

IMMIGRATION POLICY BY COURT ORDER: THE ADVERSE EFFECTS OF *PLYLER* v. *DOE*

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION AND
LIMITED GOVERNMENT

OF THE

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An article entitled, “Are immigrant students disproportionately consuming educational resources?” Oct. 3, 2019, *Brookings*

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- A report entitled, “SCAAP Data Suggest Illegal Aliens Commit Crime at a Much Higher Rate Than Citizens & Lawful Immigrants,” Feb. 2019, *Federation for American Immigration Reform (FAIR)*
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- A report entitled, “How Many Illegal Aliens Are in the United States? 2025 Update,” August 2025, *Federation for American Immigration Reform (FAIR)*
- A report entitled, “Every State Should Challenge Plyler v. Doe: Time to End Free Education for Illegal Alien K–12 Students,” Feb. 17, 2026, *The Heritage Foundation*

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IMMIGRATION POLICY BY COURT ORDER: THE ADVERSE EFFECTS OF *PLYLER* v. *DOE*

Wednesday, March 18, 2026

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Charles Eugene Roy [Chair of the Subcommittee] presiding.

Members present: Representatives Roy, McClintock, Massie, Hagerman, Hunt, Grothman, Harris, Onder, Gill, Scanlon, Cohen, Jayapal, Balint, Kamlager-Dove, and Goldman.

Mr. ROY. Welcome to today's hearing on the adverse effects of *Plyler* v. *Doe*. I will now recognize myself for an opening statement.

In 1975, Texas took a bold stand against illegal immigration after experiencing the adverse consequences of illegal immigration in its classrooms firsthand, recognizing the Federal Government wasn't doing enough to secure our borders.

That same year, Texas passed a law to prevent illegal alien minors from crowding its K-12 public schools, prioritizing American students based on the belief that limited resources should benefit those with legal status, a point underscored by Federal inaction.

The law was challenged and eventually made its way to the Supreme Court in 1982, where five Supreme Court Justices declared that Texas, and every State in the Union, is constitutionally required to offer free public education to illegal alien minors.

The case was called *Plyler* v. *Doe*. It is time for it to go. Without even a head fake toward the original meaning of the 14th Amendment or the court's Equal Protection Clause case law, the *Plyler* majority held that American citizens must subsidize the education of minors who are in our country illegally.

At the outset, *Plyler* is constitutionally indefensible, having no basis in law or even commonsense. The court's majority relied on two key premises.

First, that illegal alien minors are not responsible for their immigration status. Second, that mandatory free education for illegal aliens does not burden States.

The court referenced the Equal Protection Clause, a provision in the 14th Amendment that prohibits States from denying any person within their jurisdiction the equal protection of the laws.

The five justice Majority set aside every conventional tool of Constitutional interpretation and simply wished a new right into existence, by legislating from the bench using the Equal Protection Clause of the 14th Amendment as justification.

It is absurd to claim that the drafters of the 14th Amendment understood it to guarantee public benefits to individuals who have no right to be in the country and whose very presence is a violation of American law.

Plyler gets the Constitutional basics wrong about what constitutes a right under the Equal Protection Clause. The 14th Amendment States that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

By definition, illegal aliens, including those who are minors, are trespassers to the Nation, as they entered or overstayed without the consent of the American people, which makes them persons outside of the jurisdiction of the United States.

Immigration, legal or illegal, is not a fundamental right. Congress establishes which aliens, how many of which, under what circumstances, if any, are allowed to enter, and determines what they are entitled to once they are within our borders.

Similarly, accessing public education is not a fundamental right, explicitly or implicitly guaranteed by the Constitution under the Equal Protection Clause. In other words, the Supreme Court majority in *Plyler*, based part of its ruling on a misguided premise that unchecked immigration and education somehow mandated by the 14th Amendment.

Just as important, the court's majority claimed that the number of illegal aliens in public schools in Texas was small, and that there was no evidence in the record suggesting that illegal entrance imposed any significant burden on the State's economy. That premise fails on two fronts.

First, any amount of illegal immigration in our hospitals, jails, schools, or elsewhere should not be tolerated, and definitely represents a significant burden on taxpayers. Second, the States should have the ability to curb it.

Texas's experience with the negative impacts of illegal immigration in its classroom since the 1970s, requiring State funds from law-abiding residents exemplifies why States should have legislative options to address these costs.

Moreover, fundamental to the issue at hand, the facts surrounding illegal immigration to Texas and nationwide have worsened since 1982. For starters, our Nation's illegal alien population was roughly around three million in 1982, has skyrocketed to an estimated 15–20 million last year, meaning we have five times the number of illegal aliens we had 40 years ago.

As of 2025, Texas had more than 2.7 million illegal aliens residing across the State, draining public resources and services. What is to blame for this surge of immigration lawbreakers?

Up until President Trump returned to office, the Federal Government had refused to take seriously its most basic responsibility for securing our borders. The Federal Government has also issued more amnesties, both at the Congressional and Executive Branch

levels that have shielded millions from deportation, incentivizing more of the same lawless behavior.

At the State level, we have seen localities issue more magnets that attract illegal immigration, not fewer, such as offering taxpayer-subsidized benefits to illegal aliens.

More recently, we have had activist judges strike down legally sound policies aimed at putting Americans first.

By any objective measure, the America we live in today with an exponential growing significant burden on local resources and failed Federal immigration policies demonstrates that the effects of the *Plyler* decision have become worse since 1982.

To add to the problem of illegal aliens in our schools, we have been met with unaccompanied alien minors who have traveled across the globe due to failed policies under the previous Administration and under other Democratic regimes, to our border to be released into the interior thanks to exploited laws.

Over the last decade, more than 700,000 unaccompanied minors have crossed the border illegally, which by the way, endangers the children in addition to providing a burden on our schools and on our systems in the State of Texas.

American taxpayers provide free public education to every single UAC enrolled in a public school. I can tell you firsthand in Texas, the burden that is placed on the people of Texas, the taxpayers of Texas, our local jurisdictions, because of these failed policies, and because of a Supreme Court ruling that we have no business continuing to operate under.

In Cleveland, Texas ISD, where once 40 percent of its 3,500 students were Hispanic, today 90 percent of its 10,800 students are Hispanic, many of whom do not speak English. This has led the district to hire foreign-born teachers through specialist work visas to teach ESL classes to immigrant students.

Student enrollment in Cleveland ISD is set to double this year, with a projected price tag of \$1.2 billion over the next decade.

A public school in Houston named Las Americas Newcomer Middle School started a semester with 150 immigrant and refugee students, and the following year it was 325. Principal Marie Moreno said of the situation, "it's put a burden on me because I've run out of space. I can't handle them. They're going next door to another school."

Since 2015, over 98,000 unaccompanied alien children have been released to sponsors in Texas, adding more illegal alien minors to our schools. Based on Texas's average per person spending of \$13,900, just one year of public education of these alien children cost Texans \$1.3 billion nationwide, the cost to help alien school children, legal immigrant minors, and refugees learn English through limited English proficiency programs in American schools, is \$78 billion annually, according to a 2022 study. All the while, the American taxpayers left with a bill to pay for the education.

The financial costs of *Plyler* are undoubtedly staggering, clearly representing a significant burden on localities. It isn't just fiscal costs we should be worried about.

Our Nation's classrooms routinely deal with illegal alien students, many of whom know little to no English, and may struggle with other learning disabilities. For example, a 2017 study by the

Annie Casey Foundation revealed that immigrant children, legal or illegal, had lower reading and math proficiency scores compared to their American-born classmates.

The study found that among fourth grade children from immigrant families, only eight percent scored at or above the proficiency level. In math, proficiency rates are even worse.

Such data should prompt a broader discussion about the demands placed on schools and educators who must use limited resources meant for American students by American taxpayers to help immigrant children achieve proficiency standards.

In the small community of Charleroi, Pennsylvania, did I pronounce that right? An influx of illegal, well, I can either, it is Pennsylvania, so it is closer than it is to Austin.

An influx of illegal alien Haitians led to a complete disruption of the educational environment. In the 2021 school year alone, the number of non-English speaking students skyrocketed from 12 to 220 in a district of only 1,450 students.

Teachers had to pause in the middle of lessons to translate using phone apps, leaving one wondering if she was hindering the learning of American students. Today, this small industrial town spends \$400,000 annually on five staff members dedicated to non-English speaking aliens.

Similarly, in a single year, Maryland saw more than 2,200 unaccompanied minors arrive, imposing burdens on the school administrators. In Miami-Dade County in public schools reporting spending \$1,959 more per child for immigrant children and are relying on community partnerships.

I could go on with examples of this absurdity across the country. Ironically writing for the majority opinion for *Plyler*, Justice Brennan wrote that such policies allowing illegal aliens access to public schools could likely lead to “the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime.”

Fast forward 40 years, the American students, teachers, and taxpayers are living with the unmitigated consequences of that ruling.

The state governments and Congress have restricted illegal aliens from accessing SNAP, Medicaid, in-State tuition, among other benefits in the past. It can certainly deny access to their public classrooms.

Unelected Federal Judges should not interfere with rulings based on personal policy preferences not rooted in the Constitution. In fact, my legislation, H.R. 6225, the PAUSE Act, would freeze immigration until the Federal Government fixes longstanding illegal immigration problems ranging from birthright citizenship to issues such as the one we are discussing today under *Plyler v. Doe*.

It is time we meet the moment to overturn *Plyler v. Doe*. It is time for Congress and the courts to address the glaring failures of this court decision and finally alleviate Texans and Americans alike from this burden.

With that, I will recognize the Ranking Member for her opening statement.

Ms. SCANLON. Thank you, Mr. Chair. Fifty years ago, Texas passed a law seeking to ban children who were not legally admitted

to the country from our public schools, and to defund their education.

The State argued that this ban was necessary to preserve its resources for educating its lawful residents and argued that these children were not persons under our Constitution. The Supreme Court disagreed.

In 1982, the court struck down the Texas Statute in *Plyler v. Doe*, rejecting the argument that children did not count as persons entitled to equal protection under the 14th Amendment.

The court also found Texas's economic arguments to be unconvincing, and the exclusion of undocumented children from public schools an unlikely and ineffective way to achieve the true underlying objective, of addressing and ultimately repelling an influx of undocumented immigrants.

Even Conservative Chief Justice Burger, while rejecting the majority's reasoning wrote, "it is senseless for an enlightened society to deprive any children, including illegal aliens, of an elementary education," and agreed that "it would be folly and wrong to tolerate creation of a segment of society made up of illiterate persons."

He also noted that, "the long-range cost of excluding any children from our public schools may well outweigh the costs of educating them." For a generation, the issue was deemed settled.

Bigotry and bad ideas die hard. Now, at the urging of the Trump White House, the authors of Project 2025 and their allies, Texas and a few other States seek once again to enshrine bigotry and bad ideas into law.

To do so, they have mounted a coordinated effort to overturn *Plyler v. Doe*, making the same arguments that the court previously rejected. If anything, the intervening years have put to rest the argument that the public education of undocumented children imposes a net economic burden on the States, or somehow harms public education and services offered to lawful residents.

In fact, the overwhelming majority of credible studies from both conservative and mainstream entities, including the Congressional Budget Office, have consistently found that the net economic impact of immigration is overwhelmingly positive.

Most recently, the Congressional Budget Office issued a finding that immigrants, including undocumented immigrants, generated a \$14.5 trillion, that is trillion with a "T," fiscal surplus over the last 20 years.

When one compares the tax contributions of those immigrants to the limited, very limited, public benefits that they consume, even in Texas, the purported subject of this hearing, the net fiscal impact of immigration during the 40-year *Plyler* period, including the cost of public education, has a net of \$93 billion to the benefit of the State.

In addition, we now have decades of data showing the public health, developmental, civic, humanitarian, and social impact of providing public education to immigrant children regardless of their legal status.

No matter the rhetoric coming from the other side of the aisle, the fact is that our Republican colleagues have brought us here today to advocate for kicking kids out of school.

Reversing *Plyler v. Doe* would mean that children as young as kindergarten and through high school, would be denied a basic education, left out of society, and held back from reaching their potential, and meaningfully contributing to America.

This isn't just terrible education policy. It is extremely harmful to vulnerable children. It is also bad for our country's health, workforce, and economy.

The Supreme Court's decision in *Plyler v. Doe* guaranteed equal access to free public K-12 education for all children living in the United States, regardless of their immigration status. The court recognized in *Plyler* that education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.

In the 44 years since, the children who have benefited from these protections, including some who have since become citizens and legal permanent residents, have grown up to contribute immensely to our country.

A report by *FWD.us* found that *Plyler* beneficiaries have driven economic growth by paying over \$633 billion more in State and local taxes than their public education's cost, preventing over 700,000 U.S. citizen children from falling into poverty, increasing GDP by \$2.71 trillion over their lifetimes. These are, again, the accomplishments of the *Plyler* beneficiaries.

They have strengthened the workforce with over one million people filling U.S. jobs, and they have reduced healthcare costs by at least \$28 billion since 1982. Additionally, other students have found that having immigrant children in K-12 classrooms improved the academic outcomes for their U.S. born classmates, lifting up entire communities.

Public schools are a crucial part of our social fabric. They are places where kids can learn, make friends, dream about their futures, and develop the skills they need to contribute to those futures and our society.

Robbing some children of that foundation would wind up hurting all children and America as a whole. It is a cruel attempt to senselessly punish undocumented children for their parents' decisions, choices they had no role in.

It is all based on a false assertion that giving undocumented children a public education is a burden on taxpayers. It bears dangerous similarity to other attempts to exclude children, including children with disabilities, from public education.

According to a June 2025, analysis from Niskanen Center, the tax revenue from undocumented workers alone covers the annual cost of educating undocumented children. Of course, the effort is part of an ill-conceived effort to end immigration to this country, a country that is famously one formed by immigrants.

It is also part of a larger war on children being prosecuted by this White House. A Right-wing effort to kick kids out of school is just another facet in the ongoing war that is being waged against American children, particularly the effort to undermine public education.

President Trump and congressional Republicans' One Big Ugly Bill, ripped healthcare and food away from millions of kids when

enacting the biggest cuts to Medicaid, CHIP, and SNAP in our history.

This Administration is attempting to undermine and erode vaccine science, at a time when measles and other preventable infectious disease outbreaks have killed American children. Republicans have made callous cuts to childhood cancer research, denying families the hope of a cure.

This Administration has decimated the Department of Education, gone after funding for early childhood education programs like Head Start, frozen access to billions of dollars in funding for childcare and family assistance, and cut funding for community violence prevention.

ICE is now targeting schools, previously protected areas, in its cruel, chaotic mass deportation efforts, leading to plummeting attendance and fear among entire school communities. Children have been detained in traumatizing conditions and used as bait by immigration enforcement agents to lure their parents.

Some of us may remember growing up and learning about when in the Bible Jesus said, suffer the little children to come to me, rejecting the efforts of his disciples to punish their parents' efforts. Right now, instead of caring for the little children, our country and its leaders are shamefully turning their backs on those little children.

We must firmly reject a worldview that only certain classes of children, those whose parents can afford to pay, are entitled to the blessings of liberty and the hope of a better future. Our kids are our future, and I want to do all we can to make sure that this future is a bright one for everyone's sake.

This is not the direction that we need to go back here. It is fundamentally flawed. I yield back.

Mr. ROY. I thank the Ranking Member. I believe for the sake of time, that the Chair is going to yield, and I will recognize the Ranking Member of the Full Committee, Mr. Raskin.

Mr. RASKIN. Thank you kindly, Mr. Chair. Thanks to the witnesses for being here, and thanks for these wonderful kids in the front row who are keeping me very entertained.

I wanted to start by invoking Tom Paine, who was an undocumented immigrant who came to this land in 1774, two years before the revolution, and wrote "Common Sense," the pamphlet that ignited the American revolution.

He said that, "this land, if it lives up to its ideals and its promise, would become an asylum to humanity." Not an insane asylum, but a place of refuge for people seeking freedom from religious, political, intellectual, and economic persecution from all over the world.

Also, in the 18th century, Thomas Jefferson, who was a descendant of a long line of undocumented immigrants, both on his mother's side and his father's side to the country, said that education would be central to democratic self-government and to the protection of liberty in our country. He said the Nation cannot be both ignorant and free. He said it was an impossibility.

In the 20th century, the Supreme Court affirmed that public education is a Constitutional commitment in America for all children who are here. In *Plyler v. Doe*, the court held that denying children

access to a public education based on their immigration status would violate the 14th Amendment Equal Protection Clause.

Writing for the majority, Justice Brennan found that excluding undocumented children from public education would impose a lifetime of hardship. He said something like what the Constitution calls a taint of blood or a bill of attainder, a hereditary punishment for something over which the child had absolutely no control.

Plyler did not place an undue financial burden on America. Rather, it has paid big dividends for our country. A recent analysis measured the costs and benefits of this decision and found that children who were able to go to school, thanks to *Plyler*, have contributed to the tune of billions of dollars more in State and local income taxes than the costs of their education.

Of course, their classes were going to be happening anyway. *Plyler* has strengthened the workforce by allowing three quarters of adults who got an education, thanks to *Plyler*, to work in occupations that require a high school degree.

It has also improved public health by making sure that every child in America gets the appropriate vaccinations.

Is there anyone who really thinks that America would be stronger as a country if all the kids who got an education because of *Plyler v. Doe* had been forced to stay home or to stay in the streets during the day when their parents were working?

Well, to distract America from the Iran war, which is now costing between \$1–\$2 billion a day, and which has already cost 13 Americans their lives, and more than a thousand Iranians their lives, including 175 school children who perished in a bomb explosion at an all-girls school, to distract America from the Trump Administration's massive coverup of the Epstein files and the billion-dollar global trafficking conspiracy of young women, teenage girls, and children, our colleagues want to revisit a 44-year-old Supreme Court decision with the aim of kicking tens of thousands of kids out of their classes and out of their schools.

Well, the Trump Administration's mass deportation campaign is already succeeding in denying kids, both noncitizens and citizens alike, access to school and education.

In a survey of 693 educators across the country, when asked whether Federal immigration enforcement efforts were affecting students, 24 percent reported reduced student attendance at school and increased distraction or disengagement in class.

Eighteen percent said reduced attendance is leading to declining student performance, of course, and 50 percent stated that the children in their schools have expressed great anxiety and fear about what is taking place in their communities.

The harm is not concentrated solely in the city's most under siege either. West of the Twin Cities, in Wilmar, Minnesota, more than one in four students started missing classes after one student, with legal residency, was detained and held in custody for several days, and another student who is a U.S. citizen was stopped by ICE outside a district learning center.

The school superintendent said, "families of our Black and Brown students feared profiling and family separation even as legal residents, White families reported keeping children home due to anxi-

eties about potential armed law enforcement activity taking place inside the schools.”

Even when kids are showing up, immigration enforcement actions are dramatically affecting academic performance. Using data from a large urban school district in Florida, one of the 10 biggest in the country, researchers found that the recent surge reduced test scores for both U.S.-born and foreign-born Spanish-speaking students, especially in higher poverty areas.

It is hard to study, to learn, to think, to do homework, or to take exams when you are filled with fear and dread and anxiety. This reign of terror is part of the Administration’s relentless campaign against children right now.

In July last year, Trump signed into law his Big Beautiful Bill, which included the largest cuts to Medicaid, the Children’s Health Insurance Program, and the Supplemental Nutrition Assistance Program, SNAP, in our history. Over 37 million children rely on Medicaid and CHIP to get healthcare, and nearly 15 million children rely on SNAP to get adequate nutrition.

While denying children access to healthcare, the Administration is also making it harder for kids to stay healthy in the first place. After a confirmed 2,144 measles cases across 44 States in 2025, the U.S. stands to lose its measles-free designation.

With this self-inflicted wound administered by Secretary Robert F. Kennedy, Jr., the country is already on track to soar past last year’s total measles cases with more than 1,300 cases across 31 States, already confirmed as of March 12th. Of course, Mr. Chair, Texas has been particularly hard hit.

The Secretary of Health and Human Services fired all 17 members of its advisory committee on immunization practices, which provides recommendations for immunization in the U.S. Drop the number of recommended routine childhood vaccines putting children again, at risk of contracting preventable diseases.

The Administration has gutted the Department of Education, which ensures nearly 26 million low-income students, and seven and a half million students with disabilities, to get meaningful access to educational opportunities. Has repeatedly threatened funding for Head Start, which provides childcare and early education to millions of low-income children every year.

I would urge our colleagues to abandon this determination to make life harder for children in our country and instead join us in passing policy to deliver for America’s kids.

Together, we can make the child tax credit permanent, instead of making tax cuts permanent for the Nation’s billionaires. We could expand access to healthcare and support nutrition for kids in need.

We could protect the Department of Education to make sure kids in America get equal access to a quality education.

We could take action to once and for all address the leading cause of death for children under 18 in the United States, the epidemic of gun violence in our country.

For more than a decade now, Americans have strongly supported commonsense gun safety reform to ensure that guns stay out of hands of the people who do the most harm. No matter how many children lose their lives to gun violence, our colleagues maintain

their oath to the gun lobby, and the absolute myth that the Second Amendment prevents reasonable gun safety legislation. It does not.

The Democrats on this Committee take supporting and protecting every child in America seriously. I hope our colleagues will join us.

Thank you, Mr. Chair. I yield back.

Mr. ROY. I thank the Ranking Member. I remind people this is a hearing on *Plyler v. Doe*.

Now, without objection, all other opening statements will be included in the record. We will now introduce today's witnesses. Does the Chair—

Mr. JORDAN. Well, I was just curious, the Ranking Member said, I think his opening sentence was, he said "Thomas Paine was an illegal immigrant." My understanding was Mr. Paine was born in the UK, came to America, then a British colony in 1774. I was just struggling to figure out how he was an illegal immigrant.

Mr. RASKIN. Oh, I didn't say he was an illegal immigrant. I said he was an undocumented immigrant. Just like Thomas Jefferson's family was. Most of our ancestors did not arrive here with documents.

Mr. JORDAN. OK. OK. Well, big deal. OK. Got it.

Mr. RASKIN. Well, that does appear to be a big deal to people on your side of the aisle, because you don't want to educate kids because they don't have the right documents.

Mr. ROY. It is the time of the Chair.

Mr. JORDAN. I yield back.

Mr. ROY. The Chair is going to yield back. I would just note, it is not undocumented, because he was within the colonies of England. He was a citizen of England.

All right. Without objection, all other opening statements will be included in the record. We will now introduce today's witnesses.

Ms. Mandy Drogan. Ms. Drogan is a Senior Fellow with the Government Reform and Oversight Coalition at the Texas Public Policy Foundation. Her work focuses on K-12 education. She previously worked at the American Federation for Children.

Mr. Matt O'Brien. Mr. O'Brien is the Deputy Executive Director of the Federation for American Immigration Reform. He previously served as an Assistant Chief Immigration Judge, Chief of the National Security Division of U.S. Citizenship and Immigration Services Fraud Detection and National Security Directorate, and in other senior roles in USCIS ICE, and what was then known as the Immigration and Naturalization Service.

Mr. James Rogers. Mr. Rogers is a Senior Counsel at the American First Legal Foundation, where he litigates matters involving border security, election integrity, parental rights, and constitutional administrative law. He previously served as Senior Litigation Counsel in the Arizona Attorney General's Solicitor General's Office.

Mr. Thomas Saenz. Mr. Saenz is the President and General Counsel of the Mexican American Legal Defense and Educational Fund. He previously served as counsel to then Los Angeles Mayor Antonio Villaraigosa.

We thank our witnesses for appearing today and we will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative. Thank you. You may be seated.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Ms. Drogan, you may begin, and I will remind each of you to turn your microphones on before you begin your testimony. Ms. Drogan, you may begin and you have five minutes.

STATEMENT OF MANDY DROGAN

Ms. DROGAN. Chair, Ranking Member, and the Members of the Committee, thank you for the opportunity to testify on the adverse effects of *Plyler v. Doe*, and how subsequent Federal policy, particularly the Obama Administration's "Dear Colleague" letter, has created a contradiction harming students, schools, and communities.

Plyler v. Doe held that States cannot deny illegal immigrant children access to public education. Texas has fulfilled that obligation.

Our Constitution requires a free public education system, and Texas has built one of the Nation's most robust accountability systems in the Nation.

Our A–F accountability system evaluates schools based on standardized test performance, graduation rates, and college readiness indicators. These ratings have real consequences.

They can trigger State interventions, leadership changes, campus restructuring, and school closures. In recent years, roughly 16.6 percent of Texas districts have received a D or F rating.

The ratings strike major policy decisions like student funding, and it relies on accurate demographic data. Federal policy prevents States from collecting one key category, the illegal immigration status of K–12 students.

The *FWD.us* estimates that approximately 111,000 students in Texas are illegal immigrant children. This restriction does not come directly from *Plyler v. Doe*.

Instead, it stems largely from a 2011 "Dear Colleague" letter issued by the Departments of Justice and Education, which warned that asking about immigration status could discourage enrollment and create a chilling effect.

The "Dear Colleague" letter is the agency guidance. It is not a law passed by Congress, and it is not required in *Plyler* or by the Supreme Court.

Congress should clarify that it cannot prevent States from collecting necessary data to educate students. Every effective education policy relies on demographic data.

Schools identify student populations to provide targeted support, whether it is for low-income students, English learners, or students

with special disabilities. They track things like race, gender, attendance, discipline, and even parental incarceration.

This data is used to identify needs and measure outcomes. It is not used to stigmatize students. It is universally accepted that schools must have it to identify student needs, measure outcomes for the students, the schools, and the entire education system.

Illegal immigration status is the one characteristic schools are effectively barred for measuring. States are asked to address complex challenges, while remaining blind to a key factor influencing outcomes.

This contradiction undermines the very logic of *Plyler* itself. If illegal immigrant children face serious disadvantage, as the court has recognized, schools must be able to identify them to provide appropriate supports.

Evidence suggests illegal immigrant students face challenges way beyond language barriers, including higher absenteeism, mobility, interrupted schooling, and greater educational needs.

A study in social science and medicine found that 97.4 percent of Central American and Mexican migrant children experienced at least one traumatic event before entry, and 44 percent showed psychological or behavioral concerns. Texas medical experts report that many require significant mental health support due to sexual and violent trauma experience during migration.

These realities affect accountability systems and other students as well. Schools must determine whether performance challenges stem from language barriers, trauma, or interrupted education.

Policymakers cannot answer these questions on how illegal immigrant students perform as compared to other groups. We see the consequences all across Texas.

Campuses receiving failing ratings for five consecutive years, face closure, restructuring, and State takeover. Recently, districts such as Fort Worth, Beaumont, Connally, and Lake Worth ISD have faced such risks after six campuses repeatedly receive failing grades.

These campuses share strikingly similar characteristics. Between 80–97 percent of the students come from low-income households compared to 60 percent statewide. At five of the campuses, 64–92 percent of students are considered at risk of dropping out.

A Stanford education researcher, Beth Schuler explained, “I don’t think we want to lose sight of the fact that demographic composition of a school system is the thing that is going to be most predictive of variation and performance and outcomes.”

When schools struggle or close, communities are disrupted. Enrollment declines, families move, and local economies suffer.

In short, the downstream effects of *Plyler v. Doe*, affect every single student in the State of Texas. In the schools and in the community, it is not just the illegal immigrant students.

Congress should require the Department of Education and Justice to issue new guidance clarifying the 2011 “Dear Colleague” letter, can’t prevent States from collecting data on illegal immigration or legal immigration status of students.

Congress should also pass legislation allowing States to collect immigration status, both legal and illegal. If States are required to educate illegal immigrant students, they must be allowed to iden-

tify the student population status to fully understand and address the adverse effects of *Plyler v. Doe*. Thank you. I look forward to your questions.

[The prepared statement of Ms. Drogan follows:]

Testimony of Mandy Drogin

Chairman, Ranking Member, and Members of the Committee,

Thank you for the opportunity to testify today on the adverse effects of *Plyler v. Doe* and how subsequent federal policy—particularly the Obama administration’s Dear Colleague Letter—has created a policy contradiction harming students, schools, and communities.

The Supreme Court’s decision in *Plyler v. Doe* held that states cannot deny undocumented children access to public education. Texas has carried out that legal obligation. Our state constitution requires a free system of public education, and Texas has built one of the most robust accountability systems in the nation to ensure that obligation is met.

[Our A–F Accountability System](#) evaluates schools based on standardized test performance, graduation rates, and college readiness indicators such as Advanced Placement, dual credit participation, and career readiness outcomes. These ratings have real consequences: they can trigger state interventions, leadership changes, campus restructuring, or school closures. In recent years, roughly 16.6 percent of Texas districts have received a D or F rating, placing many schools closer to significant sanctions.

Because these ratings drive major policy decisions, Texas relies heavily on accurate demographic data to understand the populations our schools serve.

Yet federal policy effectively prevents states from collecting one important category of information: the immigration status of students. In Texas, the scale of this issue is significant. [Data from FWD.us](#), a left-leaning pro-immigration non-profit founded by Mark Zuckerberg estimates that approximately 111,000 Texas K–12 students are undocumented.

This restriction does not come directly from *Plyler v. Doe*. Instead, it stems largely from the 2011 Dear Colleague Letter issued by the Departments of Justice and Education, which warned that asking about immigration status could discourage enrollment and create a “chilling effect.”

The Dear Colleague Letter is agency guidance—not law passed by Congress and not required by *Plyler*. After the Supreme Court’s 2024 decision in *Loper Bright Enterprises v. Raimondo*, courts are no longer required to defer to federal agency interpretations of ambiguous statutes, significantly curtailing the Chevron doctrine that previously allowed agencies to rely on their own interpretations of federal law.

This matters here. The Dear Colleague Letter reflects an agency interpretation, not a requirement enacted by Congress or mandated by the Supreme Court. Congress should make clear that this guidance cannot prevent states from collecting the data necessary to educate students and maintain fair accountability systems.

Every effective education policy relies on demographic data. Schools identify student populations to provide targeted support: Title I funding depends on identifying low-income students; English learner programs depend on identifying language needs; special education services require identifying students with disabilities. Schools also track race, gender, attendance patterns, and discipline.

This data is not collected to stigmatize students. It is collected so schools can identify needs, allocate resources, and measure outcomes for students, schools, and education systems.

Yet immigration status—despite potentially shaping educational challenges—is the one demographic characteristic schools are discouraged from measuring. In effect, states like Texas are being asked to address complex educational challenges affecting entire schools while remaining blind to a key factor influencing student outcomes.

This contradiction undermines the logic of *Plyler* itself. If undocumented children face serious disadvantages—as the Court recognized—schools must be able to identify these students in order to provide appropriate support.

Evidence suggests these students often face challenges beyond language barriers. Policy researchers frequently hypothesize that undocumented students experience higher absenteeism, greater mobility between schools, interrupted schooling, and greater educational service needs.

Research confirms the severity of trauma many migrant children experience. [A study published in Social Science & Medicine](#) found that 97.4 percent of Central American and Mexican migrant children experienced at least one traumatic event before arriving in the United States, and 44 percent exhibited psychological or behavioral concerns.

Medical experts in Texas report that many immigrant children require significant mental health support due to sexual and violent trauma experienced during migration. [A Department of Homeland Security](#) initiative also uncovered cases of abuse and exploitation of migrant children placed with inadequately vetted sponsors, highlighting the vulnerability of some students entering our schools.

These realities affect school accountability systems.

Schools must determine whether lower performance stems from language acquisition challenges, trauma, interrupted education, or other factors requiring different interventions. Right now, policymakers cannot answer a basic question:

How do students with precarious immigration status perform compared to students who simply speak a language other than English at home?

We see the consequences across Texas.

Under state law, when a campus receives an F rating for five consecutive years, the education commissioner must close schools, reorganize the district, or replace local leadership with state control. Students are reassigned, teachers are replaced, and entire communities experience disruption.

Recently, this threshold has placed districts such as Fort Worth, Beaumont, Connally, and Lake Worth ISD at risk of state takeover after six campuses repeatedly received failing grades.

These campuses share strikingly similar characteristics. Between 80 percent and 97 percent of students come from low-income households, compared with about 60 percent statewide. At five of the campuses, 64 percent to 92 percent of students are considered at risk of dropping out.

Research consistently confirms the importance of demographics in educational outcomes. As [Stanford education researcher Beth Schueler explains](#):

“I don’t think we want to lose sight of the fact that the demographic composition of a school system is the thing that’s going to be the most predictive of variation in performance and outcomes.”

When schools struggle or close, enrollment declines, families move away, and local economic opportunities diminish.

In short, the downstream effects of *Plyler v. Doe* are not limited to undocumented students. They may affect every student in the school, district, and the communities that depend on them.

Congress has the authority to address this contradiction.

Congress should require the Departments of Education and Justice to issue new guidance clarifying that the 2011 Dear Colleague Letter cannot be used to prevent states from collecting data necessary to educate students and administer fair accountability systems.

Congress should also consider legislation allowing states to collect immigration-status data for educational planning and accountability purposes.

Right now, schools are required to meet complex educational needs affecting students, schools, and entire districts while operating in the dark.

If Congress requires states to educate every child, then states must also be allowed to identify the immigration status of students in order to understand the adverse effects of *Plyler v. Doe*.

Thank you, and I look forward to your questions.

Mr. ROY. Thank you, Ms. Drogan. Mr. O'Brien, you may begin and I remind you to turn your microphone on.

STATEMENT OF MATT O'BRIEN

Mr. O'BRIEN. Chair Roy, Ranking Member Scanlon, and the Members of the Subcommittee, thank you for the opportunity to testify. The Supreme Court's decision in *Plyler v. Doe*, rewrote rather than interpreted the Equal Protection Clause.

By transforming a Texas funding provision into a nationwide mandate, the court required States to provide free K-12 education to children who have no legal right to be in the United States.

The majority did not rely on established constitutional doctrine. Instead, it imported its own policy preferences, particularly concerns about illiteracy and social mobility, and constructed a novel, heightened standard of review that the court itself admitted does not ordinarily apply to nonsuspect classes or nonfundamental interests.

The result was an act of judicial legislation that intrudes on Congress's plenary authority over immigration, restricts State control over limited educational resources, and imposes heavy fiscal and operational burdens on already struggling school systems.

For more than a century, the Supreme Court has consistently recognized that immigration is a uniquely Federal domain entrusted to the political branches. Congress may draw distinctions between citizens, lawful residents, and those here in violation of Federal law.

Indeed, the court has repeatedly affirmed that Congress has no constitutional obligation to extend public benefits to individuals who lack lawful status.

When Texas in 1975, enacted a statute limiting the use of State funds to educate only children legally admitted to the United States, it acted squarely within this constitutional framework.

Nevertheless, the statute was challenged under the 14th Amendment, and the *Plyler* majority ultimately struck it down, not on legal grounds, but on speculative policy judgments about social equity and long-term socioeconomic outcomes.

The court acknowledged that illegal aliens are not a suspect class, and that education is not a fundamental right. It proceeded to treat both as if they were, devising a bespoke standard of review applicable only to the facts before it.

This approach was inconsistent with precedent, inconsistent with the Constitution's text, and inconsistent with the judiciary's proper role. Under ordinary rational basis review, a State may allocate its resources in any manner reasonably related to a legitimate governmental interest.

The *Plyler* court replaced that deferential standard with what legal scholars call rational basis with bite, forcing Texas to justify its policy as though a fundamental right were at stake.

In doing so, the court substituted its own policy views for those of the legislature, and entered an area, immigration policy and resource allocation, where the Constitution explicitly entrusts authority to elected officials.

The consequences of this judicial overreach have been substantial. *Plyler* effectively created a Federalized unfunded mandate re-

quiring States to provide free K–12 education to all children lacking lawful presence.

Today's State and local governments collectively spend tens of billions of dollars each year to comply with this mandate, even as many public schools struggle with overcrowding, limited resources, and declining performance.

Estimates indicate that between 1.9–2.2 million illegal alien children are now enrolled in America's public schools, many of whom arrive with significant educational needs that require additional staffing, specialized instruction, and expanded support services. These obligations fall squarely on State and local budgets, which already devote more resources to K–12 education than any other expenditure category.

In sum, *Plyler v. Doe* represents a dramatic departure from constitutional principles, established doctrine, and the proper limits of the judicial role. By elevating policy considerations above legal analysis, the court imposed long-lasting financial and operational burdens on States and localities while undermining democratic accountability.

Rather than upholding the Constitution, *Plyler* exemplifies the risks of judicial lawmaking and has had enduring negative consequences for both constitutional governance and the effectiveness of the American public education.

Thank you. I look forward to your questions.

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TESTIMONY OF

Dr. Matthew J. O'Brien,
Former Assistant Chief Immigration Judge

BEFORE

U.S. House Committee on the Judiciary
Subcommittee on the Constitution and Limited Government

ON

“Immigration Policy by Court Order: The Adverse Effects of *Plyler v. Doe*”

March 18, 2026
Washington, DC

We are here today to discuss the Supreme Court’s decision in *Plyler v. Doe*. That decision rewrote—rather than interpreted—the Equal Protection Clause, thereby transforming a Texas funding rule into a national mandate that states must provide free K–12 education to children who have no legal right to be in the United States. The majority reached this result not by applying settled doctrine, but by importing their personal policy preferences (about the costs of illiteracy and hoped-for social outcomes) into constitutional analysis, and by crafting a novel, heightened form of “rational-basis” scrutiny that the Court itself conceded usually does not apply to non-suspect classes or non-fundamental interests. The result is a paradigmatic instance of judicial legislation that: (1) intrudes on Congress’s plenary authority over immigration; (2) restricts state discretion to allocate scarce educational resources; and (3) has imposed very substantial fiscal and operational burdens on already underperforming school systems. In plain English, *Plyler* can only be understood as an egregious example of judicial activism that has damaged public education.

The Constitution of the United States assigns the power to regulate immigration to Congress, with executive authority derived primarily from congressional delegations of authority. From their earliest days, the federal courts have recognized that immigration is a uniquely federal domain, belonging exclusively to the political branches of government. In *Fiallo v. Bell*, the Court noted that, “Over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.”¹ That principle does not merely describe the admission of aliens; it broadly encompasses the policy consequences of admission and exclusion decisions, including how government may draw distinctions between aliens and citizens.

Hewing to this principle, the Supreme Court has recognized that, “In exercising its power over immigration, Congress can make laws concerning aliens that would be unconstitutional if applied to citizens.”² And, in *Mathews v. Diaz*, the Court explicitly held that, “Congress...has no constitutional duty to provide all aliens with the welfare benefits provided to citizens.”³ Therefore, “when allocating government benefits to a given class of aliens, [government officials] may take into account the character of the relationship between the alien and this country” and “when that relationship is a federally prohibited one, there can, of course, be no presumption that a state has a constitutional duty to include illegal aliens among the recipients of its governmental benefits.”⁴

In May 1975, Texas passed a statute making it illegal to spend state funds for the education of children who were not legally admitted to the United States and authorizing school districts to deny enrollment to such children.⁵ And, based on the precedential decisions cited above, that statute was a constitutional exercise of legislative authority allocating publicly funded benefits on the basis of a valid legal distinction that Congress made between those who are lawfully present in the United States and those who are present here in violation of the law.

Still, a group of illegal aliens mounted a constitutional challenge to the statute, claiming it was an instance of invidious discrimination, denying them the equal protection of the laws required under the Fourteenth Amendment to the U.S. Constitution. That challenge made its way to the Supreme Court, where the majority – quite shockingly – ruled in favor of the illegal aliens, not on the basis of law, but solely on the basis of policy concerns that lay well beyond the purview of the Court.

In relevant part, the Fourteenth Amendment states: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 the equal protection of the laws.”⁶ An astute observer will note the conspicuous absence of any reference to free public education in the Fourteenth Amendment or, for that matter, in any portion of the Constitution.

So, how exactly did the American taxpayer become saddled with the responsibility of educating every foreign child who washes up, uninvited, upon our shores? The Supreme Court in deciding *Plyler* abandoned any pretense of judicial objectivity, usurped the authority of Congress, and legislated from the bench. Rather than delivering an opinion based on the sound application of legal principles, the *Plyler* majority acted as an unelected supra-legislature and took it upon itself to set the nation’s social policy. According to the Court, “[T]he illegal alien of today may well be the legal alien of tomorrow’...without an education, these undocumented children, ‘already disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices...will become permanently locked into the lowest socio-economic class.’”⁷ [Internal citations omitted.]

In other words, failure to enforce laws against illegal entry and unlawful employment has created an underclass of illegal aliens who live in the shadows. Should a state choose to protect American students and limited educational resources by denying a free public education to illegal alien children, it is guilty of “promoting the creation and perpetuation of a sub-class of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime.” These are legislative policy considerations, not legal constraints mandated by the Constitution’s text or history. Nevertheless, in the *Plyler* Court’s estimation, as a matter of social justice, there can be no rational basis for excluding illegal alien children from public schools. Or, put more plainly, the Court reached the paradoxical conclusion that children who

have no legal right to be in the United States somehow have a right to a free public education in America's schools.

This conclusion was grossly at odds with the Court's other holdings in similar matters. In *Colegrove v. Green*, the Court made it clear that the federal judiciary should avoid involvement in matters traditionally left to legislative policy-making. It stated that, "An aspect of government from which the judiciary...has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate."⁸ Furthermore, when it comes to matters involving immigration, the Court, "has repeatedly emphasized that 'over no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens."⁹ [Internal citations omitted.]

Even more disturbing than the appropriation of legislative authority, or the departure from precedent, is the extent of the abuse to which the Court subjected the logic of the law in *Plyler*. The Court clearly acknowledged that "illegal aliens" is not a suspect classification and that education is not a fundamental right. It plainly stated, "Undocumented aliens cannot be treated as a suspect class because their presence in this country in violation of federal law is not a 'constitutional irrelevancy.' Nor is education a fundamental right; a State need not justify by compelling necessity every variation in the manner in which education is provided to its population."¹⁰ [Internal citations omitted.] Nonetheless, the *Plyler* majority proceeded to treat illegal aliens as a suspect class, consider education as a fundamental right, and require Texas to justify its decision. In the end, the matter was decided on a bespoke standard of review, created by the Court from whole cloth, specifically to apply to the facts of *Plyler*.

Ordinarily, in cases where neither a suspect class nor a fundamental right is implicated, rational basis review applies. Under that deferential test, a statute survives if any conceivable

legitimate interest rationally supports it. Yet in *Plyler*, the Court innovated a heightened variant – often described by scholars as “rational basis with bite” – demanding that Texas show the law furthered a substantial goal. In so doing, the majority balanced its own predictive social policy judgments – about the costs of illiteracy and future societal participation – against legislative choices—a textbook example of policy making from the bench.

Ultimately, the decision reached by the Court in *Plyler* was not constitutional interpretation; it was judicial legislation. And its consequences—federalizing an unfunded mandate that compels states to provide free K–12 education to children lacking lawful presence, while limiting state flexibility to manage scarce resources—have been profound. According to the Center on Budget and Policy Priorities, kindergarten through twelfth grade educational expenditures have now become the largest category in the budgets of most states, counties and municipalities throughout the United States.¹¹ As of 2023, there were an estimated 1.2 million illegal alien children, under age eighteen, in the United States.¹² According to FAIR’s estimates, during the Biden Administration’s disastrous embrace of open borders, more than one million additional illegal alien children may have entered the country.¹³ That means that roughly 2.2 million foreign children, many of whom do not speak English, have been crammed into American public schools which are already underperforming.¹⁴ And U.S. taxpayers spend nearly \$80 billion annually educating these children, none of whom have any legal right to be in the United States.¹⁵

In sum, *Plyler v. Doe* stands as a troubling departure from constitutional text, established doctrine, and the proper limits of judicial power. By elevating policy preferences above legal principle, the Court not only intruded on Congress’s exclusive authority over immigration and state discretion in allocating educational resources, but also fashioned a novel standard of review

untethered from precedent. The resulting mandate has imposed immense financial, administrative, and operational burdens on state and local governments, all while diminishing democratic accountability for decisions of profound national consequence. Far from vindicating the Constitution, *Plyler* exemplifies the hazards of judicial overreach—substituting the judgment of an unelected Court for that of the political branches and, in the process, inflicting long-term harm on both the integrity of constitutional governance and the effectiveness of public education in the United States.

¹ *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

² *Demore v. Kim*, 538 U.S. 510, 522 (2003).

³ *Mathews v. Diaz*, 426 U.S. 67, 68 (1976).

⁴ *Mathews v. Diaz* at 80.

⁵ Tex. Educ. Code Ann. § 21.031 (Vernon Supp. 1981).

⁶ U.S. Const. amend XIV § 1, <https://constitution.congress.gov/constitution/amendment-14/>

⁷ *Plyler v. Doe*, 457 US 202, 207 (1982).

⁸ *Colegrove* at 327.

⁹ *Oceanic Navigation Co. V. Stranahan*, 214 U.S. 320, 214 U.S. 339 (1909).

¹⁰ *Plyler* at 223.

¹¹ Center on Budget and Policy Priorities, “Where Do Our State Tax Dollars Go?”, July 25, 2018, <https://www.cbpp.org/research/policy-basics-where-do-our-state-tax-dollars-go#:~:text=By%20far%20the%20largest%20areas,low%20income%20families%20has%20declined>.

¹² Jeffrey S. Passel and Jens Manuel Krogstad, “U.S. Unauthorized Immigrant Population Reached a record 14 Million in 2023,” August, 21, 2025, <https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/>

¹³ Andrew R. Arthur, “Reuters: 500K+ School-Age Migrant Children Have Arrived Since 2022,” October 15, 2024, <https://cis.org/Arthur/Reuters-500K-School-Age-Migrant-Children-Have-Arrived-2022#:~:text=According%20to%20DHS's%20Office%20of,the%20past%20three%20fiscal%20years>

¹⁴ Kansas University School of Education and Human Sciences, “How USA Education Measures Up Worldwide,” May 15, 2023, <https://educationonline.ku.edu/community/how-usa-education-measures-up-worldwide>

¹⁵ Federation for American Immigration Reform, “The Fiscal Burden of Illegal Immigration on United States Taxpayers,” March 2023, <https://www.fairus.org/issue/publications-resources/fiscal-burden-illegal-immigration-united-states-taxpayers-2023>

Mr. ROY. Thank you, Mr. O'Brien. Mr. Rogers, you may begin.

STATEMENT OF JAMES ROGERS

Mr. ROGERS. Chair Roy, Ranking Member Scanlan, and the Members of the Subcommittee, thank you for this invitation. In 1982, the Supreme Court held in *Plyler v. Doe*, that States must provide free public K–12 education to children illegally present in the United States.

That decision was wrong. It should be overruled. Even in the meantime, States are not without tools to address it.

Plyler presented the court with a straightforward Constitutional question. Under the Equal Protection Clause, courts apply strict scrutiny when a law discriminates against a suspect class such as based on race or religion, or burdens of fundamental rights such as the right to freedom of speech or religion.

Laws rarely survive strict scrutiny review. For everything else, courts apply rational basis review, which is a permissive standard that laws almost always survive. The standard of review that courts apply usually determines the outcome.

As Mr. O'Brien acknowledged, the *Plyler* majority conceded that the heightened standard of strict scrutiny did not apply. It acknowledged expressly that illegal aliens are not a suspect class, and that education is not a fundamental right.

Having made those concessions, the court was legally obligated to apply rational basis review under which Texas's law would easily have survived. Instead, the majority invented a novel substantial State interest test found nowhere in prior precedent, then used that invented standard to strike the law down.

As Chief Justice Burger wrote in dissent, "if ever a court was guilty of an unabashedly result oriented approach, this case is a prime example."

The decision was a close one, with only five justices in the majority and four justices dissenting. The dissent's core critique was that the majority had ignored the requirements of the Constitution and was substituting its own policy preferences for those of the Texas legislature.

It was trying to address a perceived failure of Congress to deal with illegal immigration, rather than allowing the political branches of government to fulfill their functions.

The Constitution Burger wrote, "does not make Justices into platonic guardians authorized to strike down laws that do not meet the court's standards of desirable social policy."

The dissent also correctly pointed out that it is rational for a State to conclude that it does not have the same responsibility to provide benefits for persons whose very presence in the country is illegal.

In *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe v. Wade*, the Supreme Court articulated five tests for whether prior precedent should be overruled. *Plyler* fails everyone.

It was egregiously wrong from the start. The majority itself conceded that prior court precedent required that the Texas law be upheld.

Plyler's reasoning is thin, lacking any grounding in constitutional text or history. Its substantial State interest standard is unworkable. No court has coherently defined it in 40 years.

It has distorted immigration federalism by chilling legitimate State policy choices, and it implicates no concrete transactional reliance interest of the kind that the law is designed to protect.

Critically, *Plyler*'s own majority acknowledged that "undocumented status coupled with some articulable Federal policy, might enhance State authority," and thus, justify the type of policy that the *Plyler* court had rejected.

Congress has since provided exactly that policy. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or PRWORA, declared it a compelling government interest to deny public benefits to illegal aliens, and it barred them from Federal public benefits.

The premise on which *Plyler* rested, thus no longer exists. Some States have started considering adopting laws that would bar illegal alien children from receiving free public education.

They are trying to create a vehicle for the Supreme Court to reconsider *Plyler* and overturn it. Congress can accelerate reconsideration by enacting legislation explicitly authorizing States to condition free K-12 enrollment unlawful presence.

Even under *Plyler*, meaningful tools remain. States can condition free public education on residency and then define residency as requiring lawful presence.

Plyler bars denial based on immigration status, but a State that conditions enrollment on legal residency raises a fundamentally different question. States can also require districts to collect and publicly report the fiscal costs of illegal alien enrollment, building the evidentiary record for future litigation.

Finally, they can restrict supplemental programs beyond the basic K-12 curriculum, and deny in-State post-secondary tuition, in compliance with Federal law.

In conclusion, as Chief Justice Burger wrote in his *Plyler* dissent, "the Constitution does not provide a cure for every social ill." The court should correct its 1982 error.

In the meantime, the States and Congress can take action to keep illegal aliens from taking advantage of the generosity of the American taxpayer. Thank you.

[The prepared statement of Mr. Rogers follows:]



**Testimony of James Rogers
Senior Counsel
America First Legal Foundation**

Before the
House Judiciary Committee,
Subcommittee on the Constitution and Limited Government

“Immigration Policy by Court Order:
The Adverse Effects of *Plyler v. Doe*”

March 18, 2026

Chairman Roy, Ranking Member Scanlon, and Members of the Subcommittee on the Constitution and Limited Government: Thank you for the invitation to testify on this critical topic.

My expertise on our country’s immigration system is multifaceted. From 2015 to 2021, I served our country as a Foreign Service Officer at the Department of State. From 2017 to 2019, I served as a Consular Officer conducting visa interviews in Brazil. I then spent two years—from 2019 to 2021—as an attorney advisor in the Office of the Assistant Legal Advisor for Consular Affairs. Since leaving the State Department and returning to the practice of law, a significant part of my practice has been litigating border security and immigration cases.

In 1982, the Supreme Court decided *Plyler v. Doe*, 457 U.S. 202 (1982), holding by a 5–4 vote that the State of Texas could not deny free public K–12 education to children who were illegally present in the United States. *Plyler* was wrongly decided from the outset. The majority opinion acknowledged the very legal premises that should have compelled it to uphold the Texas law—yet proceeded to strike it down anyway, using a standard of constitutional review it invented for the occasion, untethered from constitutional text or prior precedent. Chief Justice Burger’s dissent, joined by three colleagues, clearly exposed this, and its reasoning has only grown more persuasive with time.

Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court now has both the legal framework and the factual grounds to overrule *Plyler*. The *Dobbs* decision articulated a rigorous set of factors for reconsidering prior constitutional decisions, and *Plyler* fails every one of them. Moreover, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act in 1996, supplying the very "articulable federal policy" that the *Plyler* majority said was missing.

Finally, even while *Plyler* remains on the books, states, localities, and the federal government are not without tools. This testimony outlines concrete actions that can be taken today, within *Plyler's* constraints, to limit the burdens illegal alien enrollment imposes on America's public schools.

I. *Plyler v. Doe*: Why the Dissent Was Right

A. What *Plyler v. Doe* Decided

In 1975, the Texas Legislature enacted a statute that withheld state education funding from local school districts for the education of children who were not "legally admitted" to the United States and authorized school districts to deny enrollment to such children or to charge them tuition. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court, by a 5–4 vote, struck that statute down as a violation of the Fourteenth Amendment's Equal Protection Clause. The majority opinion, written by Justice Brennan, held that illegal aliens are "persons" within the meaning of the Equal Protection Clause and that states cannot deny children a free public K–12 education on the basis of immigration status unless the state can show that the denial furthers a "substantial state interest."

B. A Primer on Constitutional Standards of Review

To understand why *Plyler* is legally problematic, it helps to understand the framework courts use to evaluate whether a law violates the Equal Protection Clause. Courts apply different levels of scrutiny depending on who is harmed and what right is affected.

Strict scrutiny is the most demanding standard. It applies when a law discriminates against a "suspect class"—such as a racial minority—or burdens a "fundamental right" such as the right to vote. Under strict scrutiny, the government must show that the law serves a *compelling* government interest and is *narrowly tailored* to achieve it. Laws rarely survive this level of review.

Rational basis review is the default, most permissive standard. It applies to ordinary legislation affecting no suspect class and no fundamental right. Under rational basis, a law is presumed constitutional and will be upheld if there is *any* rational reason a legislature could have had for enacting it. Laws almost always survive this level of review.

The outcome of a constitutional challenge often depends entirely on which standard applies. And the standard is supposed to be determined by the *nature of the classification* and the *nature of the right at stake* — not by the sympathies of the reviewing judges.

C. The Majority's Analytical Problem

The *Plyler* majority found itself in a difficult position. It acknowledged that its own precedents required it to conclude that *neither* strict scrutiny *nor* any heightened standard applied. The Court stated explicitly: “Undocumented aliens cannot be treated as a suspect class because” they are “presen[t] in this country in violation of federal law.... Nor is education a fundamental right; a State need not justify by compelling necessity every variation in the manner in which education is provided to its population.” *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

Having made those admissions, the Court was legally obligated under its own precedents to apply ordinary rational basis review—the permissive standard under which virtually any conceivable government justification suffices. Yet the Court refused to do so. Instead, it invented a novel, intermediate standard of review without any clear constitutional basis, demanding that Texas show a “substantial state interest”—a test that appears nowhere in the Court's prior Equal Protection jurisprudence and that the majority never adequately explained or grounded in the actual text of the Constitution.

Even the majority itself acknowledged the sensitivity of this area, recognizing that “[t]he obvious need for delicate policy judgments has counseled the Judicial Branch to avoid intrusion into this field.” *Id.* at 225. And yet, having recognized that caution was warranted, the Court proceeded to intrude all the same.

D. The State's Justifications and the Court's Rejection of Them

Texas offered several justifications for its statute, all of which the Court rejected — in most cases with very little legal analysis.

First, Texas argued that the law served the state's interest in **preserving its limited educational resources** for lawful residents. The

Court dismissed this almost out of hand, stating that “a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources.” *Id.* at 227. The Court provided no persuasive explanation for why resource conservation—a plainly legitimate government interest under any rational basis analysis—failed to satisfy even a “substantial interest” test.

Second, Texas argued the law was justified by the State's desire to **protect itself from an influx of illegal immigrants** and the economic burdens they impose. The Court rejected this as well, finding “no evidence in the record suggesting that illegal entrants impose any significant burden on the State's economy.” *Id.* at 228.

Third, Texas argued that illegal alien children impose **special burdens on the State's ability to provide high-quality public education**. The Court disagreed because, under an invented standard that it failed to justify, Texas needed to show that “exclusion of undocumented children is likely to improve the overall quality of education in the State.” *Id.* at 229.

Fourth, Texas argued that illegal alien children are appropriately singled out because their **unlawful presence makes them less likely to remain in the state and put their education to productive use**. The Court rejected this too, stating that “it is an interest that is most difficult to quantify” and that Texas had no “assurance” whether the illegal alien children would remain or leave the State. *Id.* at 230.

Finally, and critically, the Court acknowledged that the outcome might have been different, but **Congress had not enacted a clear federal policy** on point. The majority wrote: “We are reluctant to impute to Congress the intention to withhold from these children, for so long as they are present in this country through no fault of their own, access to a basic education. In other contexts, undocumented status, coupled with some articulable federal policy, might enhance state authority with respect to the treatment of undocumented aliens. But in the area of special constitutional sensitivity presented by these cases, and in the absence of any contrary indication fairly discernible in the present legislative record, we perceive no national policy that supports the State in denying these children an elementary education.” *Id.* at 226. As discussed in Part II below, Congress has since spoken directly on this subject—removing the very premise upon which the Court rested its decision.

E. Why the Dissent Was Right

Chief Justice Burger, joined by Justices White, Rehnquist, and O'Connor, wrote a dissent that, with the benefit of four decades of hindsight, reads as the more principled and constitutionally sound analysis. The dissent rested on several powerful arguments.

The Court substituted its own policy preferences for those of the Texas Legislature. As Chief Justice Burger wrote: “The Constitution does not constitute us as ‘Platonic Guardians’ nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, ‘wisdom,’ or ‘common sense.’ We trespass on the assigned function of the political branches under our structure of limited and separated powers when we assume a policymaking role as the Court does today.” *Id.* at 242 (Burger, C.J., dissenting) (cleaned up).

The majority was acting to compensate for congressional failure. The dissent captured, with unusual candor, exactly what the Court was doing: “The Court makes no attempt to disguise that it is acting to make up for Congress’ lack of ‘effective leadership’ in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across our borders. The failure of enforcement of the immigration laws over more than a decade and the inherent difficulty and expense of sealing our vast borders have combined to create a grave socioeconomic dilemma. It is a dilemma that has not yet even been fully assessed, let alone addressed. However, it is not the function of the Judiciary to provide ‘effective leadership’ simply because the political branches of government fail to do so.” *Id.* at 242–43 (cleaned up).

This critique goes to the heart of the separation of powers. Whatever one thinks of the underlying policy, federal immigration law is entrusted by the Constitution to Congress and the Executive, not to the federal judiciary. When courts step in to fill perceived policy gaps left by legislative inaction, they undermine the democratic process and exceed their constitutional role.

The majority distorted the Constitution. Burger was unflinching: “The Court employs, and in my view abuses, the Fourteenth Amendment in an effort to become an omnipotent and omniscient problem solver. That the motives for doing so are noble and compassionate does not alter the fact that the Court distorts our constitutional function to make amends for the defaults of others.” *Id.* at 243. He added that “the extent to

which the Court departs from principled constitutional adjudication is ... disturbing." *Id.*

The Court invented a standard of review with no constitutional basis. Having conceded that illegal aliens are not a suspect class and that education is not a fundamental right, the majority was required to apply rational basis review. As Burger wrote: "Once it is conceded—as the Court does—that illegal aliens are not a suspect class, and that education is not a fundamental right, our inquiry should focus on and be limited to whether the legislative classification at issue bears a rational relationship to a legitimate state purpose." *Id.* at 248. The majority's invention of a hybrid, intermediate standard was, as Burger bluntly observed, "a prime example" of a court being "was guilty of an unabashedly result-oriented approach." *Id.* at 244.

The Equal Protection Clause does not mandate identical treatment of all persons in all circumstances. The dissent correctly noted that "[t]he Equal Protection Clause does not mandate identical treatment of different categories of persons" and that "[t]he distinction the State of Texas has drawn—based not only upon its own legitimate interests but on classifications established by the Federal Government in its immigration laws and policies—is not unconstitutional." *Id.* at 243–44. Furthermore, "[t]he Equal Protection Clause guarantees similar treatment of similarly situated persons, but it does not mandate a constitutional hierarchy of governmental services." *Id.* at 248.

Resource conservation of limited resources is a rational and legitimate state interest. Under ordinary rational basis review—which the Court itself admitted was the appropriate standard—conservation of limited public resources is an entirely legitimate government objective. As Burger wrote: "I assume no Member of this Court would argue that prudent conservation of finite state revenues is per se an illegitimate goal." *Id.* at 249. The majority's offhand dismissal of Texas's resource-conservation justification thus could not be reconciled with rational basis doctrine.

Illegal aliens are not entitled to the same governmental benefits as lawful residents. This may be the dissent's most commonsense point: "it simply is not 'irrational' for a state to conclude that it does not have the same responsibility to provide benefits for persons whose very presence in the state and this country is illegal as it does to provide for

persons lawfully present. By definition, illegal aliens have no right whatever to be here, and the state may reasonably, and constitutionally, elect not to provide them with governmental services at the expense of those who are lawfully in the state.” *Id.* at 250.

The dissent also observed the inconsistency of the Court's position given federal law: “It is significant that the Federal Government has seen fit to exclude illegal aliens from numerous social welfare programs.... Although these exclusions do not conclusively demonstrate the constitutionality of the State's use of the same classification for comparable purposes, at the very least they tend to support the rationality of excluding illegal alien residents of a state from such programs so as to preserve the state's finite revenues for the benefit of lawful residents.” *Id.* at 250–51.

The Chief Justice was careful to note that his conclusion was not a statement of preferred policy: “Denying a free education to illegal alien children is not a choice I would make were I a legislator.” *Id.* at 252. However, he concluded: “The Constitution does not provide a cure for every social ill, nor does it vest judges with a mandate to try to remedy every social problem.... The solution to this seemingly intractable problem is to defer to the political processes, unpalatable as that may be to some.” *Id.* at 253–54 (citation omitted).

II. The Path to Overruling *Plyler* — Applying the *Dobbs* Framework

A. *Stare Decisis* Is Not an Inexorable Command

The doctrine of *stare decisis* — the principle that courts should generally follow their prior decisions — is an important part of the rule of law. It promotes stability, predictability, and public confidence in the judiciary. But it has never been, and must never be, an absolute rule. Some of the Supreme Court's most celebrated decisions were cases where the Court overruled a prior precedent that was demonstrably wrong.

In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court articulated a careful, multi-factor framework for determining when a prior constitutional precedent should be overruled. The Court identified five key factors that bear on whether overruling is appropriate. As shown below, all five factors weigh in favor of overruling *Plyler*.

B. Applying the *Dobbs* Factors to *Plyler v. Doe*

Factor 1: The Nature of the Court’s Error. The first *Dobbs* factor is to examine the nature of the court’s error, particularly whether the decision was “egregiously wrong.” *Dobbs*, 597 U.S. at 268. *Plyler* was wrong from the day it was decided. As the dissent demonstrated, the majority conceded the very legal premises—that illegal aliens are not a suspect class and education is not a fundamental right—that under the Supreme Court’s own jurisprudence required application of rational basis review. Having made those concessions, the majority had no principled basis for invalidating the Texas law. The majority’s invention of a novel intermediate standard of review, untethered from constitutional text or precedent, was a product of result-oriented adjudication, not principled constitutional analysis. Like *Roe v. Wade*, *Plyler* imposed a judicial policy preference in place of a democratically enacted law, short-circuiting the political process on a question the Constitution entrusted to the states and Congress.

Factor 2: The Quality of the Reasoning. *Dobbs* instructs that poor legal reasoning—lacking textual, historical, or precedential grounding—weighs in favor of overruling. *Dobbs*, 597 U.S. at 269-70. *Plyler*’s reasoning is notably thin. The majority never explained the constitutional source of its novel “substantial state interest” standard. It performed no serious engagement with constitutional text or history. It rejected each of Texas’s proffered justifications with brief, conclusory responses that would fail under any ordinary rational basis analysis. The majority’s analysis more closely resembled a legislative committee’s policy assessment—weighing societal costs and benefits—than a legal opinion grounded in constitutional interpretation. This is precisely the kind of judicial legislating that *Dobbs* recognized as a basis for overruling prior precedent.

Factor 3: Workability. *Dobbs* asks whether the rule set forth in a prior decision can be understood and applied consistently and predictably. *Dobbs*, 597 U.S. at 280-81. *Plyler*’s “substantial state interest” standard has proven unworkable in at least two respects. First, it has never been clear what makes a state interest “substantial” enough to override the ruling, leading to litigation uncertainty for states and localities. Second, and more significantly, the decision has made it difficult for states to respond to dramatically changed circumstances—including a surge in illegal immigration that dwarfs the numbers the Court considered in 1982. A rule of constitutional law that cannot be coherently applied to changed factual

conditions, and whose outer limits remain undefined, is by definition unworkable.

Factor 4: Effect on Other Areas of Law. *Dobbs* recognized that a factor weighing in favor of overruling a decision is if it distorts other legal doctrines. *Dobbs*, 597 U.S. at 286-87. *Plyler* has had a distorting effect on immigration federalism. By holding that courts must review state distinctions based on immigration status under a heightened (if undefined) standard, the decision has chilled legitimate state policy choices across a range of public benefit programs and has been cited as a barrier to state-level immigration enforcement. It has also created interpretive confusion about the relationship between federal immigration law and state benefit programs — confusion that Congress has been unable to fully resolve even through legislation.

Factor 5: Reliance Interests. *Dobbs* recognizes that strong concrete reliance interests—like those involving property or contract rights—weigh against overruling. *Dobbs*, 597 U.S. at 287-88. *Plyler* does not implicate the kind of concrete, transactional reliance that would make overruling disruptive. Unlike property rights or contract obligations, the expectation of receiving free public education based on illegal presence in the country does not represent the kind of settled reliance interest that the law is designed to protect. The illegal aliens whose children attend public schools under *Plyler* cannot claim they organized their affairs and made irreversible economic commitments in reliance on the decision in the same way that property owners or contracting parties do. Restoring the rule of law in this area would not unwind decades of commercial transactions; it would return a policy question to the democratic branches, where it has always belonged.

C. Post-1982 Congressional Enactments Remove *Plyler*'s Core Premise

The *Plyler* majority was candid that its holding rested in part on the absence of a clear federal policy on the subject. As Justice Brennan wrote, “undocumented status, coupled with some articulable federal policy, might enhance state authority with respect to the treatment of undocumented aliens.” *Plyler*, 457 U.S. at 226.

Congress has since supplied precisely that policy. In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which declared it “a compelling government interest to remove the incentive for illegal immigration provided by the availability

of public benefits,” 8 U.S.C. § 1601(6)-(7) and declared that illegal aliens who are not “qualified aliens” are ineligible for federal public benefits. 8 U.S.C. § 1611. Congress specifically defined “federal public benefits” to include postsecondary education and other government services. 8 U.S.C. § 1611(c)(1)(b). In the same year, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which barred states from offering in-state postsecondary tuition to illegal aliens unless the same rate is offered to all U.S. citizens regardless of state of residence. 8 U.S.C. § 1623.

These enactments—passed with overwhelming bipartisan support—represent exactly the kind of “articulable federal policy” that the *Plyler* majority said could change the constitutional calculus. In light of PRWORA, a state can now argue not only that its distinction between lawful and unlawful residents is rational, but that it *mirrors* an explicit federal policy judgment by Congress. The foundational premise of the *Plyler* majority—that no federal policy supported the Texas classification—no longer holds.

D. State Challenges Are Already Underway

Multiple states have already moved to create the legal vehicle for the Supreme Court to reconsider *Plyler* by introducing legislation that would require proof of citizenship or legal immigration status as a condition of enrollment, or that would authorize school districts to charge tuition to illegal alien students. These legislative efforts are deliberate; they are designed to generate litigation that will allow the Supreme Court to reconsider *Plyler* under the current constitutional framework and in light of changed circumstances.

This strategy mirrors the successful approach taken in the abortion context. Mississippi’s Gestational Age Act—the law at issue in *Dobbs*—was enacted specifically to create a vehicle for overruling *Roe v. Wade*. The same strategic logic applies here: a state that enacts a law requiring immigration status verification for school enrollment and charges tuition to unlawfully present students will invite a legal challenge. That challenge, if it reaches the Supreme Court, will allow the Court to reconsider *Plyler* using the *Dobbs* framework outlined above.

Congress can accelerate this process by enacting legislation explicitly providing that states are authorized to condition free public K–12 education on lawful presence. Such a statute would not only constitute additional evidence of an “articulable federal policy” under *Plyler*’s own terms,

but would also frame the legal question for any reviewing court in the most favorable manner possible.

III. What States and Localities Can Do Right Now

Even under the constraints of *Plyler* as currently interpreted, states and localities retain meaningful tools to address the burdens illegal alien enrollment places on public schools. The following is a non-exhaustive list of actions permitted under current law.

A. Residency Verification

Plyler prohibits states from denying enrollment based solely on *immigration status*, but it does not prevent states from defining the threshold concept of *residency* itself in ways that exclude illegal aliens and nonimmigrant aliens from qualifying as district residents in the first place. That distinction matters enormously. A state that denies enrollment because a child is an illegal alien runs directly into *Plyler*. A state that denies enrollment because a child is not a *resident* of the district—applying a carefully crafted, constitutionally grounded definition of residence—raises a fundamentally different legal question.

The legal tools for this approach are well-established. The Supreme Court has recognized that “usual residence” for purposes of the census means more than mere physical presence; it includes “some element of allegiance or enduring tie to a place.” *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992). An illegal alien, by definition, lacks both. As the Court held in *United States v. Wong Kim Ark*, the reciprocal relationship of protection and allegiance that defines lawful residence depends on the sovereign’s *permission* to reside here. 169 U.S. 649, 694 (1898). Because illegal aliens are present in defiance of federal law, the United States has not consented to their residence; they remain subject to removal at any time, possess no enduring tie to any particular state, and owe their primary political allegiance to a foreign nation—not to the state in which they temporarily find themselves. Aliens present on temporary visas are similarly situated: their authorized stay is, by definition, contingent and time-limited, and it cannot create the durable allegiance and enduring tie that lawful residency requires. States can codify these principles by adopting statutes that only allow residents to attend public schools without paying tuition and including in their definition of “resident” for school enrollment purposes to mean a person who has legal permission to live in the school district—thereby excluding illegal aliens and nonimmigrant visa holders

as a matter of *residence law*, not immigration-status discrimination. The Supreme Court expressly recognized in *Burns v. Richardson*, 384 U.S. 73, 92 (1966), that states possess the constitutional authority to exclude aliens and other non-permanent residents from their electoral apportionment bases, reflecting the broader principle that state-conferred benefits may rationally be limited to those who share a genuine, lawful connection to the community.

B. Data Collection and Fiscal Reporting

Nothing in *Plyler* prevents states from requiring school districts to collect and publicly report aggregate data on the number of enrolled students who cannot demonstrate lawful presence, the associated per-pupil costs, and the total fiscal burden on the state’s public school system. This kind of fiscal transparency is valuable for two reasons: it provides an honest accounting of the costs that the public is bearing; and it builds the evidentiary record that may be needed to support future litigation or legislation.

C. Restricting Benefits Beyond Basic K–12 Education

Plyler protects access to “basic education”—the core K–12 curriculum. It does not guarantee every supplemental program, enrichment activity, or government benefit offered by a school or district. States can adopt policies restricting illegal alien students’ access to, for example, specialized gifted and talented programs that involve additional state funding, dual-enrollment college tuition subsidies, extracurricular travel, and similar optional programs that go beyond the baseline *Plyler* requires. These distinctions must be applied carefully and not used as a pretext for wholesale exclusion, but legitimate distinctions between “basic education” and “supplemental benefits” are constitutionally defensible.

D. Withholding State Funding for Postsecondary Education

States have clear authority to deny in-state tuition and state financial aid to illegal alien students in postsecondary education. As discussed above, PRWORA explicitly recognizes this, and IIRIRA bars states from offering discounted in-state tuition to illegal aliens unless the same rate is offered to all U.S. citizens. Any state that currently offers in-state tuition to illegal aliens in defiance of IIRIRA should reconsider that practice, and Congress should vigorously enforce the IIRIRA prohibition.

E. Federal Program Eligibility Verification

While *Plyler* constrains states regarding basic K–12 enrollment, it does not control eligibility for federally funded programs administered

through schools. In 2025, the Department of Education issued interpretive guidance concluding that federally funded career and technical education programs under the Perkins Act, adult education programs under WIOA, and other federal workforce education grants are “federal public benefits” subject to PRWORA’s citizenship-verification requirements. *Clarification of Federal Public Benefits Under the Personal Responsibility and Work Opportunity Reconciliation Act*, 90 Fed. Reg. 30,896 (Jul. 11, 2025). Under the guidance, schools receiving federal funds must verify eligibility for such programs and exclude ineligible illegal aliens accordingly. Head Start and federally funded preschool programs are similarly subject to federal eligibility verification and are not protected by *Plyler*.

Conclusion

Plyler v. Doe was a decision driven by judicial sympathy for children in a difficult situation — a sympathy that is entirely understandable on a human level. But as Chief Justice Burger correctly observed, “the Constitution does not provide a cure for every social ill, nor does it vest judges with a mandate to try to remedy every social problem.” *Plyler*, 457 U.S. at 253–54 (Burger, C.J., dissenting). The Court’s role is to interpret the Constitution, not to serve as a policymaking body filling in the gaps left by legislative inaction. Where the Constitution’s text, history, and precedent all point in the same direction—and where the Court’s own analytical concessions compel application of a standard under which the challenged law would clearly survive—the Court must follow the law, not its own policy preferences.

Plyler failed that test in 1982. The *Dobbs* framework gives the Court a principled path to correct that error now.

Mr. ROY. Mr. Rogers, thank you. Mr. Saenz, you may begin.

STATEMENT OF THOMAS A. SAENZ

Mr. SAENZ. Thank you, Mr. Chair and the Hon. Members. My name is Thomas Saenz, and I have been for 17 years now, the President and General Counsel of MALDEF, the Mexican American Legal Defense and Educational Fund.

I am proud as the current head of MALDEF, that my predecessors were the legal representatives for the plaintiffs in *Plyler v. Doe*, the first of a number of cases consolidated and coming before the Supreme Court in 1982.

It is important to note that the *Plyler v. Doe* decision was the product of a conservative Supreme Court. Indeed, four of the five justices in the majority, including the author of the opinion, William Brennan, were appointed by Republican Presidents.

In addition, it is important to note that the swing Justice, if you will, Lewis Powell, has impeccable conservative credentials, and he is clearly the Justice whose decision ended up being the decision in *Plyler*. He was the fifth vote.

It is also important to note as not often remembered, that while this Court split five to four on the Constitutional issue, the court was unanimous in its conclusion that the Texas law struck down was bad public policy.

I say that because Chief Justice Warren Burger, who wrote on behalf of all the dissenters who joined his opinion in full, including the soon to be Chief Justice, Conservative William Rehnquist, on behalf of all of them, he stated that this Texas policy was a bad public policy. He called it folly.

It is important to keep that in mind as you review the basis of the majority decision in *Plyler*. In *Plyler*, the majority simply applied rational basis, a standard recognized by the Supreme Court previously and all the way up to date, as a basis for evaluating legislation that singles out a particular group of persons for exclusion from a public benefit in this case, excluding minor children who are undocumented from receiving public education.

In applying rational basis, the majority considered a number of factors. Among them are factors that have clearly not changed in the 44 years since *Plyler* was decided.

First, the fact is, as the court noted then, many of the students who are undocumented today, and who would be deprived of a basic public education were the Texas law to be revived, many of those students will remain in the country indefinitely or permanently, and will adjust their status to that of either lawful, permanent resident or naturalized U.S. citizen.

As such, they will be expected, as Brennan noted, "to contribute to our economy, to our society, and to our government." Their ability to do so if deprived of a basic public education, would be taken away from them.

Second, the court did recognize that public education is expensive, and that is the case today as well. However, despite that fact, public education is perhaps the government service that receives the highest levels of support throughout the country.

Why is that? Because that expense is an investment. It is an investment that pays off. Having these children in school with a

basic education when they become citizens or lawful permanent residents, and are contributing to the economy, pays off much more than the costs of the education.

The billions, and indeed over time, trillions of dollars more into the economy, into government, through tax payments, and through immeasurable benefits such as patents, innovations, and improved service throughout the economy.

The court also recognized that these children are not responsible for their status in this country. They are minors.

We are talking about elementary and secondary school children who came to the country as a result of decisions by their parents. That is still true today.

Despite the slight increase in unaccompanied minors, the fact is the vast, vast majority of undocumented students did not come to the United States on their own.

Finally, the court recognized, and I note here, that Lewis Powell's concurrence particularly focused on what would happen if the Texas law were implemented. It would leave thousands and thousands of children on the street during the daytime rather than being in school.

While the *Plyler* decision didn't explore that as deeply as it might have, the fact is, that eliminating *Plyler* would threaten the continuance of public education.

Why? Because kids out of school have a tendency to attract their peers to leave school as well. It will start with their siblings, as a result of the phenomenon of mixed status families where older children are undocumented, but younger children are birthright citizens.

It will extend beyond the families to peers, and ultimately, it will be impossible to enforce truancy laws, because any child who doesn't want to be in school will know to simply say, I am undocumented, something that any truancy officer would be unable to disprove.

[The prepared statement of Mr. Saenz follows:]

**Testimony of Thomas A. Saenz
President and General Counsel, MALDEF**

**Before the Subcommittee on the Constitution and Limited
Government of the House Committee on the Judiciary**

Hearing on *Plyler v. Doe*

March 18, 2026

Good morning. My name is Thomas A. Saenz, and I am president and general counsel of MALDEF (Mexican American Legal Defense and Educational Fund), which has for 58 years now, worked to promote the civil rights of all Latinos living in the United States. MALDEF is headquartered in Los Angeles, with regional offices in Chicago; San Antonio, where MALDEF was founded; Washington, D.C.; and, most recently, Seattle. MALDEF lawyers today are very proud that our predecessors provided legal representation to the plaintiffs in *Plyler v. Doe*, the lead case in the matter that resulted in the 1982 Supreme Court decision that all children, regardless of immigration status, are entitled to a free public education from Kindergarten through twelfth grade.

Today, almost 44 years after *Plyler v. Doe*, too many forget or fail to take account of the fact that, while the justices split 5-4 on the constitutionality of the challenged Texas law permitting the exclusion of undocumented children from public schools, they were unanimous in their assessment that the Texas law was very bad public policy. Respected conservative Chief Justice Warren Burger authored the dissenting opinion in *Plyler*; that dissent begins with the following:

Were it our business to set the Nation's social policy, I would agree without hesitation that *It is senseless* for an enlightened society *to deprive any children – including illegal aliens – of an elementary education*. I fully agree that it would be folly – and wrong – to tolerate creation of a segment of society made up of illiterate persons, many having a limited or no command of our language.¹

Justices Sandra Day O'Connor, William Rehnquist, and Byron White joined Burger's dissent in full. Justice Rehnquist, considered to be the most conservative justice on the Court at the time, would soon become the chief justice, elevated by President Ronald Reagan. The conservative credentials of those who joined in the conclusion that the Texas law was "senseless" are beyond question.

¹ *Plyler v. Doe*, 457 U.S. 202, 242 (1982) (Burger, C.J., dissenting) (emphasis added). "Denying a free education to illegal alien children is not a choice I would make were I a legislator. Apart from compassionate considerations, the long-range costs of excluding any children from the public schools may well outweigh the costs of educating them." *Id.* at 252.

It is worth noting that, beyond the dissenters named above, renowned conservative Justice Lewis Powell not only agreed that the Texas law was bad public policy, but also considered it unconstitutional, joining the majority opinion in full. Thus, not only was the *Plyler* decision joined by a lead early strategist of the conservative movement in the federal courts, some of the most conservative justices of the modern era, even as they dissented from the majority's constitutional judgment, agreed that the challenged Texas law was "folly" as a matter of public policy.²

All of which begs the question why any conservative today would consider enacting some new version of the Texas law challenged successfully in *Plyler* to be a wise tactic, politically or as a matter of policy. Indeed, the conclusion of Burger's dissenting opinion focused on his view that the justices in the majority were taking on a policymaking endeavor that belonged more appropriately to Congress, not the Court. In Burger's view, the Constitution vested Congress with "primary responsibility" to address the issue of undocumented immigration and to assess and address the social costs of excluding any group of children from public schools.³

Thus, Burger would likely have become more solidly against the Texas law following the Congress's 1996 decision to effectively codify the holding in *Plyler*.⁴ This congressional action also counsels deference to the conservative view that Chief Justice Burger voiced in his dissenting opinion.

Nothing has changed in the 44 years since *Plyler* was decided that should alter the conclusion on public policy that Burger and his conservative colleagues reached. As the majority opinion stated, many of the undocumented children who would be denied an education, if *Plyler* were not decided as it was, will remain in the United States, and many will also become lawful permanent residents and ultimately naturalized United States citizens. *See Plyler*, 457 U.S. at 230 (majority). Indeed, one estimate shows that 430,000 students whose access to public school is guaranteed by the *Plyler* decision have since adjusted status to become citizens or lawful permanent residents.⁵

The same mechanisms that existed 44 years ago continue to exist today for undocumented immigrants to adjust their status, and many undocumented immigrants, particularly if they have long-term residence and strong community connections -- as those who attended elementary and secondary school in this country are likely to develop -- still have available grounds to suspend removal and to remain in the country long-term or permanently. Thus, the children who would be denied a basic education absent *Plyler* will be expected to contribute to our country, and denying them an education will make that impossible and impose

² *See id.* at 242.

³ *See id.* at 253-54.

⁴ *See* 8 U.S.C. § 1643(a)(2).

⁵ Scott D. Levy and Phillip Connor, *The Power of Plyler: The Societal and Economic Gains of Equal Access to Education for Undocumented Children and the Future Losses if It Is Taken Away*, FWD.us, Dec. 2025, <https://www.fwd.us/news/the-power-of-plyler/>.

a substantial burden on society. The loss to society as a whole dwarfs the loss to each individual recipient of a basic education under the *Plyler* decision.⁶ Or, as Justice Powell expressly stated:

Indeed, the interests relied upon by the State would seem to be insubstantial in view of the consequences to the State itself of wholly uneducated persons living indefinitely within its borders.⁷

In addition, of course, there may well be a forthcoming special legislated program that would allow children who came to the United States as minors and have received a higher education or otherwise prepared themselves for significant contributions to our country to adjust status and remain permanently in the country. The DREAM Act and its related subsequent legislation continue to maintain very high levels of bipartisan support.⁸ Depriving the potential beneficiaries of this legislation of even a K-12 education simply robs the nation of a ready and needed, skilled and educated future workforce. This will only increase the necessity for our nation to bring in through special visa programs skilled workers who were raised and educated in countries other than the United States.⁹

The *Plyler* court, both majority and dissent, also focused upon the nature of education and the importance of its availability to all. As Burger noted in his dissent, “[t]he importance of education is beyond dispute.”¹⁰ The majority identified as significant “the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child”¹¹ In the 44 years since the decision, the importance of education has, if anything, become even more pronounced, as more and more career options require skills and training beyond that available in elementary and secondary education. Indeed, it may well be that an updating of *Plyler* would require its application beyond K-12 education, not its elimination with respect to elementary and secondary school.

⁶ “Lifetime income gains for adult *Plyler* beneficiaries who are currently living in the U.S. are expected to be \$2.7 trillion, or nearly \$1 million per beneficiary.” *Id.*

⁷ *Plyler*, 457 U.S. at 239 (Powell, J. concurring).

⁸ Jens Manuel Krogstad, *Americans broadly support legal status for immigrants brought to the U.S. illegally as children*, Pew Research Center, June 17, 2020, <https://www.pewresearch.org/short-reads/2020/06/17/americans-broadly-support-legal-status-for-immigrants-brought-to-the-u-s-illegally-as-children/> (“[a]bout three-quarters of U.S. adults say they favor granting permanent legal status to immigrants who came illegally to the United States when they were children”). See also *NEW POLL: Overwhelming Majority of U.S. Voters Across Political Spectrum Support Legislation for Dreamers Paired with Border Security*, FWD.us, Oct. 27, 2022, <https://www.fwd.us/news/new-poll-overwhelming-majority-of-u-s-voters-across-political-spectrum-support-legislation-for-dreamers-paired-with-border-security/>.

⁹ “The exclusion of undocumented children from U.S. schools would result in an estimated future loss of 341,000 people working in jobs typically requiring some college education” Levy and Connor, *The Power of Plyler*, FWD.us, *supra* note 5.

¹⁰ *Plyler*, 457 U.S. at 247 (dissent).

¹¹ *Id.* at 221 (majority).

Of course, another major consideration in the *Plyler* case was that the children who would be denied an education played no role in their status as undocumented. They are children who followed the decision of their parents in immigrating to the United States. As the majority opinion stated, “directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.”¹² It was Justice Powell who raised the imperfect but helpful analogy to cases involving illegitimate children, noting that in *Plyler*, the challenged Texas law punished children who are “innocent” with respect to their immigration status.¹³

In this regard, too, little has changed in 44 years. It remains “the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.”¹⁴ While some might assert that the increase in unaccompanied teenagers migrating to the United States in recent years somehow undercuts this notion, the numbers are simply not so significant as to change the fact that the vast majority of those who attend school because of the *Plyler* holding simply played no role in their immigrating to the United States or staying here in an undocumented status.

In encapsulating his agreement with the majority, renowned and respected conservative jurist, Justice Lewis Powell, put it this way: “I agree with the Court that [these] children should not be left on the streets uneducated.”¹⁵ With respect to this aspect of eliminating *Plyler*, the impacts are severe for the community and for public schools. The simple fact is that children denied entry and enrollment in public school will literally be on the streets and sidewalks of our cities, small and large. The presence of such a group of children is not a desirable consequence for any community. Indeed, their mere presence would be uncomfortable for many residents, including the constituents of many of those who most assiduously seek the overturning of *Plyler*.

In addition, as many police chiefs would predict (and have predicted in prior post-*Plyler* litigation), these children are likely to become the victims of criminal activity, including recruitment of older children into participation in crime. More important, children out of school with impunity will have a tendency to draw their peers out of school, even if those peers retain the right to attend. Given the widespread phenomenon of mixed-status families, where younger children may be United States citizens by birth, while older children are undocumented, the first students to follow the excluded students out of class are their siblings. But they will quickly be followed by friends and acquaintances; over time, public schools may lose enough attendance that districts are required to lay off significant staff, including teachers, and to shutter longstanding school campuses.

This threat may be accelerated as children who retain the right to attend public school confront increasing obstacles to thriving in class. For some, these obstacles may come from the looming threat of undifferentiated immigration enforcement leading to detention of their parents.

¹² *Id.* at 220 (majority).

¹³ *See id.* at 238 (Powell, J., concurring).

¹⁴ *Id.* (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)).

¹⁵ *Id.*

For others, the obstacles may stem from the deprivation of adequate nutrition, health care, and stable housing. The cuts to the social safety net, enacted last year by Congress, that are to be implemented this year and in following years are already going to strain public education, as students become preoccupied with hunger, illness, and anxiety. These students will find it more difficult to thrive in school, and may find it easier to avoid school. These phenomena would be exponentially exacerbated if these students have peers who are already out of school because they are categorically barred from attendance if the *Plyler* decision were overturned.

In short, it is impossible not to recognize that the threat to *Plyler* is a serious threat – particularly in the current context – to the continued existence of public schooling in large swaths of our nation. *Plyler v. Doe* is most emphatically not about immigration policy; it is more appropriately about education policy; it is at present an important support to success of the public education system. Threatening or eliminating *Plyler* would betray the views of the many conservative jurists who saw the Texas law struck down in the case as “folly.”

Mr. ROY. Thank you, Mr. Saenz. I now recognize my friend from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chair. A few weeks ago, the President put a very simple proposition to the Democrats, do you believe that the first duty of the Federal Government is to defend American citizens and not illegal immigrants?

Not one of our Democratic colleagues supported that proposition, not one. We can plainly see that attitude on full display at this hearing, in fact, in any hearing where the subject presents itself.

I have never understood the logic of *Plyler*, which seems to be that illegal immigrants are both entitled to taxpayer paid benefits, but at the same time are subject to deportation.

That makes no sense. If they have no right to be here, I don't understand how they have a claim on taxpayer benefits.

The other foundation of *Plyler* seems to be, well, don't worry about it, there aren't that many of them. Well, that might have been true in 1973. It is certainly not true today.

It is indisputable that this is diverting billions of dollars of school funds away from educating American citizens and legal residents. In California alone, taxpayers are paying about \$3 billion a year for this purpose.

That is \$3 billion of education funds that are not reaching American citizens and legal immigrants. Imagine the outrage from the Democrats if we propose cutting \$3 billion from California's public schools, but that is exactly what their open borders policies have done.

Now, we heard Ms. Scanlon tell us that this is good for students and good for taxpayers. I wonder if these people ever listen to themselves.

We are entitled to ask, how have our public schools fared since this, the largest illegal mass migration and history under the Democrats? Are students doing better or worse?

Ms. Drogan, what does the data actually tell us?

Mr. ROY. Microphone.

Ms. DROGAN. The data actually tells us when we are hearing numbers of a couple of thousand, that is completely inaccurate.

Even if we are using a Left-leaning pro-immigration organization that Ranking Member Scanlon quoted *FWD.us*, they say that in Texas alone, there is at least 111,000 students. This obviously is billions of dollars.

We can look at the data and see since 2015, with the unaccompanied minors that have been released, if we use the TEA PEIMS data that tells us how much we are spending, it is \$18,125 per student across the State of Texas on average. Of course, doing English second language and whatnot costs more.

If we use that number, we can see that we are already approaching \$2 billion at \$1.78 billion. We could also use the Huffines Liberty Institute's research that went back over a course of 10 years to see the amount of money that we were spending in Texas.

They found that it is roughly eight percent on illegal immigrant students. According to our data last year in—

Mr. MCCLINTOCK. Somehow this is supposed to be helping our students.

Ms. DROGAN. Yes.

Mr. MCCLINTOCK. I don't understand that logic at all.

Ms. DROGAN. Yes. It is about \$8 billion a year if we use their data.

Mr. MCCLINTOCK. On my first trip to the border, I spoke with a border patrol officer who related a conversation he had just had with the mother who would take her eight-year-old son on the dangerous trip to cross our border illegally.

He asked her why she would expose her child to such danger? She answered, "well, to get him a good education and get away from the gangs."

The border patrol agent said, well, "don't you understand those gangs are already here, and your child will be placed in a classroom where he doesn't understand the language or the culture, and he will look to those very gangs for his acceptance?"

Every day we hear of cases in which illegals with criminal records or gang affiliations are found in our public schools. There is a story in the news today coming out of Fairfax County, just a few miles from here, of a 19-year-old illegal alien from El Salvador who was groping young girls for months, before the district took any disciplinary actions.

Mr. O'Brien, have there been any studies of how many illegals with criminal records or criminal activities are in our schools today?

Mr. O'BRIEN. I don't believe so, only because it is virtually impossible to get the relevant data. We conducted studies that indicated that illegal aliens commit crimes at a rate anywhere from two to three times higher than citizens and lawful immigrants.

I would presume—

Mr. MCCLINTOCK. There have been extensive studies presented to our Immigration Subcommittee on that very point. The Democrats love to claim, oh, there is no higher criminal rate among illegals. Well, that is completely belied by the facts.

Mr. Rogers, what makes you think that the Supreme Court is inclined to reverse this decision?

Mr. ROGERS. Well, the *Dobbs* decision set out a very clear standard of five factors that can be used to evaluate whether prior precedent was wrongly decided and should be reevaluated.

Like I said in my testimony, all five of those factors, *Plyler* fails all of them. Applying the standard that they have set out, *Plyler* is ripe for a reconsideration.

Mr. MCCLINTOCK. Thank you.

Mr. RASKIN. Thank you, Mr. Chair. Mr. Saenz, I want to return to something that the gentleman from California said. Did the Supreme Court say that a family could not be removed from the country if their noncitizen children were in a public school?

Are they still deportable if the family is not here lawfully?

Mr. SAENZ. The way children tend to be deported, as I think you know, Congress Member, is a parent who is deported and has to make a decision whether to take the children with them, or to leave them the custody of someone else. That is the way deportation works for the *Plyler* class that we are talking about.

It is also important to note in response to what the member from California said, "the undocumented, many of them, have a basis to remain in this country." If they were actually placed in deportation

proceedings, they would have defenses available to them, and many of them will, through that process, ultimately stay in the country permanently.

You can't say that all them—

Mr. RASKIN. Well, what would one of those be? You mean, if they were seeking asylum, for example?

Mr. SAENZ. No. If they were to seek some suspension of deportation because of longstanding ties in this country, because of continued connection in this country, or because they simply have a basis for adjusting relationship to someone else that they didn't have previously or didn't know provided a basis.

Mr. RASKIN. My point is a little bit different, which is, there is nothing in *Plyler v. Doe*, which gives anybody the right to stay in America if they don't already have such a right.

You are positing that in some cases they might have such a right. There is nothing in *Plyler v. Doe* that changes immigration law.

All the Supreme Court said in *Plyler v. Doe* was, as long as this family is in America, the children have a right to be in public school and should not be out on the street or kept at home or what have you.

Am I reading that correctly?

Mr. SAENZ. That is absolutely correct. This is all about students who are here, and therefore have to be somewhere during the day, they should be in public school.

Mr. RASKIN. The Supreme Court never altered anybody's immigration status.

Mr. SAENZ. Not at all. Not at all.

Mr. RASKIN. OK. What is your response to *Plyler's* critics who say that this places a massive fiscal burden on the country?

Mr. SAENZ. It is untrue, because you have to look at both sides of the ledger. What we are talking about is an investment that we make in any child who is in public education.

That is, the payoff comes when they are able to participate in the workforce. In many college educations requiring professions and the like, a recent study points out that a large number of the recipients of services under *Plyler*, end up in positions that require a college degree.

Beyond that, you have to recognize that these are also taxpayers. These families are taxpayers like their neighbors.

Their status does not change the fact that they pay sales taxes, property taxes if they have property, and income taxes if there is an income.

Mr. RASKIN. They are not in the social security system, right?

Mr. SAENZ. Exactly. They are not eligible, as you know, and as has been pointed out by others on this panel. They are paying those taxes from what they are able to earn.

Mr. RASKIN. Yes. In ordinary times, if we are not in a time of anti-immigrant hysteria and nativism, people have accepted this for a half a century, right?

It has not seemed like a big deal that they—

Mr. SAENZ. I would argue, Congress Member, it is not a big deal now for most of the people out in the public. There really are not

huge numbers of bills moving forward in our legislature. Yes, bills get introduced.

Mr. RASKIN. Yes.

Mr. SAENZ. When legislators start doing their job and look at what the consequences are of actually attempting to implement a law like the one struck down in *Plyler*, they realize this is not wise public policy, and they tend to back away from it. There is no clamoring to change *Plyler v. Doe* after 44 years.

Mr. RASKIN. Yes. In the brief colloquy I had with the Chair at the beginning, we talked a little bit about my reference to the first great generation of revolutionary patriots, people like Tom Paine or Thomas Jefferson, as undocumented or the descendants of undocumented people. I didn't think there was anything controversial about that.

I suppose from the perspective of Native Americans who were here long before anybody else, everybody was undocumented at that point. Have we not had a fluid sense of the border?

Now, we need to have actual laws that exist, but this has been part of the law that kids who are here get to go to school here, at least until their family is deported, right?

Mr. SAENZ. Absolutely. This is as well established as much of immigration law, because we didn't actually control our Southern border until the middle of the 20th century.

Mr. RASKIN. Well, that was Mexico, right, until the 1840s and the 1850s with the annexation. It was in 1845 in Texas and California, a little bit after that.

What is the bottom line then? Is all this really headed to try to get a very Right-leaning Supreme Court to overturn *Plyler v. Doe*? Is that what this is about?

Mr. SAENZ. I think that is the ultimate goal. There is an impediment, which is this is now part of Federal immigration policy.

Mr. RASKIN. Thank you. I yield back, Mr. Chair.

Mr. ROY. I now recognize the gentleman from Kentucky.

Mr. MASSIE. Thank you, Mr. Chair. I would like to note that our annual debt has now gone past \$39 trillion. I yield my time to the Chair from Texas.

Mr. ROY. Well, I appreciate my friend from Kentucky, notably wearing his debt clock, where he is announcing to the world that we are now cracking \$39 trillion.

I would note that there are a lot of reasons why, and this is one of them, among many. That we continue to have this fanciful notion that we can just say anybody can come into the United States, and that it doesn't have an impact on our overall budget.

That the idea that it is like somehow, oh, there is this magic economic driver and economic creation of revenue that is offsetting the cost of our government services, programs, welfare, education, crime, and hospitals, that somehow that magically pays for itself. It is absolutely insane.

Mr. Saenz, there are approximately 2.4 billion children in the world under the age of 18. Can they all come to the United States and be educated?

Mr. SAENZ. Obviously not. Those who are here have a right now for 44 years—

Mr. ROY. Wait now, wait, how about a billion?

Mr. SAENZ. To an education.

Mr. ROY. Mr. Saenz, how about a billion? Can a billion children around the world come to the United States and get a free education?

Mr. SAENZ. Obviously not.

Mr. ROY. OK. How about 500 million?

Mr. SAENZ. These are matters of capacity of—

Mr. ROY. One hundred million?

Mr. SAENZ. It is a matter of the capacity of our country, Mr. Chair.

Mr. ROY. Ten million? When we are God-fearing, Jesus-loving people, 10 million people around the world can come here to the United States.

Mr. SAENZ. Far as I know, this country actually has religious pluralism and respects all religions. I object to your question in that sense. I am not going to give you a number, Mr. Chair. The simple fact is that—

Mr. ROY. You are not going to give me a number? You are not going to give me a number because—

Mr. SAENZ. There is a capacity of—

Mr. ROY. You are going to give me a number because you know this is fantastic unicorn nonsense.

Mr. SAENZ. I am not going to give you a number to give you the YouTube moment you are looking for, because—

Mr. ROY. This is unicorn nonsense. Well, you know what? This is an absolute aberration, because you know precisely what is going on.

You think that you can make policy via the court, that you can somehow establish that there is the right to come here to the United States and get a free education.

When posed with a question, how many people can come here, you know there is not an answer. Because right now, the people of Texas are the ones left holding the bag.

Ms. Drogan—

Mr. SAENZ. That is false, Mr. Chair.

Mr. ROY. Ms. Drogan—

Mr. SAENZ. You don't know me.

Mr. ROY. Ms. Drogan—

Mr. SAENZ. I am not running for office.

Mr. ROY. It is my time, and I am the Chair, whether or not I am running for office, is irrelevant.

Mr. SAENZ. You posed a question—

Mr. ROY. The fact of the matter is Mr. Saenz—

Mr. SAENZ. You posed a question, Mr. Chair.

Mr. ROY. The fact of the matter is Mr. Saenz—

Mr. SAENZ. You accuse me—

Mr. ROY. I am the Chair of this Committee, Mr. Saenz, and it is my time. The fact of the matter is, the people of Texas, the people of Texas, Ms. Drogan, are the ones left holding the bag.

Ms. DROGAN. Yes, sir.

Mr. ROY. Are the taxpayers in Texas paying education for illegal alien children to the detriment of American citizen children?

Ms. DROGAN. Yes, sir.

Mr. ROY. Can you expand on that? We talked about it before on the numbers. We have had over 100 and something thousand unaccompanied alien children.

How about the fact that we have got, for every English learner, Texas schools receive \$616 or \$950 for those enrolled in a dual-language program. How much does that cost?

Ms. DROGAN. About \$830 million, sir.

Mr. ROY. How much money do we get from the Federal Government for that?

Ms. DROGAN. It would be \$8.1 million.

Mr. ROY. The Texas taxpayers are the ones left holding the bag on that number alone, correct?

Ms. DROGAN. Yes, sir. Ninety percent of it.

Mr. ROY. What is the impact for the average school district out there that is dealing with the fact that you have illegal alien children that are being educated on the back of the taxpayers?

Ms. DROGAN. It is massive. That is what we were talking about, is this isn't just about the illegal children. It is also about the entire system.

We have accountability systems. These students, I pointed out several districts, Lake Worth ISD, 43.6 percent of them are English learners. This is a crushing barrier.

It goes between 30–70 percent that are English learners in these districts that are slated for takeover. That doesn't just impact the illegal students in the schools, it impacts the entire school.

American citizens who are losing out on resources, their teachers are being forced to try and do Google Translate on their phones. All these things obviously impact the total education system.

The taxpayers are left holding the bag for it.

Mr. ROY. Somebody asserted earlier that there is nobody clamoring in the State of Texas to deal with this issue. First, do you believe that to be true?

Ms. DROGAN. That is 100 percent false.

Mr. ROY. Correct. I hear about it all the time across the State of Texas, since I do crisscross the State of Texas quite a lot.

The reality is, with respect to that question, do we have the information or the data for the average American to understand the extent to which forced education of illegal alien children is having an impact on their kids, their school district, their bond issuances, their property taxes?

Are we prohibited from having that information right now?

Ms. DROGAN. Yes, we are prohibited from having that information. It has created a "chilling effect" on districts.

I hear from teachers, superintendents, and leaders all across the State of Texas, they want this data collected so that we can have a comprehensive view of how this impacts students and taxpayers in our education system as a whole.

Mr. ROY. Thank you, Ms. Droган. I will now recognize Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair. First, Mr. O'Brien, you made a comment that the statistics show that illegal immigrants, or undocumented immigrants, committed crime at a higher rate than other folks.

I have had statistics, and we have talked about them as a Committee, that are just the opposite, and they came from Texas. Where are your statistics from?

Mr. O'BRIEN. The statistics that we looked at were from the SCAAP, which is the State Criminal Alien Apprehension Program.

Mr. COHEN. The SCAAP?

Mr. O'BRIEN. It is a Federal program that reimburses States for the cost of incarcerating anyone who is not a citizen who is present in the United States, particularly illegal aliens.

Mr. COHEN. Do you have a copy of that study with you so I can take a look at it?

Mr. O'BRIEN. I don't have it with me. We can get you a copy of it.

Mr. COHEN. Well, just to inform you, the Justice Department did a study a few years ago in Texas and said that undocumented immigrants have a much lesser rate of committing offenses than other citizens.

Other statistics show that as well. They are less likely to commit offenses. Most of them don't get out and are afraid right now to get out of their houses, because they are afraid that they will get shot by ICE, or taken to some detention camp and held for an unlimited amount of time, even if they have their little hats on and are five years old.

They take them to Texas and put them away. That is not good for children. That is not good for America. That is not good for anybody. That is anti-American.

If you show me your statistics and get them to me, I will look at them. I will send you the Justice Department statistics that show that illegal or undocumented immigrants do not commit crimes at a higher rate.

Mr. O'BRIEN. Well, we certainly can get that to you. In my experience as an immigration judge and a trial attorney with ICE, it would be indicated differently. My experience—

Mr. COHEN. Your experience is not statistics. It is your experience. It is very subjective. I would like to see the objective.

Mr. O'BRIEN. I think the statistics are based on the experience of people like me.

Mr. COHEN. Mr. Saenz, you were trying to say something in response to Mr. Roy, and he cut you off. You are not running for office, I understand that. Could you tell me what you were about to say?

Mr. SAENZ. I was going to say that in fact, the number of students who are in school as a result of *Plyler v. Doe*, is dictated by our immigration policies in effect.

We can talk about the billions of people out in the world, but it has no reflection on what is happening in this country. As you earlier mentioned, we are talking about students who are here.

As earlier was mentioned by your colleague, actually, we are talking about students who are here, their families are here, don't know how long they will be here, but they are here, maybe here indefinitely or permanently. That is the class of students we are talking about who benefited from *Plyler v. Doe*.

Not only they benefit, their classmates benefit, and all society benefits, because they then have the skills to ultimately contribute

to our economy in important ways to the tune of billions, ultimately trillions of dollars.

Mr. COHEN. I think Ms. Drogan was giving some testimony that undocumented or illegals have worse grades and are more likely to drop out and cause problems.

Ms. DROGAN. Well, the reality is that—

Mr. COHEN. Excuse me, Mr. Drogan, I wasn't asking you a question.

Ms. DROGAN. Oh, I am sorry. I am sorry.

Mr. COHEN. That is not a problem. Just, Mr. Saenz, do you remember her saying that?

Mr. SAENZ. It is important to note that we don't have data about undocumented students and their grades. What we do know, is that so many of those who were undocumented in elementary and secondary school, do go on to higher education.

These are the students who now have DACA, and their younger colleagues who have been rendered ineligible for DACA, but these are the ones who are contributing to our economy, who frankly, through their contributions in healthcare and in other fields, saved us during the pandemic.

That is what we are talking about, not students who are low performing. It is important to note, because there is a lot of conflation of this, that when you talk about English learners, you are not talking about undocumented students.

The vast majority of noncitizens in this country are not undocumented. They have some other status, lawful permanent residents or other, and that comprises a portion of the English learner population.

Frankly, a large portion of the English learner population is United States citizens born in this country, who have every right to stay permanently, and who are in school, but come to school with a need to acquire English fluency at an academic level that they didn't acquire in their homes prior to coming to school.

Similarly, the Chair mentioned in his opening remarks, the Latino population of a particular school district. Latino does not equal undocumented, not by any means. The Latino population is overwhelmingly U.S. citizens and lawful permanent residents in this country.

Talking about increased numbers of Latino students in a school, is completely irrelevant to what we are talking about here, which is the experience of undocumented students in public schools.

Mr. COHEN. Thank you. I yield back to the balance of my time.

Mr. ROY. I will now recognize the Ranking Member for some UCs.

Ms. SCANLON. Thank you. I ask unanimous consent to enter into the record a March 18, 2026 statement, and report titled, "The Power of *Plyler*," highlighting how the *Plyler* decision has aided in decades of economic advancement.

I would also introduce the Texas-specific data showing the net fiscal impact of *Plyler* has been \$93 billion to the positive for Texas.

Finally, I would enter a 2021 study by the National Bureau of Economic Research entitled, "Presence of immigrant students boosts test scores for all."

Mr. ROY. Without objection. I now recognize the gentlelady from Wyoming for five minutes.

Ms. HAGEMAN. Thank you. When discussing the issue of K–12 education, there is no free public education. Every decision that is made here in Washington, DC, or within any State or local community, comes at the cost of the American taxpayer.

Plyler v. Doe effectively imposed an unfunded mandate whose consequences, due to years of neglect and mismanagement of our immigration system across multiple administrations, have gone far beyond what could have ever been foreseen in 1982.

This is evident as the court's decision rested on the assertion that the number of illegal aliens in public schools was small, and that there was no evidence in the record suggesting that illegal entrance imposes any significant burden on the State's economy.

We know that is absolutely untrue. I am sure that Mr. Saenz, if he would actually read that the data, would recognize that as well.

This decision which came at a time markedly different than the circumstances we face today, negatively impacts every aspect of participation of our public education system at the cost of hard-working American families.

Reporting from 2023, found that New York City grappled with the challenge of incorporating nearly 20,000 illegal alien students into its classes, while in 2024, the Denver public schools incorporated over 3,000.

Ms. Drogan, knowing that schools are generally unable to ask about a student's immigration status, does any consistently reliable data exist that could give us an idea of how many illegal alien students are enrolled in our public-school systems, and how much it costs the American taxpayer?

Ms. DROGAN. It is all just estimates, and I would say that is very intentional, whether it is weaponized opaqueness or incompetence. The idea is that they don't want us to identify them, to understand and be able to give accurate numbers on how many, where they are, what the impact, not just the cost, but the socioeconomic impact of entire communities.

Again, I was listening to Mr. McClintock talk about a mother talking about she wants to get her kids away from gangs. There are gangs in Houston schools. Tren de Aragua is in Houston schools. This has been proven.

To say that we can give an accurate number, we can use Census Bureau data, we can use different entities to try and extrapolate from Customs and Immigration, or other services, but, the truth is, is we don't know.

That is very intentional, particularly by the Obama Administration's "Dear Colleague" letter in 2011.

Ms. HAGEMAN. Well, then Mr. O'Brien, wouldn't you say that the same is true for crime statistics?

Isn't that intentional to ignore the immigration status of many people who commit crimes, to cover up the fact that in fact illegal aliens do commit crimes at a higher rate than Native born?

Mr. O'BRIEN. Yes. That is 100 percent correct. You also have to take into account that any illegal alien is by definition a criminal,

because they have violated 8 U.S.C. 1325, improper entry by an alien. They have committed a crime to enter the United States.

Ms. HAGEMAN. OK. If the data is not there and verification is not an option, are there adequate safeguards at the State and local level to monitor and mitigate misuse of taxpayer funding, including issues such as residency or enrollment fraud?

Ms. DROGAN. No. Not anyone that can track it accurately. We simply do not have the data.

Ms. HAGEMAN. What reforms, if any, have been taken at the State and local levels, particularly over the course of the Biden-Harris border crisis? Has there been any?

Ms. DROGAN. No. The most recent has been, Tennessee has passed a law through the House, asking to be able to track this data.

Ms. HAGEMAN. All right. Again, Ms. Drogan, given that the national average cost of educating a single student exceeds \$16,000, how have State and local governments accounted for spikes in enrollment stemming from unchecked illegal immigration?

Ms. DROGAN. It is crushing. The debt in Texas is growing from not just what we are spending at the State level, but we also have to recognize that our bond debt, we have \$234.2 billion of bond debt.

This brings massive amount of debt from our taxpayers. We cannot identify who they are, where they are going, and the impact on Texans as a whole.

Ms. HAGEMAN. Have essential services programs or facility improvements been reduced or delayed due to the enrollment burden that *Plyler v. Doe* imposes on our Nation schools?

Ms. DROGAN. That is a very accurate statement, that there are students that are not getting the services, American students, whether they are special education students or in other classifications, that are not getting the services, because we are having to redirect student funding to pay for English second language teachers, tutors, all sorts of this.

Also, as I noted in my testimony, there is a whole host of other problems, not just chronic absenteeism. You look at the medical results, the mental health problems, when you have these students that are coming in and they have severe mental health problems due to traumatic events, whether it is rape or violence that they have occurred, this takes other resources out of the school system.

Ms. HAGEMAN. OK. Well, I thank you for the testimony. I have many other questions, but I also want to, at this point, ask unanimous consent to introduce an article entitled, "Illegal immigrant student accused of groping girls in North Virginia high school," related to an adult student who lied about his age so that he could enroll in high school.

Ask unanimous consent for an article, "Vance reveals \$19 billion in fraud uncovered in Minneapolis and hints that California is the next target."

Mr. ROY. Without objection.

Ms. HAGEMAN. Clearly erasing any financial benefits that illegals may provide in this country. Thank you. I yield back.

Mr. ROY. I think the gentlelady from Wyoming. I will now recognize the gentlelady from Washington.

Ms. JAYAPAL. Thank you, Mr. Chair. I wanted to start just by saying there are no illegal children. It is a very cruel thing to say about children.

There is an illegal war on Iran happening right now that has already cost taxpayers \$16 billion. There is an illegal coverup of the Epstein files that is happening right now.

There is an illegal corruption by the Trump Administration officials, like Kristi Noem, in directing government contracts to family members. Those are all illegal.

It is important that we don't say that there are illegal children. That is a very cruel and hurtful statement to make.

Republicans would have the American people blame immigrants for all their problems. It is not immigrants who are making it harder to feed families. Republicans did that by cutting hundreds of billions of dollars from the Supplemental Nutrition Assistance Program.

It is not immigrants who are raising the cost of healthcare for children. Republicans did that by cutting hundreds of billions of dollars from the Children's Health Insurance Program.

It is not immigrants who are hurting the quality of our public education. Republicans are now trying to do that by overturning the Supreme Court's historic decision in *Plyler v. Doe*.

That decision established that undocumented students are protected by the 14th Amendment, against discriminatory State laws that deny them equal access to public education. Justice William Brennan said it best when he said, "these students, live within the structure of our civic institutions and contribute to the progress of our Nation."

Mr. Saenz, a lot of these discussions end up dehumanizing immigrants. I wanted you to humanize these students for us. Who are they?

Bring them into the room with us, tell them who they are, how they have contributed to the progress of our Nation.

Mr. SAENZ. Well, first, they are the older brothers and sisters of U.S. citizens. Then, when they complete their education, go on to higher education, and adjust their status and remain here permanently, they are the U.S. citizen fathers and mothers of United States citizens today.

When you talk about a decision that goes back 44 years, we have a long history of folks who were able to attend school because of *Plyler*, because they were in Texas or another State that might have adopted that policy, and who have succeeded beyond anyone's dreams. Making contributions to our economy, to our society, and even to government.

Ms. JAYAPAL. You mentioned during COVID, I want to bring another example from my home State, Itzel Santiago Pastrana grew up going to public schools near Seattle, where she had teachers who mentored her and inspired her to attend the University of Washington.

As a DACA recipient, now a naturalized U.S. citizen, you talked about this progression in some of your answers, she has decided to give back to her community by working at an immigration law firm for a decade, and at the State Attorney General's Civil Rights Division.

The whole discussion reminds me of the debate that we keep having in this Committee around birthright citizenship, another clear protection of the 14th Amendment that Republicans continue to attack. This Subcommittee held a hearing last year and one of the witnesses testified that eliminating birthright citizenship would “create a permanent underclass, a caste system, which was the very result that the Reconstruction Congress intended to end.”

Mr. Saenz, would removing students like Itzel from the classroom also create a permanent underclass?

Mr. SAENZ. It would. The majority in *Plyler v. Doe* recognized that, and creating such a permanent underclass would have immediate negative repercussions for the public school system.

As I was outlining, they will lose students in the schools, not just undocumented students. It has long-term consequences, of course, for all of society.

When you have a permanent underclass, they are deprived of any ability to contribute in the way that DACA recipients and others have continued to contribute as doctors, as lawyers, in important professions and positions throughout society.

Ms. JAYAPAL. What about the impact on U.S. citizen children? What is the impact in the classroom likely to be?

Mr. SAENZ. It actually improves their education, because they are exposed to other cultures. They are exposed to other experiences.

Ms. JAYAPAL. When those undocumented students are there?

Mr. SAENZ. When those students are sitting next to them.

Ms. JAYAPAL. When they are not there, the opposite.

Mr. SAENZ. They lose all that. They lose all that. Their only encounters with those students would be out on the streets. That is not likely to be a very positive encounter on either side.

We are talking about enhancing public education by continuing to follow a 44-year-old decision or bringing public education to an end as we know it.

Ms. JAYAPAL. In addition to taking away benefits in the classroom, what are the broader consequences to the American economy, you have sort of referred to this, if *Plyler* was overturned, and students like Itzel were denied equal access to education?

Mr. SAENZ. Well, our economy would take a huge hit. I mean, there is no denying that people who are allowed to have an education are able to contribute more to our society through tax payments and through their contributions to the job.

If you take away even the basic education that folks need, their ability to contribute will be rendered almost a nullity.

Ms. JAYAPAL. This is such an important conversation that you are bringing to the table. I thank you.

Mr. Chair, I yield back. I do have some unanimous consent requests to enter.

Mr. ROY. All right.

Ms. JAYAPAL. First, one is granting, this is from *New America*, “Granting undocumented students access to public education delivers \$633 billion return on investment.”

Second, from *Brookings*, “Are immigrant students disproportionately consuming educational resources?” I would just say that the conclusion is absolutely not.

Third, from *NPR*, “Immigrants are less likely to commit crimes than U.S.-born Americans, studies find.”

Fourth, from *Cato Institute*, with similar conclusions, “Illegal immigration and crime in Texas.”

Fifth, from the *National Institute of Justice* entitled, “Undocumented immigrant offending rate lower than U.S.-born citizen rate.”

Mr. ROY. Without objection. I thank the gentlelady from Washington. I now recognize the gentleman from North Carolina for five minutes.

Mr. HARRIS. Thank you, Mr. Chair. Thanks to all of you on the panel today. Let me jump into this.

Mr. Rogers, you touched on something when Representative McClintock was speaking, and you had mentioned in your written testimony that caught my attention, that the 2022 *Dobbs* decision at the Supreme Court set the framework for overturning *Plyler v. Doe*.

I just want to give you a few moments to kind of dive a little deeper into that, and explain why you believe this to be the case?

Mr. ROGERS. Sure. Thank you. The *Dobbs* decision set up five standards for whether a prior precedent should be overruled.

First, whether the nature of the court’s error, and if it is an egregious error. That weighs in favor of overruling. As I talked about, the court applied the wrong standards for the Equal Protection Clause.

Second, the quality of the reasoning. If you actually read the decision, it is very bare. It just basically says this is good policy. It doesn’t give actual legal reasoning.

Third, workability. It is whether it is a standard that can be applied by courts. The standard the court invented, no one has been able to define or understand what it means.

Fourth, its effect on other areas of law. As we have heard, this decision has affected how States can implement their own education policy.

We heard some testimony about how States haven’t adopted *Plyler* type laws, like the one they issued in Texas, because it is good policy. If it were good policy, then we wouldn’t hear people concerned about *Plyler* being overruled.

The fact that they are so concerned, means they know that States would adopt it if they didn’t have this restriction.

Fifth, reliance interest. Whether companies or individuals have financial reliance interests on the rule. There are no financial interests of the type of like, contract interest here.

All five rules weigh against *Plyler* being upheld.

Mr. HARRIS. Excellent. Thank you, sir. Mr. O’Brien, can you explain how the Supreme Court in *Plyler* acted like the Legislative Branch rather than the Judicial Branch?

Mr. O’BRIEN. Sure. The function of a court is to apply the law as written. In this particular case, there really was no Constitutional issue before the court based on the court’s own reasoning.

The court found that illegal aliens were not a suspect class. The court also found that a free public education is not a fundamental right.

Therefore, it is arguable that there was no Constitutional issue whatsoever in front of the court, because by definition, if illegal aliens are not a suspect class, then the State of Texas was not discriminating against anyone.

For whatever reason, the Supreme Court granted writ of certiorari, and went forward with it. Then, they completely ignored the relevant standards, and they ruled entirely on policy grounds.

Now, the consideration of policy under our Constitutional framework, belongs to the Congress of the United States. It does not belong to the courts.

The courts apply the law based on canons of statutory construction and other legal principles. Policy calls belong to Congress.

Mr. HARRIS. You would say the court should not be able to require free education for the children of illegal immigrants?

Mr. O'BRIEN. No. Not by any stretch of the imagination. That is a decision that if Congress wished to make, it probably could have. It in no way fell within the purview of the court.

Mr. HARRIS. Thank you, sir. Mr. Rogers, coming back, as I understand the *Plyler v. Doe*, the State of Texas argued the illegal alien children imposed a burden on the State's education system.

The court in a decision rejected such a claim. Here we are 40 years later, where there is a lot more data to underscore that point.

Can you explain the burden that the massive influx of illegal aliens' places on the State's public education systems?

Mr. ROGERS. As we have heard, they impose a tremendous burden, because most of them arrive not speaking English. They require special services, which means that American citizen children can't get those services, because there are limited resources.

An interesting example of the policy decision about this is if a temporary immigrant arrives with a tourist visa, they are actually required to pay tuition. Under Federal law right now, they have to pay tuition for their kids.

Yet, illegal aliens who are also here temporarily, don't have to. Which is tremendously unfair that they are treated differently and given special privileges.

Mr. HARRIS. Thank you, sir. Mr. Chair, I yield my time.

Mr. ROY. I thank the gentleman from North Carolina.

Mr. Rogers, in your last 30 seconds here, it is your considered judgment that there are States right now taking actions to start to pass laws to say that they should not have to fund education for illegal alien children, and that they should move their way through the courts, and that the court should take it up.

Is that correct?

Mr. ROGERS. Correct.

Mr. ROY. Thanks, Mr. Rogers. I will now recognize the gentlelady from Vermont for five minutes.

Ms. BALINT. Thank you, Mr. Chair. I am a former middle school teacher, which I always say is perfect preparation for this place.

I know the incredible value and importance of public education. To say that the children of immigrants are not entitled to learn and to grow in public schools is an extreme position.

We are talking about children. This is a fundamental question of decency and who we claim to be as Americans. I want to echo the

comments of my colleague, Ms. Jayapal, who said there are no illegal children.

We should not be referring to them in this way. How has this Administration treated children and families so far?

Well, it has cut early childhood education. It has cut children's healthcare. It has cut child nutrition programs. It has cut infant formula inspection.

It has cut research for vaccines. They even eliminated funding for children's television programs on *PBS*. This is not an administration that is looking out for children and families.

As I said, I am a former teacher and I am a parent. I know how hard it is to be a kid and a teen in this country today.

Our kids carry the real fear of gun violence in their schools. They carry the real anxiety of unaddressed climate change. They have to navigate social media landscapes that exacerbate the crisis of loneliness and disconnection.

For the children of immigrants, they have to deal with all this on top of the fear that they are experiencing right now, as there are targeted raids happening in communities across this country.

Just last week in Vermont, masked agents decided to create chaos and a dangerous situation near two schools. I heard from parents about how frightened they were to drop their kids off at school and to pick them up at the end of the day.

The actions caused fear and concern among this community in Vermont. That kind of anxiety is going to live with those children and these families for a lifetime.

Mr. Saenz, can you describe the level of fear and anxiety affecting immigrant communities in the U.S. today?

Mr. SAENZ. It is extreme. It is extreme because of what you have described. It starts with the undifferentiated immigration enforcement that is happening across the country, targeted at certain States, but across the country, and accomplished through masked agents who do not wear identification that they are law enforcement at all.

This is not what kids have been taught should occur in this country. It occasions great anxiety, and studies have begun to document higher degrees of absenteeism because of it.

You add to it the challenges that you have also outlined. When you take away adequate nutrition, you take away adequate healthcare, you take away adequate housing, then those are the things that kids have anxiety about.

Is my family going to have a place to stay tomorrow night? Am I going to get a meal tonight? Am I going to get the healthcare that I need?

On top of that, if they actually have a healthcare need that they are not getting, they will be absent from school. All the kids who are in school are preoccupied by that kind of consideration.

It leads to their inability to concentrate, as I am sure you saw—

Ms. BALINT. Oh, I know.

Mr. SAENZ. Many times, for all kinds of reasons in middle school. This just adds to it. It makes them ill-equipped to really take advantage of the education while they are sitting in the classroom. All of it accumulates.

Ms. BALINT. I just want to make sure I highlight something here. It is not just immigrant children. It is any family that is a family of color in this administration.

Because, we have seen that ICE enforcement is concentrating on people who have a different color of skin and a different accent. They have widened the search; it is creating lots of harm in our communities.

When you think about a child's immigrant status, and that if it can be used as a means to deny immigrant children of an education, where does this end?

What is the logical conclusion for this in terms of equal access to public education? Where will it end? What other groups will be excluded from this?

Mr. SAENZ. Well, you have to assume that the theory that there is no rational basis that would strike down the Texas law, means that there is no rational basis standard to strike down excluding disabled kids from school.

They are also expensive. Their education is more expensive. You can imagine that they would be the next target.

Beyond that, you can single out any group of students, because education is not a fundamental right. Under the theory being put forward today, there would be no basis to challenge any decision on equal protection grounds that would exclude any group of students.

You can imagine a society split between those who are allowed to receive a free public education and a large and growing group that are denied that opportunity.

Ms. BALINT. I agree with you. I stand with students. I stand with their families. I stand against the fear that is being created.

If we want a better world, which we all do, I think we can come together on that on this Committee, then we have to support and protect young people in this country, not attack them.

Thank you so much, and I yield back.

Mr. ROY. I thank the gentlelady from Vermont. Before I recognize my friend from Texas, I have a couple of unanimous extent requests.

I ask unanimous extent to put in the record, an article by *FAIR*, demonstrating the data showing illegal aliens have higher crime rates.

Without objection. A *CIS* report, showing misuse of Texas data understates illegal immigrant criminality.

Without objection. I would also put in a report by *FAIR*, showing that there were approximately, respectfully, 16,000 illegal aliens in Vermont, compared to 2.7 million illegal aliens in the State of Texas, in a report demonstrating State-by-State data.

With that, I will recognize my friend from Texas, Mr. Gill.

Mr. GILL. Thank you, Mr. Chair. Thank you for holding this hearing and for fighting so hard against destructive mass migration. Thank you for the witnesses for taking the time to be here.

Mr. Saenz, if somebody crosses the border illegally, what should happen to them?

Mr. SAENZ. Federal law indicates that there are steps that can be taken to remove them. Now, that can happen at the border.

Mr. GILL. They should be deported?

Mr. SAENZ. It can happen when they are integrated into society. There are protections once you are integrated into society, especially depending on how long—

Mr. GILL. If they are crossing, if we find them crossing into the country illegally, they should be deported to put it simply. Is that right?

Mr. SAENZ. If someone does not have a right to enter, yes, there is a right under Federal law to interdict them and prevent them from entering.

Mr. GILL. Right.

Mr. SAENZ. That has been a basic element of immigration law for a very long time.

Mr. GILL. I agree.

Mr. SAENZ. Including during *Plyler*.

Mr. GILL. I agree. Do you believe that American tax dollars should be used to rehabilitate criminal illegal aliens within our own borders?

Mr. SAENZ. I believe it is in our own interest to rehabilitate anybody who commits a crime.

Mr. GILL. Including criminal illegal aliens who never should have been here?

Mr. SAENZ. If it happens within our borders, if it happens within our borders, it is to the benefit of all of us to rehabilitate them. Rehabilitation of those convicted—

Mr. GILL. How many criminal—

Mr. SAENZ. Criminals are not for their own benefit. It is for the benefit of society.

Mr. GILL. How many criminal illegal aliens should we rehabilitate?

Mr. SAENZ. Again, anyone who commits a crime and is convicted of a crime should be rehabilitated—

Mr. GILL. There is no end?

Mr. SAENZ. To the benefit of the entire—

Mr. GILL. An illegal alien comes into our country, and murders or rape somebody, we ought to rehabilitate them, is your view. There is no limit to the number of illegal alien criminals we should rehabilitate? Is that your testimony?

Mr. SAENZ. I wasn't asked to testify about that, Congressman. I was asked to testify about—

Mr. GILL. I am just clarifying what your position is.

Mr. SAENZ. I am not sure what this has to do with anything.

Mr. GILL. I am clarifying your position on what you just attempted to lay out.

Mr. SAENZ. I think my position is quite clear. Thank you.

Mr. GILL. OK. How much money should we spend on rehabilitating criminal illegal aliens?

Mr. SAENZ. We should spend as much money as necessary to rehabilitate anyone who was convicted of crimes in this country. Again, let—

Mr. GILL. As much as we—

Mr. SAENZ. —me just note, Congressman, this has nothing to do with *Plyler v. Doe*.

Mr. GILL. We are getting—

Mr. SAENZ. These are children.

Mr. GILL. Yes, they are.

Mr. SAENZ. These are children. With an education, they are far less likely to—

Mr. GILL. We are getting there and you have already answered—

Mr. SAENZ. Commit a crime.

Mr. GILL. My question actually. Couldn't we just secure the border and deport illegal aliens as opposed to rehabilitating them on our own tax dollars?

Mr. SAENZ. That is too facile, Congress Member. You should understand that. The simple fact is, society benefits from rehabilitation. It is not a gift to anyone who is convicted of a crime.

Mr. GILL. Society is paying for rehabilitation, it sounds like. Do you believe that there should be a strict wall of separation between local law enforcement and immigration officials?

Mr. SAENZ. Do I believe there should be such a law? Yes, I do.

Mr. GILL. That there should be a strict wall, to be clear. A strict wall of separation—

Mr. SAENZ. All laws are strict. I am not aware of Congress or any legislature passing a lenient law. This is a strict law.

Mr. GILL. It is wall, W-A-L-L. It is not law, wall, W-A-L-L.

Mr. SAENZ. Oh, wall. A wall.

Mr. GILL. That is right.

Mr. SAENZ. I am sorry, I thought you said law.

Mr. GILL. No.

Mr. SAENZ. I apologize.

Mr. GILL. A strict wall of separation between.

Mr. SAENZ. The wall would be incredibly ridiculous, frankly.

Mr. GILL. A wall of separation between local law enforcement and immigration officials?

Mr. SAENZ. A wall of separation, is what, OK. Yes, Congress Member, yes. Again, I do believe there should be a law of separation. If you want to describe that law metaphorically as a wall—

Mr. GILL. The word is—

Mr. SAENZ. I would accept that.

Mr. GILL. OK. I was actually using your words, where you said there should be a strict, strict wall of no cooperation between local law enforcement and Federal immigration authorities.

That is something that you had said in an interview with *NPR* in November 2016. If police arrest—

Mr. SAENZ. I have just acknowledged that.

Mr. GILL. Right. If police arrest them—

Mr. SAENZ. I am not sure why you are quoting myself to myself. I am sure that maybe it was not—

Mr. GILL. I am asking you, I am the one asking questions here, not you.

If police arrest an illegal alien for breaking into somebody's home in the middle of the night, should they turn that illegal alien over to immigration officials?

Mr. SAENZ. *Plyler v. Doe* guarantees an education.

Mr. GILL. It is just a yes or no.

Mr. SAENZ. A result, that means that those kids who received that education—

Mr. GILL. I will tell you, you don't like that—

Mr. SAENZ. —are far less likely to break into anyone's home, Congress Member.

Mr. GILL. I am asking, let's say they do. Should they be turned over to immigration officials?

Mr. SAENZ. No. They—

Mr. GILL. It is just a yes or no question.

Mr. SAENZ. No, they should be put through—

Mr. GILL. They should be put through.

Mr. SAENZ. The criminal law system that we have.

Mr. GILL. What about after serving, let's say they are convicted and they serve a sentence. This is a criminal illegal alien, they broke into somebody's home. They are convicted. They serve, let's say, a five-year sentence.

Instead of releasing them onto the streets, should local law enforcement or prison officials release them or give them over to immigration officials?

Mr. SAENZ. There are too many repercussions of a policy like that. You are putting it in the context of a single instance.

Mr. GILL. No. It is very clear—

Mr. SAENZ. It is a very difficult concept.

Mr. GILL. It is very clear that your answer is no.

Mr. SAENZ. No. That is not clear, sir.

Mr. GILL. Your testimony—

Mr. SAENZ. That is not clear, sir. Please don't put words in my mouth.

Mr. GILL. Should American—

Mr. SAENZ. You have my words from *NPR*.

Mr. GILL. Should American taxpayers pay for—

Mr. SAENZ. What I say here, you don't need to put words in my mouth.

Mr. GILL. Should American taxpayers pay for Medicaid for illegal aliens?

Mr. SAENZ. In many circumstances, yes.

Mr. GILL. They should?

Mr. SAENZ. Not just American taxpayers, but immigrant taxpayers also pay taxes.

Mr. GILL. Should American taxpayers pay for social security for illegal—

As you know, sir, there is no exception for taxpaying—should American—

Mr. SAENZ. Due to immigration status.

Mr. GILL. I am the one who is asking questions here. Should American taxpayers pay for social security for illegal aliens? It is a yes or no question.

Mr. SAENZ. Actually, no.

Mr. GILL. The answer is no. I am asking a yes or no question.

Mr. SAENZ. It is not a yes or no question. It doesn't happen. We don't provide social security benefits—

Mr. GILL. Wait, I am asking you if we should?

Mr. SAENZ. To undocumented people. I wasn't aware that it was a topic of today's hearing.

Mr. GILL. I don't think that this should happen, and I am asking you if you think it should happen?

Mr. ROY. It is the last question. The witness may answer the question.

Mr. SAENZ. I don't believe that is a question when it doesn't happen. It is misleading to suggest it does. No one who is undocumented—

Mr. GILL. It is a really basic question.

Mr. SAENZ. Receives social security.

Mr. GILL. You don't want to answer it, because you have got a crazy radical open borders agenda that we can all see. Thank you, Mr. Chair.

Mr. ROY. I thank the gentleman from Texas for his questions. I will now recognize the Ranking Member for UC requests.

Ms. SCANLON. Yes. Thank you. I ask unanimous consent to enter into the record an article written by Alexandra Villarreal, published by the *Guardian* on January 23, 2026, "There are kids not going to school. Fear of ICE is keeping children from classes in Connecticut."

I also ask unanimous consent to enter into the record an article written by Bri Hatch and published by *Chalkbeat Tennessee* on October 28, 2025, titled, "In increasingly Hispanic Memphis schools, immigration enforcement surge brings fear and absence."

I ask unanimous consent to enter into the record an article written by Kate Payne, Bianca Vasquez Tones, and Gisela Salomon, published by *NBC News*, November 17, 2025, entitled, "Immigrant student enrollment is dwindling at schools across the U.S. amid immigration problems."

I ask unanimous consent to enter into the record an article written by Justine McDaniel and Maria Luisa Paul, published by the *Washington Post*, November 24, 2025, titled, "In cities targeted by ICE, empty desks and district follow."

I seek UC to enter into the record an article written by Daniella Silva and Natasha Korecki, published by *NBC News* on October 14, 2025, entitled, "Chicago teachers say immigration enforcement near schools is scaring kids."

Finally, I ask unanimous consent to enter into the record an article written by Mara Klecker and Anthony Lonetree, published by the *Minnesota Star Tribune*, January 15, 2026, titled, "Attendance drops at Minnesota schools as Federal immigration enforcement intensifies."

Mr. ROY. Without objection.

Ms. SCANLON. Thank you.

Mr. ROY. I will now recognize the gentlelady from California.

Mr. KAMLAGER-DOVE. Thank you, Mr. Chair. I just have to say that many of us travel around the world. In my travels, I remain in awe at how educated so many children are in other countries.

They are bilingual. They are trilingual. They are culturally proficient and aware. It is amazing.

It is so disturbing that it seems like my Republican colleagues in this Committee are interested in (A) dehumanizing other children, and (B) advocating for our children to be unprepared for this world.

At one point the languages that folks were hearing in the schools were Welsh, Irish, Polish, German, and Italian. Now, we want to

shift that to children of color as we continue to find ways to isolate ourselves and dehumanize children.

Mr. Saenz, folks do like to talk about the money, so let's get into the money. There was a *FWD.us* report called, "The Power of *Plyler*," that estimates that adult Californians who benefited from *Plyler* have contributed \$655 billion in combined past and future GDP over their lifetime.

Can you quickly walk the Committee through what that number looks like on the ground?

Mr. SAENZ. What it means is, we have contributing members of our society who are doctors, who are teachers. Many formerly undocumented students end up in the education profession, in the healthcare profession.

They are making contributions in business, in some cases in C-suite positions. It means that we have the opportunity to translate that investment in education into the GDP that report you have cited talks about.

Ms. KAMLAGER-DOVE. Right. The report actually shows a net fiscal gain of \$145 billion in California alone. That is income tax revenue over lifetimes, minus the cost of educating those children.

For those who claim we can't afford *Plyler*, how do you respond to the argument that we actually can't afford to lose it?

Mr. SAENZ. It is absolutely clear, because we will have immediate repercussions in our public schools, really seeing a further diminution in their ability to deliver an education to anyone.

In the long term, we will lose all that additional revenue and economic contributions, and the things that you can't even quantify in money. The innovations, the inventions, the new ideas, the the inspired leadership provided by formerly undocumented immigrants in our society.

Ms. KAMLAGER-DOVE. Sort of like, connectivity to humanity.

If *Plyler* is overturned, California stands to lose \$99 billion in future economic output, just from children currently in school in 2023.

What does that trajectory look like nationally, in your professional assessment?

Mr. SAENZ. Well, you can extend it out further, because if *Plyler* is overturned, a number of States will begin to attempt to deny an education to kids.

I ultimately think they would reverse as they see their public schools fall apart, because of the exclusion of a certain class of students.

Overtime, you are talking about trillions of contributions to the economy, including to revenue from a population that is permanently going to be in this country.

The contrast is a permanent underclass incapable of providing any kind of serious contribution to either tax revenues, the economy, or to the many other elements of social connection that we have talked about.

Ms. KAMLAGER-DOVE. Thank you. To Mr. O'Brien, your organization advocates for restricting *Plyler*. The record here shows that the core argument you make, that educating these children is a cost to taxpayers, simply doesn't hold up.

The data shows tax revenue from undocumented workers alone covers the cost of educating these children more than nine times over.

Am I correct in saying that you believe that the hundreds of billions of dollars in economic contributions from *Plyler* beneficiaries, including over \$600 billion in California alone, were not worth the investment?

Mr. O'BRIEN. I don't believe that those contributions were made. I believe that the data on which those claims are based is erroneous, and that there is a cost imposed by *Plyler*.

Ms. KAMLAGER-DOVE. OK. You don't like the data when it doesn't say what you want it to say. I am going to stay with the numbers in the report and the numbers that are here.

FAIR has argued that educating undocumented children is a cost to taxpayers. The data in front of us shows a net fiscal gain of \$145 billion in California, \$43 billion in New York, \$20 billion in Arizona, \$93 billion in Texas, \$42 billion in Florida, and \$21 billion in Washington.

Once again, we should be talking about why we cannot afford to lose *Plyler*, not why it is so important to lose all these economic gains.

Mr. Chair, I just want to enter into the record, I would like to ask unanimous consent to enter into the record the report *FWD.us* report, "The Power of *Plyler*."

Mr. ROY. Without objection.

Ms. KAMLAGER-DOVE. Thank you so much. I yield back.

Mr. ROY. I thank the gentlelady from California. I will now recognize the Chair of the Committee, Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chair. Mr. Rogers, what percentage, any idea what percentage of the United States population lives in a sanctuary jurisdiction?

Mr. ROGERS. That is a good question. I don't have that number, but it is far too high. It should be zero.

Mr. JORDAN. Yes. It should be zero, but it is like 31.5 percent. Eighteen cities, 11 States, three counties, and the District of Columbia.

Because these are big Blue cities, big Blue States, again, almost a third of the population lives in a jurisdiction where, and correct me if I am wrong, but where local Left-wing political leaders tell local law enforcement not to work with Federal law enforcement when it comes to enforcing Federal law.

Is that your understanding of sanctuary jurisdiction?

Mr. ROGERS. Correct. Yes.

Mr. JORDAN. Is that literally one of the dumbest things you have ever heard?

Mr. ROGERS. Yes. It is against Federal law as well because it is not—

Mr. JORDAN. No kidding. In a third of the country, that goes on. Last year alone, we just marked this Bill up two weeks ago, last year alone, 2025, 17,864 times, ICE would file a detainer with a local law, with local jail, local detention center, where there is a person who is in the country illegally and been charged with a crime, and ICE would send a detainer notice saying, hey, if you are going to let this guy out, give us a call.

For 17,864 times in 2025, local law enforcement, because Left-wing politicians told them to, would not work with Federal law enforcement. Many times, these people are released to the streets.

Again, I would ask you, is that a crazy policy or what?

Mr. ROGERS. It is absolutely crazy and it is totally counter-productive for everybody, illegal immigrants, and legal immigrants who live in those communities.

Mr. JORDAN. Would you be surprised to learn that several of those people who were released, then went out and caused harm, did some crime against some other American or maybe some other migrant, who knows, but committed some crime after they have been released when they could have been turned over to Federal law enforcement?

Mr. ROGERS. It is not surprising. It is totally predictable. It is a tragedy for each of those people.

Mr. JORDAN. Totally predictable. Mr. Saenz, would you say that is a good policy?

Mr. SAENZ. Which policy, Congressman?

Chair JORDAN. The policy sanctuary jurisdiction.

Mr. SAENZ. It's a good policy.

Chair JORDAN. It's a good policy to let 17,000 people out, potentially 17,000 people, not on a detainer and let some of those people released to the streets who had already been charged with a crime, and then, they commit another crime? You're saying that's a good policy?

Mr. SAENZ. That's your characterization of how that works out.

Chair JORDAN. No, that's the facts.

Mr. SAENZ. It's an inaccurate—it's an inaccurate characterization.

Chair JORDAN. That is the fact.

Mr. SAENZ. No, I'm sorry, it's inaccurate.

Chair JORDAN. OK. Tell me what's inaccurate.

Mr. SAENZ. If you want to have accurate—

Chair JORDAN. Thirty-one—31 percent of the—

Mr. SAENZ. If you want to have—

Chair JORDAN. Thirty-one percent of the population lives in a sanctuary jurisdiction. Is that inaccurate?

Mr. SAENZ. I don't know. I take your word on that.

Chair JORDAN. OK.

Mr. SAENZ. I don't know.

Chair JORDAN. That's not inaccurate. What about this: 17,864 times a detainer was not honored last year by local law enforcement when ICE issued detainer?

Mr. SAENZ. Again, I have no idea, Congressman. What I came here to talk about, *Plyler v. Doe*, and I can absolutely guarantee you there has never been a detainer issued against a student enrolled in public education as a result of *Plyler*.

Chair JORDAN. That wasn't asked. I'll get to the student issue—

Mr. SAENZ. The hearing is about *Plyler*.

Chair JORDAN. The hearing is about—

Mr. SAENZ. I don't have an answer to your question about whether the—

Chair JORDAN. The hearing is about *Plyler* and about immigration policy—

Mr. SAENZ. —data you have is accurate and related to something completely unrelated.

Chair JORDAN. —and about immigration policy, and I'm getting to that.

Mr. ROY. Suspend. It is the gentleman's time to ask the questions. The witness can respond to the questions, but we are not going to talk over each other. Mr. Chair?

Chair JORDAN. Mr. O'Brien, to get to *Plyler*, there's a cost associated with this, right?

Mr. O'BRIEN. Yes.

Chair JORDAN. With this decision?

Mr. O'BRIEN. There is.

Chair JORDAN. Significant? The court said, way back in 1982, the number of illegal aliens in public schools was small and there was, quote, "no evidence in records suggesting that illegal entrants impose any significant burden on the State's economy." That was the ruling back in 1982, but things have changed a little bit since then, haven't they?

Mr. O'BRIEN. They've changed drastically and the estimated combined cost to the taxpayers—Federal, State, and local—is somewhere in the neighborhood of \$80 billion, with a "B."

Chair JORDAN. It was particularly exacerbated the last—the previous four years in the last administration? Is that accurate?

Mr. O'BRIEN. Yes, by a significant margin.

Chair JORDAN. Eight to 10 million people were coming into the country in a four-year timeframe. Many of those were students. I remember the Biden Administration lost track of hundreds of thousands of those students.

Mr. O'BRIEN. About—

Chair JORDAN. Is that right?

Mr. O'BRIEN. About 300,000, that's correct.

Chair JORDAN. Yes. There is certainly a cost associated with that. That's what this hearing is about as well, yes.

Let me ask one other question here, and then, maybe I will yield a few seconds to my good friend from Texas.

Is Thomas Paine an undocumented immigrant or a Founding Father, Mr. Rogers? I'm just curious.

Mr. ROGERS. He's a Founding Father. He's not an undocumented immigrant.

Chair JORDAN. Yes. Mr. O'Brien?

Mr. O'BRIEN. He was a citizen of the U.K. who went to another territory of the U.K. It was like moving from Massachusetts to New Hampshire.

Chair JORDAN. Yes. Yes.

Ms. Drogin, I just was curious if you thought he was an undocumented immigrant or a Founding Father.

Ms. DROGIN. He's a Founding Father.

Chair JORDAN. What about you, Mr. Saenz, what are you going to say to that question?

Mr. SAENZ. I'd say the terms don't apply back when Tom Paine was alive. It is true he was undocumented.

Chair JORDAN. Well, but isn't—

Mr. SAENZ. That really wasn't a category of any concern in the 18th century.

Chair JORDAN. Was he a Founding Father.

Mr. SAENZ. He's both a Founding Father—

Chair JORDAN. Come on, it's—come on, it's "Common Sense"—pun intended. Was he a Founding Father?

Mr. SAENZ. Of course he was.

Chair JORDAN. All right. God bless you. I will yield—well, I'm sorry, Mr. Gill, I ran out of time.

Mr. ROY. I appreciate the Chair. I will now recognize the Ranking Member for a UC.

Mr. GOLDMAN. Mr. Chair, don't leave yet. I have a question for you, if you—

Mr. ROY. Mr. Goldman, hold on. Hold on. I recognized the Ranking Member for a UC.

Ms. SCANLON. I can hold the UC.

Chair JORDAN. Mr. Goldman, I do have to do an interview. That's why I was, I do, but make it quick.

Mr. GOLDMAN. I have one question for you.

Chair JORDAN. Yes, let's hear it.

Mr. GOLDMAN. Of the 17,00-and-however-many—

Chair JORDAN. The 864.

Mr. GOLDMAN. —yes—how many of those people had completed—had a criminal conviction and completed their sentence?

Chair JORDAN. I don't know that number. I know there was a detainer filed—

Mr. GOLDMAN. Right.

Chair JORDAN. —at the local detention center or jail, and it was not honored. Some of those individuals were released, and we know some of them committed crimes.

Mr. GOLDMAN. Right. The problem—you can go, that's fine—but the problem with you constantly making this argument about sanctuary cities is that these are charged defendants.

As President Trump knows very well, we live in a country that has due process, where you are innocent until proven guilty. If the grounds for which an individual is to be deported is based on that criminal charge, we do not deport people based on charges. We deport people based on convictions.

If you want to talk about the sanctuary laws, let's talk about what the issues that you are raising are.

Mr. Rogers, Mr. Jordan asked you whether or not the sanctuary laws prohibit State or local law enforcement from cooperating with Federal law enforcement. The problem is these are criminal law enforcement agencies and the State and local level, and immigration is civil law enforcement. We can imagine a scenario, of course, where the civil immigration enforcement completely overwhelms all the resources of the local police and the local criminal law enforcement. That is the reason why sanctuary city laws apply is that the police can actually focus on crime, not on Federal civil immigration.

As Mr. Saenz says, we are here to talk about children—children—that this administration continues to attack. This administration has increased the fees for any unaccompanied child to actually apply for a visa. Where is that unaccompanied child supposed to get money from?

This administration has canceled contracts for legal representation for children. This administration has consistently—and my Re-

publicans have consistently—attacked children who may be transgender and affect no one else. This administration is waging a war on children. Leave children alone.

The bigger point is what you haven't touched on, is all the expenses that these undocumented children take up in their public education, well, Mr. McClintock says they're benefiting from taxpayer benefits. Well, guess what? Undocumented immigrants are taxpayers.

In fact, the amount of money that we get from taxes paid by undocumented immigrants is nine times as much money as is paid on their education. In fact, studies show that \$633 billion in local and State tax revenues exceed whatever the education costs are. It increases our GDP by nearly \$3 trillion.

Why don't we stop terrorizing immigrant communities, shooting Americans, ripping Americans out of cars, arresting people at courthouses who are trying to lawfully apply for asylum? Why don't we have a bill and a hearing on that rather than continuing to attack children who are brought here without any ability to make the decision themselves?

You want them to—what?—stay home, sit at home, when their parents decide to come here—rather than get an education, contribute to our society, which the overwhelming majority do?

Yes, I'm sure you can pick out one or two, or five or ten, or 20 people who are released and commit a crime, but that shouldn't happen. If they do commit a crime, they should be deported. I disagree with Mr. Saenz on that. That's not what is happening here.

Just stop attacking children. I yield back.

Mr. ROY. I recognize the Ranking Member for a unanimous consent request.

Ms. SCANLON. Thank you. First, I would introduce an article published by *The 19th*, dated January 6, 2026, "Five years after January 6, dozens of pardoned insurrectionists have been arrested again."

I also have a statement of Professor Patrick Wolf highlighting how our Founding Fathers stressed the importance of educating immigrant children. Patrick Wolf, distinguished Professor of Education Policy and 21st century endowed Chair at the University of Arkansas.

A UC request to enter into the record a statement arguing keeping children in school protects public safety, strengthens our economy, and upholds our country's principles. That's Professor Gerard Robinson at the University of Virginia.

Another one from NYU Professor Sophia Rodriguez that dismantling *Plyler* would harm children of U.S. citizens and all children in U.S. schools.

I also have an unanimous consent to enter into the record statements from the following organizations: All4Ed on behalf of 109 civil rights organizations, National Immigration Law Center.

Mr. ROY. Go through the list.

Ms. SCANLON. OK. The Center for Law and Social Policy; the Century Foundation; the National Youth Law Center; the National Education Law Center, the First Focus on Children, and the AFL/CIO.

Mr. ROY. Without objection.

Ms. SCANLON. Thank you.

Mr. ROY. I thank the gentlelady.

I will now recognize the gentleman from Wisconsin for five minutes.

Mr. GROTHMAN. Thank you. First, I would like to thank Ms. Drogin for bringing up one of the great horrors our country was involved in over the last few years, and that is the huge number of sexual assaults which took place by leaving the border open. I went down to the border maybe seven or eight times, and I talked to the doctors who interviewed the women, kind of debriefed the women, when they got to this country. The fact that the Biden Administration allowed this open border policy complete with—by the time it was over, it must have been hundreds of thousands of sexual assaults—is really one of the low points in this country's history. I wish we had more Democrats at the time who were able to look out for the women.

I will also point out that there are bogus studies out there claiming that these illegal immigrants are not committing many crimes. The only way they are able to come up with such a ridiculous conclusion is you look at—we do not keep track of whether legal or illegal or citizens are committing crimes. If I go into a Federal prison which is near my District and ask, "How many of the inmates here are illegal immigrants?" they would say, "We have no idea." The same thing when they talk about a county jail. Given that most of these illegals are not classified as illegals when they are in prison, that is how you get this bogus situation.

I'm going to ask Mr. Rogers a question. I did not even know this response to Mr. Harris' question as far as who pays for people's public education. If someone is a legal immigrant here or an illegal immigrant, do we treat them differently?

Mr. ROGERS. Yes, we do. For example, if a family were to come on a tourist visa, DHS would let them in for six months, and they can often extend for another six months. A family who stayed here for a year under their tourist visas and enrolled their kids in public school, under the law, they would be required to pay the cost of that education here, as temporary visitors; whereas, the illegal immigrants under *Plyler* are not.

Mr. GROTHMAN. That's just insane, of course, the idea that we one more time treat people who come here illegally better than we treat people who come here legally.

Now, I guess I could ask any one of you a question, but I will start with Ms. Drogin. We, obviously, have way too many illegal immigrants in this country, and we have to do something to discourage this, everybody from coming here. What effect does allowing people into our public schools for free have on the temptation to come here illegally?

Ms. DROGIN. It's a significant temptation. We hear this all the time. You talked about the mothers that you've met whose children were abused and themselves abused on their journey up here. They are driven by the promise of educating their children. We hear this time and time again. They are told, if you get here, then your children can be enrolled in the schools.

That is what we are seeing occur all across the country, but Texas really is where many of them are entering at first point, and

they're finding locations that—and this is why we talk about the growing—Chair Roy talked about how you have districts that started with a couple of dozen kids and they've grown to hundreds. There's communication, and they are bringing their children here to seek out a free public education.

Mr. GROTHMAN. It's interesting. I don't know the answer to this question, but I will just see if any of you want to guess. We have a policy of giving, apparently, a free education to people who come here illegally. We also have a policy of giving free healthcare to people who come here illegally. Which is the dumber policy? Which is the one resulting in more people coming here who shouldn't be here, the free-healthcare-for-all policy, more than the average American gets, or the free education policy? Anyone want to guess—wildly?

Mr. ROGERS. I would say it's probably a tossup. I did spend two years as a consular officer doing visa interviews in Brazil, and I personally saw people brag about how they could get free healthcare when they stayed here illegally. It definitely is a draw.

Mr. GROTHMAN. Right. I heard when I was down talking to the Border Patrol, dialysis treatment for free, time to get free dialysis; come to America. Right?

The next question. We have the idea that there is a racial element to what we are doing. Among people who all come here naturalized, and every year, about 800,000 people are naturalized legal in this country, something like six times the number when I was child. Does anybody have any guess which countries, when it comes to letting people into this country or becoming citizens legally, which country they are from?

[No response.]

I'm under the impression that, of the 10 countries that send the most new people here, none of them are European Nations. The idea that we are a racist country is just a horrible slander against our country, and it makes one wonder about the motivation of people who do it.

Thank you very much.

Mr. ROY. I thank the gentleman from Wisconsin. Thank you for his questions. I will now recognize my friend from Missouri, Mr. Onder.

Mr. ONDER. Thank you, Mr. Chair.

Plyler v. Doe is a clear example of judicial overreach with lasting consequences. What began as a narrow Texas funding law was transformed by the court into a nationwide mandate requiring the States to provide free K–12 education to illegal aliens.

As Dr. O'Brien and Mr. Rogers testified, this was not a constitutional interpretation; this was judicial legislation. In doing so, the court intruded on Congress' exclusive authority over immigration and imposed significant ongoing costs to taxpayers.

When unelected judges create policies of this scale, voters and their elected representatives are left without a meaningful voice in the decisions that directly affect their schools and their children's education.

As the *Dobbs* framework actually offers a clear outline for reconsidering *Plyler*, as Mr. Rogers pointed out, *Plyler* fails all five

Dobbs factors for reconsidering precedent because it was egregiously wrong from the outset.

As Ms. Drogin testified, *Plyler*'s downstream effects extend beyond illegal alien students. Schools are forced to operate without critical information about student populations and are unable to collect immigration status data that would inform resource allocation.

It is time for Congress to reclaim its constitutional role and end this era of immigration policy dictated by unelected judges. Taxpayers are tired of bearing the financial burden of judicial mandates, and States need to be empowered to allocate resources based on their unique needs and the needs of all American students.

Ms. Drogin, it seems to me ironic that my Democrat colleagues are somehow claiming that Democrats are standing up for these children who enter the country illegally. Three hundred thousand unaccompanied minor children entered this country under the Biden-Harris Administration, while Democrats in Congress cheered them on. Many of those kids were lost. In fact, the Biden Administration lost at least 85,000 children.

Some of these children were released to guardians at an address that didn't exist or dozens of list to "Uncle Jose" at the same address. Many of those kids are, undoubtedly, being trafficked to this day. Many are probably dead.

What do you say to this, the idea that somehow the Trump Administration or we Republicans in Congress are somehow being cruel to illegal aliens?

Ms. DROGIN. It's incredibly cruel to lure children and parents to the United States, to send them through violent situations with coyotes that rape them, harm them, other violence, and then, put them—

Mr. ONDER. This goes on. This is undisputed.

Ms. DROGIN. This is undisputed.

Mr. ONDER. Women and children are raped by coyotes, and my Democrat colleagues encourage this. The Biden-Harris Administration encouraged this?

Ms. DROGIN. Yes. The policies that encouraged families to come over here with the promise of a better life or freebies, if you will, that does encourage them to go through that, and then, of course, as you noted, it's the Department of Homeland that said that there were hundreds of thousands that they could not find.

Mr. ONDER. Yes.

Ms. DROGIN. Yes, this is a huge problem, and I know that a lot of times some want to use feelings over facts.

Mr. ONDER. Yes.

Ms. DROGIN. The reality is that facts are being hidden intentionally. As I mentioned in my testimony, the Obama era Administration, the Department of Justice and Education worked together to send out their "Dear Colleague" letter implying, just like they did with disciplinary measures and transgender ideology—

Mr. ONDER. Yes.

Ms. DROGIN. —that you would be investigated if you did not play our political game.

Mr. ONDER. Yes.

Ms. DROGIN. Yes, that is what is happening here.

Mr. ONDER. Thank you. Thank you.

Mr. Rogers, I have heard over and over again in this hearing that illegal aliens are taxpayers. Are all illegal aliens taxpayers?

Mr. ROGERS. No, obviously, a lot of them are paid under the table in a significant tax—

Mr. ONDER. Yes. The first time this ever came to my attention is when I was running for State rep in 2006, and I started knocking on the doors of actually union—I was in a neighborhood that was predominantly union households. They started asking me, “What are you going to do about illegal immigration?”

Because, in O’Fallon, Missouri, a low-income housing tax credit-funded project was being staffed by illegal aliens who were working off the books. The O’Fallon Police Department busted dozens working illegally off the books.

I don’t think we have any idea what the true magnitude of that is.

Mr. ROGERS. Correct, we don’t, because the studies that talk about benefits cherry-pick the data. Clearly, there’s significant costs that aren’t being accounted in those studies.

Mr. ONDER. Thank you. I yield back.

Mr. ROY. I thank the gentleman from Missouri. I want to offer my apology to the Ranking Member. I went out of order, believing that she had already gone. It was my fault, and she was gracious in allowing Mr. Onder to continue his questions.

I will now recognize the Ranking Member for her five minutes.

Ms. SCANLON. Thank you. Mr. Saenz, you mentioned earlier that much of the discussion we have heard today has been based on a conflation of ideas that all students from immigrant families who require ESL are undocumented in this country. We know that almost half of foreign-born U.S. residents are, in fact, citizens. Another 19 percent are legal permanent residents who could become citizens. Another five percent are here on temporary visas, and half of the remaining, about a quarter of foreign-born immigrants living in the United States have some legal status, including awaiting a determination of their asylum claims or U visas, temporary protected status, DACA status, humanitarian relief, et cetera.

We are actually talking about a very small number of our total immigrant population who are, in fact, undocumented. When we talk about the children of those folks, it becomes even smaller.

As a former school board member, I am concerned about the idea that we are going to put the burden on our school districts of determining immigration status, when our Federal Government has such a hard time determining that. Also, the burden of remedial education that would occur if we deny basic education services to children at formative parts of their lives.

Can you talk about the impact on a child’s life if they are denied an education and what that is going to mean to our communities as well?

Mr. SAENZ. Well, first, it is important to note, as you do, that all these programs would continue. English learner programs, remedial education programs, and all the programs that are being somehow attributed to the undocumented population, because it is so small, it would have to continue for public education to succeed.

Indeed, the incremental cost of adding one more English learner to an English learner program is much, much smaller, obviously, than having to create a new program, which is not what's happening.

What happens over the course of a child, and then, an adult's life, who does not get a basic education is they end up illiterate in all likelihood, and the options for those who are illiterate are quite limited. Too often, the options are ones that are against the law for many. For others, they will have to, as you have mentioned, have to find some way to become literate.

You would have to see some huge increase in adult literacy programs to create a workforce that is even capable of doing the most menial of jobs. The alternate, as you know, is to ensure that every kid has an education and can go on beyond 12th grade, if that's their inclination and their talent allow it, to make the kinds of contributions that we've seen from so many formerly undocumented immigrants ongoing in our society today.

Ms. SCANLON. Thank you. You touched on something that we all saw during the COVID crisis; that when schools close down and kids are not in school, we saw a huge spike in gun violence and community violence that was impacting kids, either because they were unsupervised, not getting an education, or because they had too much time on their hands.

Can you talk about what excluding kids from school could do to our communities? In particular, I'm a little—

Mr. SAENZ. Yes.

Ms. SCANLON. —surprised that this procrime policy is something our colleagues have expressed interest in.

Mr. SAENZ. I had the great honor of representing the plaintiffs in challenging California's Proposition 187, which is the only direct attempt to contradict *Plyler* in the 44 years since. That was only 12 years after the decision in 1994.

What we found was police chief after police chief after police chief who would testify that what would happen when you have hundreds, thousands of kids on the street is they are likely to become the victims of crime, because they're readily available. Too many of them, as they age, would then be fostered into becoming participants in the criminal rings that they were first victimized by. It would result in a huge increase of crime almost immediately, once you have those kids out of school.

As I've said, it multiplies over time because, ultimately, it's not just the kids who are excluded who choose not to be in school. Their siblings, citizen younger siblings of undocumented older siblings, will follow them out of school at some point, many of them. Others are friends; others are even acquaintances who see, if they don't have to be in school, then why am I here?

Frankly, it will be accelerated by the withdrawal of all the support that is happening this year and next. Whether that's healthcare, nutrition, or housing, that's going to lead to more kids' inclinations to be out of school.

If you start with eliminating *Plyler*, it will multiply quickly under the current regime because of those that lack support. A huge spike in crime.

Ms. SCANLON. If we accept the argument that immigration status can be used as a reason to deny public education, where does that logic stop?

Mr. SAENZ. Again, it means that you are then allowing local decisionmakers to decide who they would like to exclude from school. It's likely to start with those who are somehow different from the norm or are somehow more expensive, in someone's views, to educate, and it could lead to a serious decrease in eligibility for public education that the Supreme Court noticed in another important case, *Brown v. Board of Education*, is so critical to preserving our democracy and preserving our ability to thrive as a society.

Ms. SCANLON. Thank you. Mr. Chair, I have one last—I hope—unanimous consent request. The February 6, 2025, a *PBS* article entitled, “Who are the immigrants who come to the U.S.? Here's the data.”

Mr. ROY. Without objection.

Ms. SCANLON. Thank you.

Mr. ROY. Before I start my time, I have a UC request. Insert an article by Lora Ries of the *Heritage Foundation*, “Every State should challenge *Plyler v. Doe*. Time to end free education for illegal alien K–12 students.”

Without objection.

[The information referred to follows:]

Mr. ROY. With that, I will begin my five minutes of questioning. I would note, Ms. Drogin, just quickly for you, is child mutilation in the context of transgender surgeries good for children?

Ms. DROGIN. Absolutely not.

Mr. ROY. Is child migration in which the coyotes are abusing these young girls and children good for children?

Ms. DROGIN. No, it's not.

Mr. ROY. Did disastrous open borders policies result in children being abused in the migration process?

Ms. DROGIN. Absolutely, it did.

Mr. ROY. This notion of not being in school being somehow a time when children will get in trouble, being in danger, even if you concede that potential reality, is the problem of them not being in school or is the problem being here illegally?

Ms. DROGIN. Being here illegally.

Mr. ROY. Right. Isn't that the condition present? This whole question here about, well, we're going to be allowing local decisionmakers to make arbitrary decisions about who can be educated—are we not talking about that it is not arbitrary? We are just saying that it should be American citizens or people who are legally present in the United States. Correct?

Ms. DROGIN. One hundred percent.

Mr. ROY. Now, all this here, we have been talking about policy. We have heard a lot of my Democratic colleagues, we have heard Democratic witnesses in this hearing and in others, acknowledge on the record, open without shame, that local law enforcement should not cooperate with Federal authorities. We have heard that here today. We have heard that illegal aliens' children who are committing crimes should not be turned over to ICE for dealing with their possible deportation. We have heard that sanctuary cit-

ies, for 31 percent of the population, are good. We have heard that there is no limit that would be accepted for how many people should come to the United States, when we have 2.4 billion school-age children around the world.

My question here is, all that seems to be the policy positions of my Democratic colleagues and those that are testifying on behalf of my Democratic colleagues. I think the question here at the core of this is a legal question, right?

In that, I would like to turn to Mr. O'Brien and Mr. Rogers to close. It is that my Democratic colleagues and witnesses have said, effectively, in an exchange between the Ranking Member of the Full Committee, Mr. Raskin, the witness, and I'm going to paraphrase, that *Plyler* didn't change any status; that the result of *Plyler* wasn't to change a legal status, but it does, effectively, say it would be bad; it would be bad for kids who are here illegally.

Isn't this effectively, Mr. O'Brien, first, Mr. Rogers, an admission that *Plyler* should be struck down; that this was, effectively, a policy choice by the court, not a legal decision banked in—or based on the Fourteen Amendment? Mr. O'Brien, first.

Mr. O'BRIEN. Yes, the court, essentially, says that in its opinion. It admitted outright that illegal aliens are not a suspect classification and that there is no right to a free public education. Therefore, there shouldn't have been any issue before the court at all.

Mr. ROY. Mr. Rogers, can you extrapolate on that?

Mr. ROGERS. Yes. It's absolutely a policy judgment. If judges have concerns about policies in America, they should run for office, but it's not their role to make policies as judges.

Mr. ROY. Correct. Because there has been a lot of policy discussion in this hearing, but the question here is, as I put in the record the *Heritage* paper saying these States should be able to proceed with their policies and that *Plyler* should be struck down. It should be left to the States to decide or Congress to make policy.

Mr. O'Brien, you referenced, the majority found that the Texas law imposed, quote, "a lifetime of hardship on children with no responsibility for their immigration status taking an estimable toll," and that Texas' interest, quote, "in the preservation of the State's limited resources with the education of its lawful residents did not outweigh the harm." The court made a policy choice.

Mr. O'BRIEN. Yes.

Mr. ROY. Correct?

Mr. O'BRIEN. A hundred percent.

Mr. ROY. They literally wrote out in their opinion a policy choice and preference. They did not root it in the Constitution or the law, as, frankly, was the standard of the day at that time. Right?

We have already gone through, Mr. Rogers, do you acknowledge, in the *Dobbs* decision, laying out how we go back and review precedent? It is your position, correct, as you stated here—but I want to summarize and close—that you think that the court should review it; that they would have, under the *Dobbs* framework, the ability to review that precedent, and especially, in light of the error that was found in *Dobbs*' opinion and review of *Roe*, that we have got a similar legislating-from-the-bench problem, a policy choice that was made by judges to assert, in a 5–4 opinion, that the people of Texas could not make a decision on their behalf for their

schools, for their education, for their taxpayer dollars, on how to deal with the failure of the Federal Government to secure the border and inundate our schools with people who are in the United States illegally? Do you believe that the court should review it, based on what I have just described?

Mr. ROGERS. Absolutely, it should review it. It should overturn *Plyler*. We've heard testimony about all the benefits from *Plyler*, but it's not a court's role to determine the financial benefits. That's for legislators to weigh and that's where this should belong—in State legislatures and in Congress.

Mr. ROY. In closing here—with seven seconds left—do you believe that, if brought to the court, to the Supreme Court, if States were to take action—Mississippi, Texas, and other States have been taking to act on their behalf and pass policies—do you believe that, if taken to the court, that this Court would, in fact, overturn *Plyler* and side with the States?

Mr. ROGERS. I do.

Mr. ROY. Well, with that, I now have my friend from Texas who has joined us here, and I would recognize Mr. Hunt for his five minutes.

Mr. HUNT. Thank you, sir. Thank you, Mr. Chair.

Under the Biden Administration, American students and parents were overlooked. This is a fact and we all know it. President Trump took decisive action to prevent illegal aliens from receiving free secondary education—which, by the way, is a very good thing. Now, we must also prevent illegals from accessing any taxpayer benefits, including K–12 education.

As someone who was a product of school choice—me—whose parents drove me one hour each way, so I would get the education that they worked hard for me to actually attain and earn, I understand the importance of this hearing and the need to ensure opportunities are available to all American children who are tax-paying American children and tax-paying American families. Under zero circumstances should illegal aliens receive benefits that American families rightfully deserve.

In the 1982 ruling in *Plyler v. Doe*, it declared that the 1975 Texas law denying funds to public schools that enrolled illegal aliens was unconstitutional because it caused lifetime hardships on children who are not responsible for their immigration status. What about those legal citizens in this country that are also being overlooked, specifically, in Texas, my home State?

During that case, it was argued that only a small number of students were illegal, suggesting this ruling would be insignificant. This decision was flawed then and it has become a harmful burden to the American youth today.

The situation under Democrat control was the border crisis with over 20 million people entering this country—we have no idea who they were—and benefiting from the efforts of hardworking Americans. As we have discussed ad infinitum today, we are in so much debt that we can't even figure out how to get out of it, and the debt clock gets worse and worse and worse, and we are simply flat-out can't afford it.

Somebody has to have the backbone, and somebody has to have the ability to call this out for what it is. It raises a very serious

question: What could this money have done for American families? What could this money have done for American students?

As somebody who is a believer in Christ, as somebody who believes in the good of America, as somebody that has fought for this country, and as somebody that has risked my life to defend this great Nation, I understand the need to want to help others, but, oh, my gosh, what about our own American citizens that are tax-paying Americans right here right now that should be put in first place? That's what this whole America First movement is all about. This is what I fought for.

While I wish we could save the world, unfortunately, this is not going to work. We must protect ours first, just like any other country in the entire world would. You see, last I checked, I haven't seen any other country giving Americans piles of cash. We are the ones that are shipping our billions of dollars of hard-earned tax-paying dollars to everybody else, and no one wants to help us.

My first question is for you, Ms. Drogin. Thank you very much for being here today. Thank you for your testimony. As a product of school choice, I want to personally thank you for your ongoing efforts at helping the future of our children.

You say that Congress should consider legislation allowing States to collect and share immigration data for educational planning. Can you expand on this? In your opinion, what should be done with States that refuse to participate?

Ms. DROGIN. Yes, well, as I talked about, the "Dear Colleague" letter that, essentially, threatened districts or States for collecting it, that was the implied chilling effect of the letter.

Mr. HUNT. Right.

Ms. DROGIN. The problem, obviously, there is you have educators, you have educating leaders that are afraid of this. They're afraid of the ramifications across our State, across our country. They're not collecting this data.

Therefore, every time that we heard someone give statistics, whether it's how much they supposedly contribute, it's erroneous because it's not based in fact. We literally don't know, but we can estimate. We can estimate how much this cost.

We can also go back and look at the students. While English second language or emergent bilingual is not a perfect description of students that are likely here illegally, it gives us some sort of idea of what's happening.

What is happening is these students in these districts are causing negative ramifications across the board, whether it's in their classrooms, in their schools, in the entire districts that we are seeing being taken over by the State. That disrupts all the education. It is a crisis to not identify who these students are.

Mr. HUNT. Uh-hum.

Ms. DROGIN. We do it with special ed. We even do it with incarcerated parents. It's just commonsense to say, who are the kids in our schools? Of course, we're not doing that now, and that creates a huge crisis, both on resources and on funding.

Mr. HUNT. This is an issue of opportunity cost. If we are not helping American students, we are helping illegal—the children of illegal aliens that shouldn't be here in the first place. It means we are not helping an American student that deserves it.

Ms. DROGIN. That's right.

Mr. HUNT. This is not a difficult concept. It is actually quite easy. No, I'm not a jerk. No, I'm not xenophobic. I believe in ensuring that we educate American citizens first. That is where our resources—it doesn't need to go there; it must go there.

Thank you very much. My time is up. Thank you, Mr. Chair.

Mr. ROY. I thank the gentleman from Texas. I thank the witnesses for their testimony.

This concludes today's hearing.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 12:38 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Constitution and Limited Government can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=119069>.

