Testimony for the Record by
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House Judiciary Committee
Subcommittee on the Constitution and Limited Government

Hearing Title: "Immigration Policy by Court Order:
The Adverse Effects of Plyler v. Doe"

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Chairman Roy, Ranking Member Scanlon, and Members of the Subcommittee, I appreciate the opportunity to submit testimony on behalf of First Focus on Children, a bipartisan organization dedicated to making children and families a priority in federal budget and policy decisions.

I am grateful to address the Subcommittee on consequential constitutional questions of importance to children: the coordinated effort to overturn *Plyler v. Doe*, the 1982 Supreme Court decision holding that states may not deny undocumented children access to public education.

I come before you today – not as a doctor or lawyer – but as someone who has worked in federal and state policy on behalf of children for more than thirty years, including service on Capitol Hill and in state government, and as someone who believes deeply that the United States must live up to its founding commitment to every child in this country. I am also a beneficiary of the *Plyler v. Doe* decision, as it personally impacted my life for the better in numerous ways.

As a child growing up in El Paso, Texas – more than 700 miles from Tyler, where *Plyler* originated – that Supreme Court decision was vital to my own community and its children. It ensured generations of students received the education they deserved and kept public schools from being turned into quasi-immigration enforcement agents.

Growing up, I had close friends, neighbors, classmates, and teammates whose families were directly affected by *Plyler*. They taught me much about life, and they have gone on to lead impressive lives that have benefitted their families, their communities, and our nation – all because a Supreme Court decision kept their schoolhouse doors open.

Children, families, neighborhoods, communities, and the nation would all be worse off if the Supreme Court had ruled differently in *Plyler v. Doe*.

This hearing is titled "The Adverse Effects of *Plyler v. Doe*," but the title got it backwards. With respect, I would suggest the Subcommittee consider a different question entirely: what would the adverse effects of *overturning Plyler* be? The answer, as Justice Brennan's majority opinion makes plain – and as even the dissenters acknowledged – is the deliberate condemnation of innocent children to a lifetime of illiteracy.[1]

That is not a policy tradeoff. It is a cruelty. And it strikes at fundamental values of importance to this nation.

The Case Itself: What Plyler Decided and Why

In 1975, the Texas Legislature revised its education laws to withhold state funds from school districts for the education of undocumented children and to authorize districts to deny those children enrollment entirely. Two years later, the Tyler Independent School District began enforcing the law, charging families $1,000 per child in annual tuition – an amount that, for families working in meatpacking plants and agriculture for approximately $4,000 per year, was effectively a ban.

Four families risked deportation to challenge the law. The case wound through the federal courts and reached the Supreme Court in 1982, where a 5-4 majority, in an opinion by Justice William Brennan, held that the Texas statute violated the Equal Protection Clause of the Fourteenth Amendment.

The superintendent whose name the case bears, James Plyler, later reflected on the outcome. "I'm glad we lost the Hispanic court case, so that those kids could get educated," he told *Education Week* in 2007.[2] The man who initially enforced the exclusion came to recognize what the Court had understood in 1982: that keeping children out of school was wrong, whatever one believed about immigration policy.

That recognition was, remarkably, unanimous across all nine justices. As Thomas Saenz, President and General Counsel of MALDEF, which litigated the original case and is a witness before this Subcommittee today, has observed, all nine justices in *Plyler*, including then-Associate Justice William Rehnquist, agreed that the Texas law excluding undocumented children from school was bad public policy.[3]

Chief Justice Burger explicitly stated is his dissent that he would not "tolerate creation of a segment of society made up of illiterate persons."[4] Shockingly, that is precisely what some are arguing in favor of at today's hearing.

Education Is Not a Typical Government Benefit: It Is a Founding American Value

The decision's holding reads, "The deprivation of public education is not like the deprivation of some other governmental benefit. Public education has a pivotal role in maintaining the fabric of our society and in sustaining our political and cultural heritage; the deprivation of education takes an inestimable toll on the social, economic, intellectual, and psychological well-being of the individual, and poses an obstacle to individual achievement. In determining the rationality of the Texas statute, its costs to the Nation and to the innocent children may properly be considered."[5]

Brennan then marshaled a full century of Supreme Court precedent affirming education's unique constitutional status:

- "The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance." – *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923)

- The public schools are "a most vital civic institution for the preservation of a democratic system of government" and "the primary vehicle for transmitting 'the values on which our society rests.'" – *Abington School District v. Schempp*, 374 U.S. 203, 230 (1963); Ambach v. Norwick, 441 U.S. 68, 76 (1979)
- "Some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." – *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972)
- "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society.. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." – *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)

Brennan concluded: "…education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests."[6]

This is not a liberal or conservative position. It is an American one. To bar children from school is not simply to deny them a government program. It is to exclude them from the foundational institution of American civic life – to tell them that the promise of American education does not extend to them. In fact, this runs counter to our nation's promotion of access to education for all children across the world.

Justice Blackmun stated the implication plainly in his concurrence: "When a state provides an education to some and denies it to others, it immediately and inevitably creates class distinctions of a type fundamentally inconsistent with" the purposes of the Equal Protection Clause, "because an uneducated child is denied even the opportunity to achieve."[7]

When the children denied an education belong to an identifiable group, the state has not merely made a policy choice. It has created a caste.

Children Are Blameless: The Constitution Has Always Known This

Even those who believe illegal immigration should be more rigorously enforced must grapple with a principle that runs through American jurisprudence as a load-bearing beam: guilt is personal.

We do not punish children for the acts of their parents.

Brennan made this a fundamental point of the *Plyler* opinion:

> *...the children of those illegal entrants are not comparably situated. Their "parents have the ability to conform their conduct to societal norms," and*

> *presumably the ability to remove themselves from the State's jurisdiction; but the children who are plaintiffs in these cases "can affect neither their parents' conduct nor their own status." Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice.*[8]

Justice Brennan adds that the denial of an education is "directed against children, and imposes its discriminatory burden on the basis of a legal characteristic over which children can have little control." A child does not choose where he or she born. They do not choose which country their parents bring them to, or their immigration status. To punish them for those unchosen circumstances is to punish them for being a child. The Court had established this principle in the illegitimacy cases before *Plyler*, holding that children born out of wedlock could not be denied rights because of their parents' choices.[9] The same logic applies here with equal force.

Justice Powell, the decisive swing vote, stated this plainly in his concurrence: the Texas law "assigned a legal status to the children due to a violation of law by their parents." These children "should not be left on the streets uneducated" as a consequence of actions over which they had no control.[10]

I would encourage Members of this Subcommittee to consider the concrete reality of what overturning *Plyler* would mean in a single family: an undocumented child born abroad would be barred from school, while their sibling born in the United States years later would be entitled to attend as a citizen. The law would treat one as fully human and the other as ineligible for the most basic institution of American civic life.

That is not a policy disagreement. It is a cruelty that all nine justices in 1982 recognized as such and that the founding values of this republic do not permit.

Condemning Children to Illiteracy Strikes at the Nation's Core Values

The third pillar of *Plyler*'s reasoning is the one that should settle any remaining ambiguity about what overturning the case would mean. Brennan was unsparing:

> *[The Texas statute] imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.*[11]

And more directly still:

> *Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and*

> *psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.*[12]

These words describe not an inconvenience or a policy tradeoff, but a lifetime sentence – imposed on children innocent of any offense, for the sole reason that their parents crossed a border illegally. The Fourteenth Amendment was designed, above all, to prevent the legally-sanctioned creation of permanent castes in American society.

Brennan was explicit: "A legislative classification that threatens the creation of an underclass of future citizens and residents cannot be reconciled with one of the fundamental purposes of the Fourteenth Amendment."[13]

The economic evidence confirms what Brennan understood as a matter of principle.

According to a comprehensive analysis by FWD.us, the total state and local income taxes paid by *Plyler* beneficiaries over their lifetimes exceed the cost of educating them by more than $633 billion. The educational attainment protected by *Plyler* increased the income of beneficiaries by $171 billion between 1982 and 2022, and will increase GDP by $2.71 trillion over their lifetimes. *Plyler* beneficiaries include more than 45,000 people working in elementary and secondary schools and 42,000 in hospitals, and the decision prevented an additional 730,000 U.S. citizen children of adult beneficiaries from living in poverty.[14] The children who were kept in school became teachers, nurses, and parents of American citizens.

A reversal would impose the opposite: income losses over the lifetimes of future beneficiaries amounting to more than $1 trillion, the loss of hundreds of thousands of workers, and billions in preventable healthcare costs.[15]

The Niskanen Center documents the outcomes in countries that have denied educational access to undocumented or migrant children in Malaysia, the Dominican Republic, and Lebanon – where the consistent result has been permanent underclasses, child labor, and communities locked out of the workforce for generations.[16]

The Constitutional Case for Plyler Is Sound, Including on Originalist Grounds

Opponents of *Plyler* often claim it represents judicial overreach – that Brennan invented protections not grounded in constitutional text or history. This claim fails on its own terms.

As Professors Steven Calabresi and Lena Barsky demonstrate in their originalist analysis of the decision, the Fourteenth Amendment's text protects "persons," not "citizens." The legislative history of the Amendment confirms that Congress deliberately used broad language intended to protect all persons within a state's jurisdiction. And at the time of the Amendment's adoption in 1868, no federal immigration law created the legal category of "undocumented" presence – meaning that category cannot be read back into a provision drafted before it existed.[17]

Opponents of *Plyler* ask this Court to read into the Constitution a value, that undocumented status disqualifies children from equal protection, which the Constitution's authors never placed there. That is precisely the kind of judicial activism originalists claim to oppose.

The constitutional case for *Plyler* rests on an even deeper foundation than the Fourteenth Amendment alone.

As Professor Nicholas Serafin argues in a recent *Maryland Law Review* article, the Corruption of Blood Clause (Article III, Section 3) and the Bill of Attainder Clause together express what constitutional scholar Akhil Reed Amar has called the "nonattainder" principle — a founding constitutional value prohibiting the legislature from singling out unpopular groups for exclusion from basic rights and from punishing children for the conduct of their parents.[18]

This principle, embedded in the original 1787 Constitution, predates the Fourteenth Amendment by nearly a century. It reflects the Founders' visceral revulsion at the English common law practice of corruption of blood, by which a parent's guilt could render an entire family line legally and socially outcast – stripped of standing, property, and civic membership.

Serafin applies this principle directly to *Plyler*, arguing that the corruption of blood principle is best understood as a prohibition on state action that directly punishes children for the "sins" of their parents. As he explains, this was precisely how the Supreme Court construed the principle in cases like *Weber v. Aetna Casualty & Surety Co.*, where the Court held that "sanctioning a child to dissuade the parent from engaging in purportedly immoral conduct 'is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.'"[19]

And it is exactly what *Plyler* prohibited: the Texas law banning children of undocumented parents from public schools failed because "legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice." In both cases, Serafin notes, the Court was particularly attentive to the gravity of the harm inflicted on minor children – in *Plyler* specifically, the "inestimable toll" on a child's "social, economic, intellectual, and psychological wellbeing" from the deprivation of education.[20]

Denying undocumented children access to public education is not merely a violation of the Fourteenth Amendment's Equal Protection Clause. It is a violation of a principle the Founders wrote into the 1787 Constitution because they had seen, in the English common law, what happens when governments are permitted to make children pay for their parents' offenses. Members of this Subcommittee who are committed to the original meaning of the Constitution should find that principle as compelling today as the Framers did in Philadelphia.

The fiscal argument for overturning *Plyler* fares no better. As the Niskanen Center's analysis demonstrates, undocumented immigrants contribute to state and local tax bases at rates that more than offset the costs of educating their children.[21] The families whose children attend these schools pay property taxes – directly as homeowners or indirectly as renters – and sales taxes. They are not free riders. They help fund the schools from which their children are being excluded.

Conclusion

The effort to overturn *Plyler v. Doe* asks this Congress to endorse something that all nine justices in 1982 recognized as indefensible: the deliberate condemnation of a class of children to illiteracy because of their parents' immigration status.

The man whose name the case bears came, in the end, to the same conclusion. James Plyler said he was glad the children got educated. The families who risked deportation to keep their children in school produced children who graduated from Tyler High School, entered the workforce, became citizens, and raised grandchildren who today attend Tyler schools and dream of becoming pediatricians and music producers. In my hometown of El Paso and in communities and schools all across this country, two generations of students have benefited greatly from the *Plyler v. Doe* decision.

That is what *Plyler* made possible. Overturning it would not make America stronger, safer, or more prosperous. It would make us crueler to children who did nothing wrong, who have no voice in these proceedings, and who are counting on this Congress to remember that the promise of American education was never meant to stop at the schoolhouse door.

Children matter. The Constitution and the Supreme Court have affirmed this point repeatedly.

The children affected by this decision cannot advocate for themselves in these hearings. They cannot vote. They cannot hire lobbyists. They are children, which is precisely why this Congress and the Constitution must protect and speak for them.

ENDNOTES

[1] *Plyler v. Doe*, 457 U.S. 202, 242 (1982).
[2] Zehr, M.A. (2007, Jun. 6). Case Touched Many Parts of Community. *Education Week*. Retrieved at https://www.edweek.org/policy-politics/case-touched-many-parts-of-community/2007/06.
[3] Saenz, T. (2022, May 5). Statement of MALDEF. Quoted in McGee, K. Gov. Greg Abbott Says Federal Government Should Cover Cost of Educating Undocumented Students in Texas Public Schools. *Texas Tribune*. Retrieved at https://www.texastribune.org/2022/05/05/greg-abbott-plyler-doe-education/.
[4] *Plyler v. Doe*, 457 U.S. 202, 242 (1982) (Burger, C.J., dissenting).
[5] *Plyler v. Doe*, 457 U.S. 202, 242 (1982).
[6] *Id.* at 221.
[7] *Id.* at 238 (Blackmun, J., concurring).
[8] *Id.* at 220.
[9] See *Trimble v. Gordon*, 430 U.S. 762 (1977); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).
[10] *Plyler*, 457 U.S. at 238–39 (Powell, J., concurring).
[11] *Id.* at 223–24.
[12] *Id.* at 222.
[13] *Id.* at 219.
[14] FWD.us. (2025). *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*. Retrieved at https://www.fwd.us/wp-content/uploads/2025/12/250919_FWD_PlylerReport_v8-2.pdf.
[15] *Id.*
[16] Zimmer, C. (2025, Jun. 18). The Price of Denial: State Lawmakers' Efforts to Undermine *Plyler v. Doe* and the Fiscal Fallacy of Exclusion. Niskanen Center. Retrieved at https://www.niskanencenter.org/the-price-of-denial-state-lawmakers-efforts-to-undermine-plyler-v-doe-and-the-fiscal-fallacy-of-exclusion/.

[17] Calabresi, S.G. & Barsky, L.M. (2017). An Originalist Defense of *Plyler v. Doe*. *BYU Law Review*, 2017, 225.
[18] Amar, A.R. (1996). Attainder and Amendment 2: Romer's Rightness. *Michigan Law Review*, 95, 203, 209–215; Serafin, N. (2025). The Corruption of Blood as Metaphor. *Maryland Law Review*, 84, 597, 600.
[19] Serafin, *supra* note 18, at 641 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)).
[20] *Id.* at 641–42 (quoting *Plyler v. Doe*, 457 U.S. 202, 220, 222 (1982)).
[21] Zimmer, *supra* note 16.

Supreme Court Cases Cited:

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