IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

J. and R. DOE AS GUARDIAN AD LITEM FOR I. ROE, J. D. DOE, E. DOE, D. DOE AND O. DOE: J. and E. ROE AS GUARDIAN AD LITEM FOR O. ROE, F. ROE, and N. ROE: F. BOE AS GUARDIAN AD LITEM FOR Z. BOE, S. BOE and X. BOE; H. and J. LOE AS GUARDIAN AD LITEM FOR A. LOE, L. LOE, M. LOE, G. LOE and R. LOE; ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,	§	
PLAINTIFFS	§	
VS.	§	CIVIL ACTION NO. TY-77-261-CA
JAMES PLYER, SUPERINTENDENT OF THE TYLER INDEPENDENT SCHOOL DISTRICT, IN HIS OFFICIAL CAPACITY: ROBERT DOBBS, CHARLES CHILDERS, CARL ROSS, MARTIN EDWARDS, VERNON GOSS, MICHAEL BREEDLOVE and ROBERT RANDALL IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE BOARD OF TRUSTEES OF THE TYLER INDEPENDENT SCHOOL DISTRICT,	§	
DEFENDANTS	§	

DEFENDANTS' BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR DENIAL OF PRELIMINARY INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

The Plaintiffs herein have requested this Court for a Preliminary Injunction which would enjoin the Defendants and those acting in concert with them, from requiring the Mexican-Americans situated within the Tyler Independent School District from producing a birth certificate or other legal document from the U. S. Immigration and Naturalization Service before being allowed to enroll and register school age children in the Tyler

Independent Public Schools in order to relieve themselves of the responsibility of paying the tuition fees now required. The Plaintiffs have further alleged that the undocumented aliens are the only group that are required to present the birth certificates or other legal documents in order to be admitted into the Tyler Independent School District without tuition. This is simply untrue. It has been a long standing policy of the Tyler Independent School District to require of all new students upon first enrolling in the Tyler Independent School District to present proof of citizenship by either a birth certificate or legal document from the U. S. Immigration and Naturalization Service upon registration. The Plaintiffs further complain that when confronted with paying the tuition required by the Tyler Independent School District which is merely reimbursement on a per student cost basis based upon the number of students and the annual operating budget of Tyler Independent School District, that they will have to remain at home without an education unless this Court grants the relief requested in their Motion for Injunction. This is another over-simplification on the Plaintiffs' part. The Plaintiffs have completely overlooked the fact that they can apply for legal admittance in the United States which they have made no attempt to do at this time.

The Defendants will hereinafter set out in more detail in the body under the argument of this Brief that the Texas Education Code and, in particular, Section 21.031, does not invade the province of the Immigration and Nationality Act of the Federal Government, and that it is Constitutional and applied equally and with due process to all persons residing within the Tyler Independent School District.

Section 21.031 of the Texas Education Code was amended by the Legislature of the State of Texas in 1975 through H.B. 1126, Texas Laws, 1975, ch. 334, § 4 at 896. As amended, Section 21.031 provides:

> § 21.031. Admission
>
> (a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of twenty-one years on the first day of September of any scholastic year shall be entitled to the benefits of the available school fund for that year.
>
> (b) Every child in this State who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of twenty-one years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parents, guardian, or the person having lawful control of him resides at the time he applies for admission.
>
> (c) The Board of Trustees of any public free school district of this State shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over twenty-one years of age at the beginning of the scholastic year if such person or his parents, guardian, or person having lawful control resides within the school district.
>
> Amended by Acts 1975, 64th Leg., p. 896, ch. 334, § 4, eff. September 1, 1975 (emphasis added).

Pursuant to this Legislative Amendment, the Tyler Independent School District (TISD) revised its attendance policies to permit only United States citizens or legally admitted aliens to attend its schools on a tuition-free basis. The policy was formally adopted into the Board Minutes on July 21, 1977. The TISD then adopted an administrative definition of a legally admitted alien. The administrative definition adopted by the TISD Board of Trustees is as follows:

> The Tyler Independent School District shall enroll all qualified students who are citizens of the United States or legally admitted aliens, and who are residents of this school district, free of tuition charge. Illegal alien children may enroll and attend schools in the Tyler Independent School District by payment of the full tuition fee.

> A legally admitted alien is one who has documentation that he or she is legally in the United States, or a person who is in the process of securing documentation from the United States Immigration Service, and the Service will state that the person is being processed and will be admitted with proper documentation.

The minor Plaintiffs in this case have alleged that they sought admission to the public free schools of TISD where they were refused admission unless they paid the approximately $1,000.00 tuition fee. Because the Plaintiffs have brought this suit under pseudonyms of Doe, Roe, Boe, and Loe, it is impossible for the personnel of the TISD to check to see if, in fact, these children have applied for admission to the TISD schools.

It is apparently undisputed that the minor Plaintiffs are not legally admitted aliens. In the minor Plaintiffs' suit, they have alleged that Section 21.031 of the Texas Education Code violates the equal protection and due process clauses of the United States and Texas Constitutions. The question before this Court is apparently whether or not Section 21.031 of the Texas Education Code is acceptable under the Constitution.

The threshold issue is whether due process and equal protection clauses of the United States Constitution and the Texas Constitution apply to illegal aliens. The Fourteenth Amendment provides in part: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws." U.S.Const. amend. XIV.

The phrase "any person" in the Fourteenth Amendment includes lawfully admitted aliens as well as citizens. Truax v. Raich, 239 U.S. 33, 39, 36 S.Ct. 7, 9 (1915); Oyama v. State of California, 332 U.S. 633, 662-63, 68 S.Ct. 269, 283 (1948). Moreover, the Fourteenth Amendment's protection extends to

resident aliens, lawfully present in the United States who are ineligible for citizenship. Oyama v. State of California, Supra.

The existence of a large number of Japanese on the West Coast during the 1940s who were lawful residents of the United States but nevertheless barred from securing citizenship led to considerable litigation concerning the rights of non-citizens. The Courts unhesitatingly extended the scope of the Fourteenth Amendment stating: "...that all persons lawfully in this country shall abide 'in any State' on an equality of legal privileges with all citizens under non-discriminatory laws." Takahasi v. Fish and Game Commission, 334 U.S. 410, 420, 68 S.Ct. 1138, 1143 (1948) emphasis added; accord Oyama v. State of California, Supra., at 649, S.Ct. at 217. The rationale upon which this extension of the Fourteenth Amendment was based was the State's attempted usurption of the Federal Government's power to regulate immigration. The State Laws, which imposed discriminatory burdens upon the entrance or residence of aliens lawfully within the United States, were in conflict with the Federal Government's Constitutionally derived powers to regulate immigration.

There are numerous other instances in which aliens have been afforded the protection of the Fourteenth Amendment. Upon first blush, these cases may appear to involve illegal aliens, but careful scrutiny reveals that the aliens were lawfully within the jurisdiction of the United States.

In Yick Wo v. Hopkins, 118 U.S. 356, 65 S.Ct. 1064 (1886), the Court struck down a San Francisco Ordinance that made laundries housed in wooden buildings unlawful. Since the Ordinance was enforced by the mere will and consent of supervisors and resulted in Chinese laundries being denied permits while Caucasian

laundries were granted permits, the Court prohibited its enforcement by relying on the Fourteenth Amendment. The Chinese involved in this dispute, while still subjects of the Emporer of China, were legally in the United States under the Treaty of November 17, 1880.

In Ho Ah Kow v. Nunan, 55 Sawy. 552 (Cir.Ct.Dist.Cal.1879) a Chinaman's queue was cut off by the Sheriff as a means of inducing the Chinese prisoner to pay his fine. The plaintiff was a subject of China, but the case is mute as to whether he was an illegal alien. Presumably, he was present in this country lawfully because during the late 1800s, many Chinese entered the United States under treaties. In addition, the case makes no mention of deportation proceedings. The ordinance that permitted the Sheriff to cut off the man's queue was unconstitutional because it was levied at only one class. Neither women or men of other nationalities were forced to submit to the degrading haircutting.

The State of Arizona at one time enacted a statute effecting businesses employing five or more persons. Truax v. Raich, supra. These businesses were required to maintain a workforce in which 80 percent of the employees were either qualified electors or native-born citizens of the United States. The plaintiff in the action was a native of Austria and a lawful inhabitant of Arizona. The Court held that "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they can't live where they can't work." Truax v. Raich, supra. at 42, S.Ct. at 11 (emphasis added).

As already pointed out in Takahasi v. Fish and Game Commission, supra., and Oyama v. State of California, supra.,

lawfully admitted Japanese who were ineligible for citizenship were afforded the protection of the Fourteenth Amendment. Consequently, it can clearly be ascertained that all persons lawfully within the United States fall within the scope of the Fourteenth Amendment's protections.

Unfortunately, the status of illegal aliens has been confused by the opinions of the Courts. Repeatedly, the Courts have held that aliens lawfully within this country are protected by the Fourteenth Amendment. Truax v. Raich, supra,; Takahasi v. Fish and Game Commission, supra. The natural inference arising from the Court's use of the phrase "lawfully admitted" is that illegal aliens do not enjoy this protection. If illegal aliens are encompassed with the Amendment's provisions, then the Court's use of the adjective "lawful" has not only been unnecessary, but misleading.

There are, however, instances in which the Courts have extended the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to illegal aliens. Wong Wing v. United States, 163 U.S. 228, 16 S.Ct. 977 (1896), tested the constitutionality of the Fourth Section of the Act of 1892 which provided that "Any such Chinese person, or person of Chinese descent, convicted and adjudged not lawfully entitled to be or remain in the United States, shall be imprisoned at hard labor for a period not exceeding one year and thereafter removed from the United States." Wong Wing v. United States, supra., at 233 S.Ct. at 979. The Section made no provision for trial by jury, and the punishment could be determined by any Justice, Judge, or Commissioner of the United States. The Court held "That even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, or be deprived of life, liberty, or property without due process of law." Id. at 238, S.Ct. at 981.

In arriving at this decision, the Court muddied the waters concerning the status of the legal and illegal aliens. The Court relied on language found in Yick Wo v. Hopkins, supra. to support its decision that all persons within the United States are entitled to protection of the Fifth and Sixth Amendments.

> "The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within the jurisdiction the equal protection of the law.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or nationality; and the equal protection of the laws is a pledge of the protection of equal laws. Wong Wing v. United States, supra, at 238, S.Ct. at 981 quoting Yick Wo vs. Hopkins, supra, at 369, S.Ct. at 1070."

Yick Wo v. Hopkins, supra, involved an alien legally within this country. Yet the Court in Wong Wing failed to recognize this distinction or to state specifically whether illegal aliens are protected by the Equal Protection Clause of the Fourteenth Amendment. Moreover, the Supreme Court recently relied on Wong Wing to support its position that the Fifth Amendment, as well as the Fourteenth Amendment, provides due process protection to illegal aliens. Mathews v. Diaz, 96 S.Ct. 1883, 1890 (1976). Mathews v. Diaz did not, however, mention the applicability of the Equal Protection Clause. Wong Wing is the only case which has even indirectly implied that the Fourteenth Amendment's Equal Protection Clause may extend to illegal aliens.

In Wong Yang Sung v. McGarth, 339 U.S. 33, 70 S.Ct. 445 (1950), Wong Yang Sung, an illegal alien, sought release from custody by habeus corpus upon the sole ground that the administrative hearing was not conducted in conformity with Sections 5 and 11 of the Administrative Procedure Act. The Administrative Procedure Act attempted to separate investigating and prosecuting functions from adjudicating functions. In Wong Yang Sung, while the presiding inspector had not investigated this particular

situation, his duties did not include the investigation of similar cases. The Government admitted noncompliance with the Act, but asserted that it did not apply. The Court held that "The Constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body." Id. at 49 S.Ct. at 454. Therefore, the prisoner was released because of the Government's noncompliance with the Administrative Procedure Act and its attendant due process requirements.

Mathews v. Diaz, supra, also recognized the applicability of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to illegal aliens.

> There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth, protects everyone of these persons from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory, is entitled to that Constitutional protection. Id. at 1819.

Mathews v. Diaz, supra, questioned the power of Congress to condition an alien's eligibility for participation in a Federal medical insurance program on continued residency in the United States for a five-year period and admission as a permanent resident. The Court found that Congress is empowered to condition participation in a Federal insurance program or residency and stated that the Federal Government can make distinctions between aliens and citizens. The Mathews Court also held that:

> "Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable Constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests." 96 S.Ct. 1883, 1891. (emphasis added)

Except for the inference that the equal protection clause may apply to illegal aliens in Wong Wing v. United States, supra,

in 1896, the Supreme Court has not bestowed upon illegal aliens the protection of the Equal Protection Clause. Instead, the Court in Mathews v. Diaz, supra, specifically held that illegal aliens cannot claim the bounty the Federal Government makes available to its citizens and some of its guests. The minor Plaintiffs here are requesting more from the State of Texas and the TISD than they can receive from the Federal Government. Although the Due Process Clause applies to illegal aliens, the Equal Protection Clause does not. The Plaintiffs lack standing, and they are precluded from seeking the bounty of the State of Texas, a free public education, under the Equal Protection Clause.

As far as the Tyler Independent School District is concerned, the minor Plaintiffs herein have been afforded the protection of the Due Process Clause by TISD. The Tyler Independent School District is at a disadvantage to specifically point out any hearings or opportunities that they have had to meet with the Plaintiffs and they are without knowledge who these Plaintiffs are at the present time. TISD can only state that it is its policy, as it has been in the past, that all students are given the opportunity to establish their eligibility to attend the TISD schools without the payment of tuition. Under the Texas Education Code, and, in particular, Section 21.031, the Legislature of the State of Texas has set forth the criteria on which school-age children will be allowed to attend the public schools of the State of Texas on a tuition-free basis. As is set out more fully hereinabove, the TISD Board policy has followed the guidelines as set forth by the Education Code. The Legislature of the State of Texas has determined that illegal aliens do not have a right to attend the public free schools of this State. The question, therefore, is one limited to whether the Equal Protection Clause is applicable; and, if so, which test must be applied.

As reviewed above, the Courts have not specifically applied the Equal Protection Clause to include illegal aliens, and the TISD submits that the Equal Protection Clause is not applicable to the minor Plaintiffs. Nevertheless, since the applicability of the Equal Protection Clause to the illegal aliens claiming the bounty offered by a State to its citizens and legally admitted aliens is a case of first impression, the TISD will, for the sake of argument, review the application of the Equal Protection Clause.

In determining whether Section 21.031 of the Texas Education Code is Constitutionally acceptable under the Equal Protection Clause, two questions must be answered. First, it must be ascertained whether the Statute operates to the disadvantage of some suspect class, and secondly, it must be determined whether it impinges upon a fundamental right explicitly or implicitly protected by the Constitution. If either of the inquiries are answered in the affirmative, strict judicial scrutiny is required and the State must demonstrate a compelling interest to sustain the Statute's validity. In the event strict judicial scrutiny is not necessary, the Statute must be examined to determine whether it rationally furthers some legitimate, articulated State purpose. San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 16, 93 S.Ct. 1278, 1287 (1973).

A suspect class has been described as one "saddled with such disabilities or subjected to such a history of purposeful unequal treatment, or regulated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." Massachusetts Board of Retirement v. Murgia, 96 S.Ct. 2562, 2566 (1976), quoting San Antonio Independent School District v. Rodriquez, supra, at 28 S.Ct. at 1294. Thus,

certain classifications based on unalterable traits such as race and lineage are inherently suspect and must be justified by some "overriding State purpose." Lindsey v. Normet, 405 U.S. 56, 73, 92 S.Ct. 862, 864 (1972).

In East Texas Guidance and Achievement Center, Inc. et al v. Brockette et al, 431 F.Supp. 231, the Tyler Division of the United States District Court for the Eastern District of Texas ruled upon the tuition of wards of other States and its Constitutionality. The suit was brought to challenge the Constitutionality of a Statute requiring that wards of States other than Texas pay tuition to attend public schools. The District Court in its holding held that Section 21.0311, Texas Education Code, did not violate Equal Protection or Due Process Clauses of the Fourteenth Amendment, but had a rational relation to a legitimate State objective. The determination by the State Board of Education of formulas to be used in calculating tuition was a proper exercise of the governmental rule making function, and involved no denial of due process.

In Oyama v. State of California, supra, the California Legislature used Federal alien classifications in the enactment of their Alien Land Law. The California Law placed additional burdens on Japanese residents who were lawfully in this country, but ineligible for citizenship. The Supreme Court found the Statute unconstitutional and stated "California should not be permitted to erect obstacles designed to prevent the immigration of the people who Congress has authorized to come into and remain in this country." Oyama v. State of California, supra, at 649 S.Ct. at 277 (emphasis added). In Takahasi v. Fish and Game Commission, supra, California once again attempted to utilize a Federally created racial ineligibility for citizenship as a basis for a licensing law. The Court, striking down the licensing law,

declared "It does not follow, as argued by California, that because the United States regulates immigration and naturalization in part on the basis of race and color classifications, a State can adopt one or more of the same classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other State inhabitants earn their living." Id. at 418 - 19, S.Ct. at 1142 (emphasis added). The issue in Graham v. Richardson, 403 U.S. 365, 191 S.Ct. 1848 (1971), was whether the Equal Protection Clause of the Fourteenth Amendment prevented a State from conditioning its welfare benefits upon the beneficiary's possession of United States citizenship or if the beneficiary was an alien, upon his or her having resided in this country for a specific number of years. Again, the Court held that State classifications based upon alienage, legally admitted, conflicted with overriding national policies in an area Constitutionally entrusted to the Federal Government. The principle which emerges from these cases is that "States can neither add to nor take away from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States." Takahasi v. Fish and Game Commission, supra, 419, S.Ct. 1142.

Unlike the lawfully admitted aliens of these cases, the minor Plaintiffs are admittedly illegal aliens; they are in Tyler without documentation in violation of the laws of the United States. The State of Texas, through Section 21.031, has not added to nor subtracted from the United States Government standards, and it has not discriminated against any class of aliens lawfully within this country. The State is not attempting to regulate immigration as was the case in Oyama, Takahasi, and Graham. In administering Section 21.031, TISD has not undertaken to determine the status of aliens. It is not disputed by the

Tyler Independent School District that TISD has no power under Section 21.031 to determine immigration status. It is merely the position of TISD that the present State law which excludes illegal aliens from school does not conflict with the enforcement of the immigration laws. If the State of Texas, and in particular, the Tyler Independent School District, were to provide free schooling for illegal aliens, it could have no effect but to encourage illegal aliens to come to Texas and in particular, Tyler, Texas, and would place a burden on the Immigration and Naturalization Service.

The Supreme Court has recently held that a State can fashion a Statute based on whether one is an illegal or legally admitted alien. In De Canas v. Bica, 424 U.S. 351 (1976), 96 S.Ct. 933 (1976), California enacted a Statute making the employment of illegal aliens a criminal offense. The Court found no conflict between the State law and the comprehensive Federal statutory scheme for the regulation of immigration and naturalization, and specifically recognized the right of California to regulate employment relationships under its police power. In its unanimous decision, the Court did not even suggest that illegal aliens could possibly be a suspect classification.

A second consideration in determining whether the Constitutionality of Section 21.031 is subject to strict scrutiny under the Equal Protection Clause is whether it impinges upon a fundamental Constitutional right. That question was conclusively answered in the negative by the Supreme Court in San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 93 S.Ct. 1278 (1973). Here the Court held:

> Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find a basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard of reviewing a State's social and economic legislation. 411 U.S. 1, 35, 93 S.Ct. 1278, 1297-98.

Consequently, Section 21.031 is not to be subjected to strict judicial scrutiny. The Statute does not operate to the disadvantage of a suspect class nor does it infringe upon a fundamental right; therefore, even if the Equal Protection Clause were applicable, the Defendants need not establish a compelling State interest or overriding State purpose to support its validity.

Since strict judicial scrutiny would not be applicable to the Minor Plaintiffs, the traditional standard of review would be utilized. Section 21.031 must, therefore, bear some rational relationship to the legitimate State purposes which it seeks to achieve. San Antonio Independent School District v. Rodriquez, supra. A State may borrow a Federal classification such as legal-illegal for its own laws; however, the State's use of the distinction must rise and fall on its own merit. Oyama v. State of California, supra, and De Canas v. Bica, supra.

As specifically recognized in Rodriquez, public education is a social and economic function of the State. The Court has also recognized that "The Fourteenth Amendment gives the Federal Courts no power to impose upon the States their view of what constitutes wise economic or social policy." Dandridge v. Williams, 397 U.S. 471, 486, 90 S.Ct. 1153, 1162 (1970). Dandridge involved a Maryland regulation which placed an absolute limit of $250.00 per month on the amount of welfare funds a family could receive. This limit applied regardless of the size of the family or its actual need. Because of Maryland's finite resources, the State had the choice of either supporting some families adequately and others less adequately, or not giving sufficient support to any family. The Court held that so long as a classification has "some reasonable basis" it does not offend the Constitution simply because the classification "is not made with mathematical niceties or because in practice it results in some equality." Id. at 485, S.Ct. 1161, quoting Lindsley v. National Carbonic Gas Co.,

220 U.S. 61, 78, 31 S.Ct. 337, 340 (1911).

Furthermore, the Court in comparing education to welfare assistance in San Antonio Independent School District v. Rodriquez, supra, at 42 S.Ct. 1301, acknowledged that "Education, perhaps even more than welfare assistance, presents a myriad of intractable economic, social, and even philosophical problems." Quoting Dandridge v. Williams, supra, at 487, S.Ct. 1163. Consequently, "The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one Constitutionally permissible method of solving them, and that, within the limits of rationality, the Legislature's efforts to tackle the problem should be entitled to respect." San Antonio Independent School District v. Rodriquez, supra, at 42 S.Ct. 1301-02, quoting Jefferson v. Hackney, 406 U.S. 535, 546-47, 92 S.Ct. 1724, 1731 (1972).

Section 21.031 was fashioned by the Legislature to achieve the State's social and economic goals. There is a limited amount of revenue available within the State which can be used to achieve the social goal of educating the State's children. The Legislature has determined that those funds are to be used to educate the United States' citizens and the legally admitted aliens who reside in Texas. Section 21.031 does not deprive those who are in Texas in violation of the immigration laws of the United States of any bounty to which they are entitled; rather, the law protects the rights of the citizens and those who are legally admitted. In essence, the State has the choice of educating citizens and lawfully admitted aliens adequately and illegal aliens less adequately, or educating citizens, legal aliens, and illegal aliens all inadequately.

The Supreme Court has repeatedly invalidated only those State laws that impose discriminatory burdens upon the entrance

or residence of aliens lawfully within this country. De Canas v. Bica, supra, S.Ct. at 938 n.6 quoting Takahasi v. Fish and Game Commission, supra, at 419 S.Ct. at 1142 (1948). Section 21.031 creates no additional burdens. In fact, as in De Canas, the Statute is designed to protect the quality of education available to not only citizens but also lawfully admitted aliens. De Canas v. Bica, supra, S.Ct. at 938 n.6 (emphasis added). Congress, not the Texas Legislature, designated these people illegal. To permit illegal aliens into free public schools would be in contravention of national policy and would encourage the violation of the United States Immigration Laws.

This Court should deny the Plaintiffs' Motion for the Preliminary Injunction requested herein.

Respectfully submitted,

WILSON, MILLER, SPIVEY, SHEEHY,
KNOWLES & HARDY
200 Peoples Bank Building South
Tyler, Texas 75702

By John C. Hardy
JOHN C. HARDY
ATTORNEYS FOR TYLER I.S.D.

Phone: 214 593-2561

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief was hand delivered to PETER ROOS and ROBERTA S. RODKIN, at the Law Offices of DAVES & RODKIN, Bryant Petroleum Building, Tyler, Texas, on this the 8th day of September, 1977.

John C. Hardy
JOHN C. HARDY