

**Robert M. Carlson**  
President

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April 23, 2019

The Honorable William P. Barr  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Barr:

On behalf of the American Bar Association, I write to express our serious concerns regarding your decision in *Matter of M-S-*, which removes the right of certain asylum seekers to receive a bond hearing before an immigration judge. This decision will result in an increase in lengthy and unnecessary detention of vulnerable asylum seekers at significant cost to the government, and we urge you to reconsider it.

As you know, this decision overturns longstanding precedent. In 2005, in *Matter of X-K-*, the Board of Immigration Appeals found that asylum seekers entering the United States other than at a port of entry, who have been found to have a credible fear of persecution, are eligible for an individualized bond hearing before an immigration judge. With your decision to reverse this precedent, these asylum seekers' only hope for release rests on the Department of Homeland Security parole process, which has been infrequently utilized and inconsistently applied. As a result, thousands of asylum seekers will remain detained during the months or years necessary to complete their cases.

The ABA recommends detaining asylum seekers and others only in extraordinary circumstances, and in the least restrictive environment necessary to ensure appearance at court proceedings. The loss of liberty has punitive effects and undercuts rights on many levels, including the right to counsel. The impact of detention is particularly negative for vulnerable groups such as asylum-seekers and victims of crime, who may be suffering from trauma and fearful of government authority and who may have physical or mental conditions that can be exacerbated by the lack of adequate care in detention.

Increased detention has negative impacts not only on asylum seekers, but also on the immigration court system. Individuals in detention are far less likely to obtain legal representation. When detainees do find counsel, the remote locations of many detention facilities often impede their ability to communicate with their lawyers and obtain evidence necessary to effectively present their cases. Lack of representation has been shown to impact case outcomes

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and makes the adjudication process less efficient, which may result in prolonging court cases at a time when the immigration court backlog is at an all-time high.

We are also concerned that this decision is one more step in a series of recent actions by the Department of Justice to remove discretion and restrict the authority of immigration judges. The decision to deprive any person, citizen or noncitizen, of his or her liberty strikes at the heart of our fundamental principles of due process. These decisions should be made on an individualized basis by neutral and independent immigration judges, not left to the discretion of an enforcement agency.

The decision in *Matter of M-S-* will exacerbate the negative impact of policies adopted over the past two years that have undermined meaningful access and protections for refugees and asylum seekers in our country. We urge you to reconsider it and restore the longstanding authority of immigration judges to adjudicate bond determinations for eligible asylum seekers.

Sincerely,

A handwritten signature in black ink that reads "Robert M. Carlson". The signature is written in a cursive, flowing style.

Robert M. Carlson