



October 21, 2019

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way opposes the nomination of Steven Menashi to be a U.S. federal judge on the Second Circuit Court of Appeals. Having advanced the agendas of Betsy DeVos and Stephen Miller, he has a record steeped in opposition to the rights and dignity of others, including refugees and survivors of sexual assault. He has also shown an attitude of disrespect for the committee itself, one that members ought not reward by advancing him to a prestigious and influential judgeship.

In 2017, Menashi left private practice to work as general counsel to the Department of Education under Secretary Betsy DeVos, an individual with no experience in public education but long known for her ideological zeal against public schools. Public education is a core democratic institution, one that has provided generations of Americans with the tools to become productive members of society, and has helped integrate generations of immigrants more fully into our communities. But, as a report on DeVos's nomination in *The New York Times* noted, "It is hard to find anyone more passionate about the idea of steering public dollars away from traditional public schools than Betsy DeVos."ⁱ During her confirmation, she also made clear her intent to roll back Obama-era protections for survivors of campus sexual assault. Her agenda was so extreme that she became the first cabinet official in U.S. history to be confirmed only due to the vice president's tie-breaking vote.ⁱⁱ

And it is an agenda that Menashi chose to advance. In his written questions for the record, he acknowledged playing a role enabling the Department of Education to:

- Weaken protections for survivors of campus sexual assault and harassment;ⁱⁱⁱ
- Delay the compliance date for "Equity in IDEA" rules that address significant racial disproportionality in the identification of students with disabilities;^{iv}
- Suspend the Obama Administration's borrower defense rule, which empowered students who were victims of fraud by for-profit colleges to seek cancelation of their federal student loans;^v
- Repeal "gainful employment" protections that cut federal funding for low-quality career programs that regularly leave graduates with high debt compared to their incomes;^{vi}

In writings, prior to joining the Department of Education, Menashi argued against needs based financial aid, claiming that it harms the wealthy and "punishes families with the foresight and prudence to save for their children's education."^{vii}

Since 2018, Menashi has worked in the White House Counsel's office and has, among other things, given legal advice to advance the work of senior policy advisor Stephen Miller. Americans have looked with horror at the cruelty and inhumanity of this administration's legally dubious immigration and asylum policies, which reflect Miller's far-right ideology. In his response to senators' questions for the record, Menashi admits to having worked on:

- The so-called "Migrant Protection Protocols," which force asylum seekers already in the U.S. to wait in dangerous border towns in Mexico rather than in the safety of the United States (nationwide injunction stayed while Ninth Circuit considers the government's appeal);^{viii}
- The "Public Charge Rule," which denies admissibility to immigrants who might avail themselves of government-provided services such as Medicaid (implementation stayed by three federal courts);^{ix}
- Prohibiting asylum to people at the southern border if they did not first apply for asylum in Mexico or another allegedly "safe" third country they passed through (stayed by lower courts, but a divided Supreme Court allowed it to go into effect during litigation);^x and
- Lifting geographical limits on "rapid removal" proceedings without a hearing for immigrants not carrying documentation that they have been in the U.S. for at least two years.^{xi}

The nation has been stunned at the misery and fear inflicted upon innocent and frightened people, not by accident but by policy. Some attorneys would have resigned rather than be party to this stain on American honor. Menashi, in contrast, has taken no such principled stand.

Initially, Menashi resisted efforts by members of both parties to find out whether he had worked on particular immigration and education issues as an official within the administration. Senators at his hearing made clear they were not asking about the content of his legal advice or about any administration policy that is not public. Nevertheless, even when the chairman instructed him that the members' questions were legitimate, the nominee continued to withhold that information.

Only later did he change his mind. In response to follow-up written QFRs, he said he had checked with the White House after the hearing and gotten permission to state whether he had worked on particular issues. But he presented this as "an accommodation" to the senators, not as a recognition of the Senate's rights and responsibilities under the U.S. Constitution.

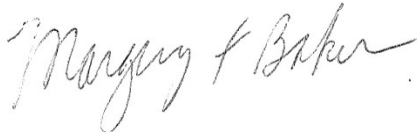
He made that attitude clear shortly thereafter, when the nation learned that President Trump had sought to pressure the president of Ukraine to interfere in the 2020 election, and that staff members had engaged in a cover-up of notes of a presidential telephone call where that pressure was applied. Because of Menashi's position in the White House counsel's office, ten senators sent him written questions asking about any role he may have had relating to the call or how the notes of the call were handled afterward.^{xii}

Menashi simply ignored them.

United States senators have a solemn obligation to fully vet the women and men nominated to serve on the federal bench. A nominee who dodges questions as if the confirmation process were a game is thwarting a key component of the balance of powers that protects our constitutional government. Acquiescing to such disdain would diminish the Senate and disserve our democracy.

We urge you to vote against Menashi's nomination.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ “Betsy DeVos, Trump’s Education Pick, Has Steered Money From Public Schools,” New York Times, Nov. 23, 2016, <https://www.nytimes.com/2016/11/23/us/politics/betsy-devos-trumps-education-pick-has-steered-money-from-public-schools.html>.

ⁱⁱ “Betsy DeVos Confirmed as Education Secretary; Pence Breaks Tie,” New York Times, Feb. 7, 2017, <https://www.nytimes.com/2017/02/07/us/politics/betsy-devos-education-secretary-confirmed.html>.

ⁱⁱⁱ “Betsy DeVos Wants to Rescind Title IX Protection for Sexual Assault Survivors. Here’s What That Means,” Fortune, Sept 7, 2017, <https://fortune.com/2017/09/07/betsy-devos-title-ix-sexual-assault>.

^{iv} “Education Department proposes delaying Obama-era rule on racial disparities in special education,” Washington Post, Dec. 15, 2017, <https://www.washingtonpost.com/news/answer-sheet/wp/2017/12/15/education-department-proposes-delaying-obama-era-rule-on-racial-disparities-in-special-education>.

^v “DeVos Toughens Rules for Student Borrowers Bilked by Colleges,” New York Times, Aug. 30, 2019, <https://www.nytimes.com/2019/08/30/business/betsy-devos-student-loan-forgiveness.html>.

^{vi} “The Trump administration is repealing an Obama-era policy of policing for-profit colleges,” USA Today, June 28, 2019, <https://www.usatoday.com/story/money/2019/06/28/trump-department-education-devos-remove-gainful-employment-rule/1601251001>.

^{vii} Stephen Menashi, “Hide That College Fund!” New York Times op-ed, Nov. 21, 1998, posted at <https://afj.org/wp-content/uploads/2019/09/Hide-That-College-Fund.pdf>.

^{viii} “Judge grills government lawyer on potential violations of international refugee law,” CBS News, Oct. 1, 2019, <https://www.cbsnews.com/news/trump-immigration-policy-judge-grills-government-lawyer-on-potential-violations-of-international-refugee-law>.

^{ix} “Federal Judges In 3 States Block Trump’s ‘Public Charge’ Rule For Green Cards,” NPR, Oct. 11, 2019, <https://www.npr.org/2019/10/11/769376154/n-y-judge-blocks-trump-administrations-public-charge-rule>.

^x “Supreme Court Says Trump Can Bar Asylum Seekers While Legal Fight Continues,” New York Times, Sept. 11, 2019, <https://www.nytimes.com/2019/09/11/us/politics/supreme-court-trump-asylum.html>.

^{xi} “Trump Administration Moves To Speed Up Deportations With Expedited Removal Expansion,” NPR, July 22, 2019, <https://www.npr.org/2019/07/22/744177726/trump-administration-moves-to-speed-up-deportations-with-expedited-removal-expan>.

^{xii} Questions to Stephen Menashi from Judiciary Democrats, Sept. 27, 2019, https://www.feinstein.senate.gov/public/index.cfm?a=files.serve&File_id=6F9722E5-1641-4919-A078-BF64699F3DBB.