Congress of the United States
Washington, DC 20515

January 3, 2012

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

Dear Secretary Duncan:

We write to express our concern regarding HB 56, a comprehensive immigration enforcement law that was recently enacted by the state of Alabama. We greatly appreciate that your Administration has filed suit to block enforcement of this law. Among the many troubling provisions in HB 56 is Section 28,[1] which requires that Alabama public schools determine the immigration status of students at the time of enrollment. Although this provision has been temporarily enjoined by the U.S. Court of Appeals for the Eleventh Circuit, pending a hearing early next year, HB 56 already has had the pernicious effect of deterring children of minority communities from accessing the classroom.

We also commend the U.S. Department of Education (hereinafter the "Department") and the U.S. Department of Justice for sending a joint "Dear Colleague" letter on May 6, 2011 reminding school districts of their obligations under federal law to avoid all "student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents'… actual or perceived citizenship or immigration status."[2] In particular, as the guidance reaffirmed, such practices violate the Supreme Court's landmark 1982 ruling in *Plyler v. Doe* that a state may not deny access to public education to any child residing in the state, regardless of immigration status.[3] Unfortunately, it is precisely this chilling effect that has resulted from HB 56. All across Alabama, many minority students and English language learners are being pulled out of school.

Despite the partial, temporary injunction of the Alabama law, Hispanic student absentee rates in the state have increased dramatically since the law's enactment and continue to stay well above average.[4] Further, students – including U.S. citizens – are facing harassment, bullying and discrimination in their schools.[5] This is unsurprising given that one of the authors of the bill has explicitly claimed that the intent of this provision is to undo the guarantee of equal access to public education established in *Plyler*.[6] Requiring students to produce proof of citizenship or schools to inquire into students' immigration status clearly violates *Plyler* and is unconstitutional.

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[1] Section 28(a) – (e).
[2] http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf.
[3] 457 U.S. 202.
[4] MJ Lee, "*Ala. Hispanic students not returning*," POLITICO (Nov. 2, 2011), *available at* http://www.politico.com/news/stories/1111/67438.html.
[5] Associated Press, "*After Alabama law, Hispanic kids being bullied*," (Oct. 22, 2011), *available at* http://www.cbsnews.com/2102-201_162-20124241.html?tag=contentMain;contentBody.
[6] Campbell Robertson, "*Critics See 'Chilling Effect' in Alabama Immigration Law*," The New York Times (Oct. 28, 2011), *available at* http://www.nytimes.com/2011/10/28/us/alabama-immigration-laws-critics-question-target.html.

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Regrettably, the effects of HB 56 reach far beyond Alabama. As we saw following the passage of Arizona's anti-immigrant law SB 1070, other states are likely to consider similar bills. Therefore, we strongly suggest that the Department reiterate the *Plyler* requirements to all states and school districts.

Although Alabama's law is the most egregious and latest example of a clear violation of the United States Constitution, other state and local policies may also be problematic. Accordingly, we would appreciate your assessment of the possible impact that implementation of HB 56 will have on the education of children and the participation of their parents in their education. This includes the possible impact on children who are English Learners or from immigrant backgrounds, homeless, economically disadvantaged, or who are children with disabilities, and on the Department's ability to administer education programs intended to benefit such children. Further, we ask that the Department continue to work closely with the U.S. Department of Justice, and identify and as appropriate utilize any and all enforcement mechanisms available to the Department under the various programs it administers, to ensure that students are not denied access to the benefits of such programs by HB 56 or laws similar to it that might be considered by other states.

Just as the federal government has taken strong action against HB 56 by bringing suit to block this misguided and unconstitutional law, the U.S. Department of Education must take all appropriate actions within its authority. We look forward to working with you to ensure that students are not harmed by laws that turn school teachers into immigration agents.

Sincerely,

Jared Polis
Member of Congress

Raúl M. Grijalva
Member of Congress

George Miller
Member of Congress

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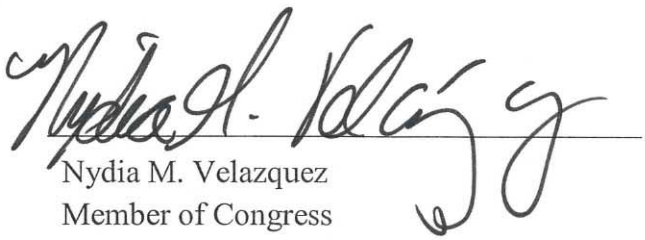

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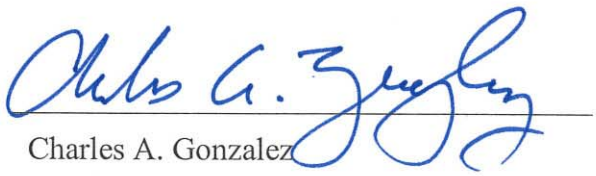

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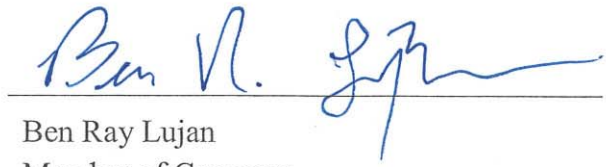

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