

Congress of the United States
Washington, DC 20515

June 4, 2018

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos:

On Tuesday, May 22nd you appeared before the Committee on Education and the Workforce of the U.S. House of Representatives to provide testimony on the policies and priorities of the Department of Education (Department). We write seeking swift, decisive, and widely disseminated correction to the inaccuracy in your sworn testimony that was provided in response to Rep. Espaillat:

“Rep. Espaillat: There are many undocumented children attending schools right now, all over the country. Do you feel that government – that we in government – should fund the education of these children?”

Sec. DeVos: Well, of course, we do because this was a Supreme Court decision rendered many years ago, and so there are undocumented children in K12 education today that we support and we give education to on a daily basis.

Rep. Espaillat: ...Inside the school, if a principal or a teacher finds out that a certain child is undocumented or his or her family members are undocumented, do you feel that that principal or teacher should, is responsible to call ICE and to have that family reported?

Sec. DeVos: Sir, I think that’s a school decision. It’s a local community decision, and again, I refer to the fact that we have laws and we also are compassionate, and I urge this body to do its job and address and clarify where there is confusion on this.”

The Supreme Court decision you seemingly reference, the 1982 ruling in *Plyler v. Doe*¹ (*Plyler*), affirmed the constitutional right of all children, regardless of a child’s or a child’s parent’s immigration status, to a public K-12 education. This constitutional right was reaffirmed by the 2012 unanimous ruling of the 11th Circuit in *Hispanic Interest Coalition of Alabama v. Alabama*² (*HICA*). You rightly note that the precedent set by *Plyler* requires states and school districts to provide, including through the obligation of public funds, “education on a daily basis” to undocumented children. Regrettably, that is where the accuracy of the exchange ends.

¹ 457 U.S. 202

² [Hispanic Interest Coalition v. Governor of Ala., 691 F.3d 1236 \(11th Cir. 2012\)](#)

Your clear assertion of local or even school-based discretion to set policies or employ practices empowering school personnel to report undocumented children or their family members to Immigration and Customs Enforcement (ICE) for potential deportation is not only wrong, but also dangerous. As established by *Plyler*, reaffirmed in *HICA*, and further clarified in your Department's existing sub-regulatory guidance,³ any such policy or practice would burden an undocumented child's right to a public education under the Equal Protection Clause of the U.S. Constitution, in direct contravention of *Plyler*. On this point, there should be no confusion. In fact, in a November 2017 letter to the Ranking Members of the House Committees on Education and the Workforce, Judiciary, and Homeland Security, a top Department official referred to the existing guidance, promulgated in 2014, as evidence of the Administration's intent to uphold *Plyler*.

Additionally, any such practice would violate Titles IV⁴ and VI⁵ of the Civil Rights Act of 1964 and accompanying regulations, which prohibit discrimination on the basis of race, color, or national origin (among other factors), by public schools, and discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin, respectively. As your Assistant Secretary noted in the above-referenced November 2017 letter, the Federal Government is charged with enforcement of the Civil Rights Act.

As the chief official for our nation's public education system, it is your job to uphold federal law and protect and promote the civil rights of all students. Your words and actions matter. Left uncorrected, your testimony leaves state and district officials and public school personnel with the false impression that they may willfully violate the U.S. Constitution, potentially subjecting any such officials or personnel who rely on your statement to liability⁶. Left uncorrected, your testimony leaves immigrant communities fearful of interaction with public schools. Left uncorrected, your testimony could do irreparable harm to educational opportunity for undocumented children.

In closing, while a statement issued by the Department to limited stakeholders on Wednesday, May 30th affirms your commitment to broadly uphold *Plyler*, it fails to sufficiently clarify what that commitment means in light of your factually inaccurate and widely-viewed testimony that is a matter of public record. Your claim, in the May 30th statement, that your words are being intentionally misrepresented, is baseless, as the public record clearly reflects.

³ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

⁴ 42 U.S.C. § 2000c-6, 28 C.F.R. § 42.104(b)(2)

⁵ 42 U.S.C. § 2000d, 34 C.F.R. § 100.3(b)(2)

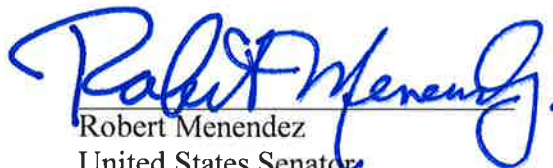
⁶ *Gonzalez v. City of Albuquerque New Mexico*, No. CV - 05-580 JB/WPL (D. N.M. Nov. 9, 2006) available at http://www.maldef.org/immigration/litigation/gonzalez_v_albuquerque/index.html.

As you stated on May 30th, “all children *should* feel safe going to school.” Unfortunately, due to your conflicting and ambiguous public statements and inaccurate testimony as a matter of public record, families are left to fear deportation at the hands of school personnel. We reiterate our call for swift, decisive, and widely disseminated correction to your testimony that unequivocally clarifies state and school district obligations to serve all children, regardless of immigration status.

Sincerely,



Adriano Espaillat
United States Representative
New York 13th District



Robert Menendez
United States Senator
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Arizona 3rd District



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Nevada



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Education and The Workforce



Judy Chu
United States Representative
California 27th District
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American Caucus



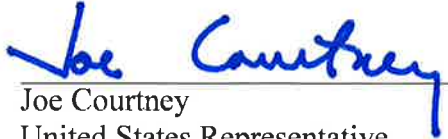
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United States Representative
New York 10th District
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Jamie Raskin
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Benjamin L. Cardin
United States Senator
Maryland



Joe Courtney
United States Representative
Connecticut 2nd District



Richard Blumenthal
United States Senator
Connecticut



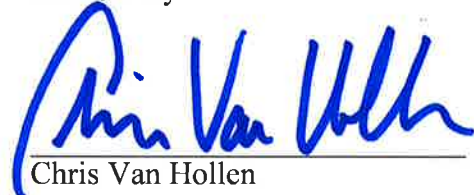
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Cory A. Booker
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Anthony G. Brown
United States Representative
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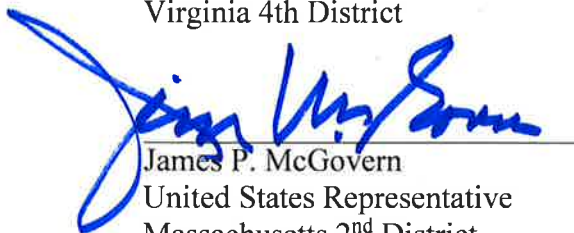
Chris Van Hollen
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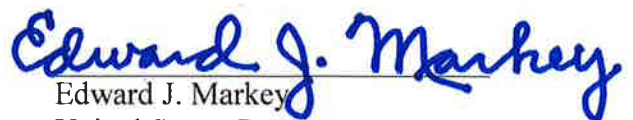
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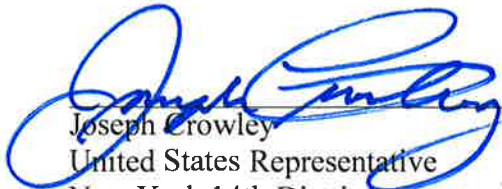
Edward J. Markey
United States Senator
Commonwealth of Massachusetts



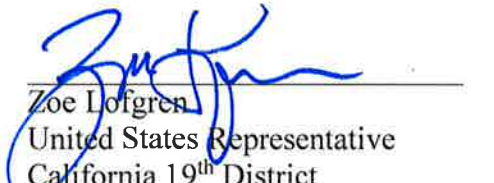
Luis V. Gutiérrez
United States Representative
Illinois 4th District

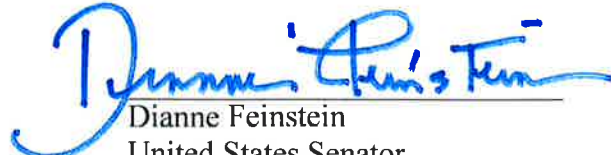



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Joseph Crowley
United States Representative
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Kirsten Gillibrand
United States Senator
New York

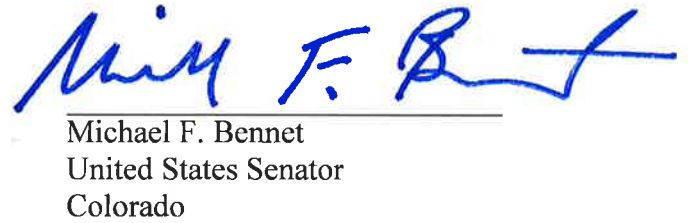

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California 19th District
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California
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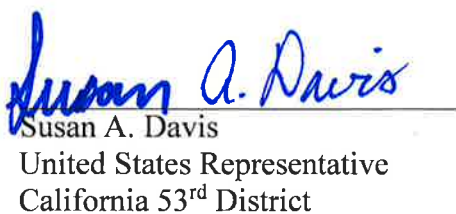

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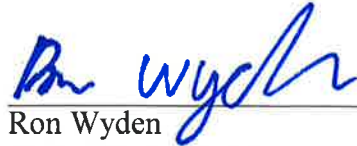
Peter Welch
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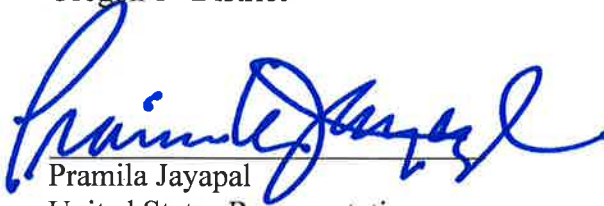
Bernard Sanders
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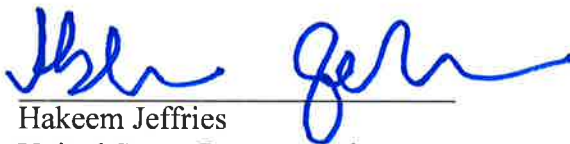
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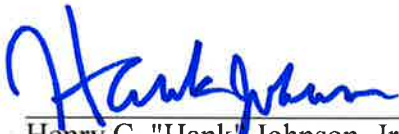
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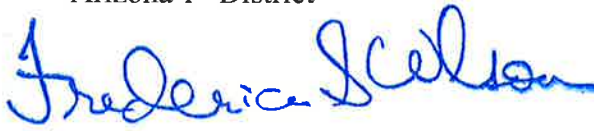

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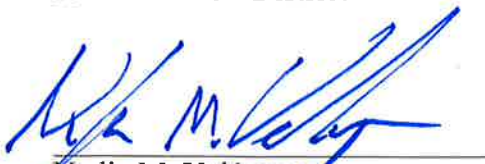

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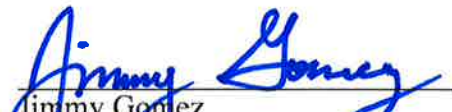

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Keith Ellison
United States Representative
Minnesota 5th District



Barbara Lee
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James R. Langevin
United States Representative
Rhode Island 2nd District

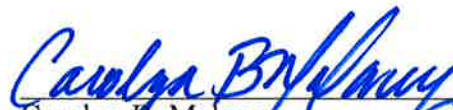

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André Carson
United States Representative
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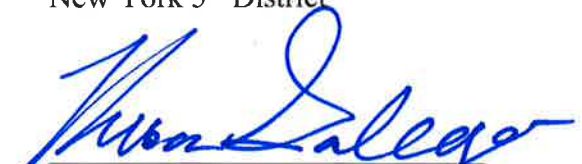

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Texas 29th District

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Florida 22nd District

Eliot L. Engel
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New York 16th District

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Adam Smith
United States Representative
Washington 9th District

Albio Sires
United States Representative
New Jersey 8th District

Joaquin Castro
United States Representative
Texas 20th District

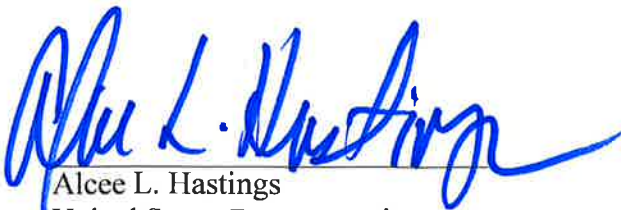
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United States Representative
New Jersey 6th District


Jim Costa
United States Representative
California 16th District


Marcia L. Fudge
United States Representative
Ohio 11th District


Jackie Speier
United States Representative
California 14th District



Alcee L. Hastings
United States Representative
Florida 20th District



Dwight Evans
United States Representative
Pennsylvania 2nd District



Lucille Roybal-Allard
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California 40th District



Tim Ryan
United States Representative
Ohio 13th District



Yvette D. Clarke
United States Representative
New York 9th District


Thomas R. Suozzi
United States Representative
New York 3rd District


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Tony Cardenas
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Diana DeGette
United States Representative
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Steve Cohen
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Tennessee 9th District