step in extending the fourteenth amendment to undocumented children by ruling that denial of free public education constituted a deprivation of equal protection. The California Supreme Court employed this reasoning in the *Darces* decision, extending AFDC benefits to undocumented children in limited circumstances. The *Darces* decision, however, did not result from consideration of the rights of undocumented alien children, but rather, from the equal protection claims of their citizen siblings. Thus, the California court has not yet faced directly the issue of the rights of undocumented children. California should rely upon the independence of the state constitution to extend benefits to undocumented children on the basis of their status as a protected class and through continued acknowledgment of the importance of welfare benefits.

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186. *See* Ruiz v. Blum, 549 F. Supp. 871, 876 (S.D.N.Y. 1982).

187. *See generally* Comment, *Undocumented Aliens' Right to Medicaid after* Plyler v. Doe, 7 Fordham Int'l L. Rev. 83, 83-117 (1984) (supporting extension of Medicaid to undocumented aliens).