



Congress of the United States
House of Representatives
Washington, DC 20515-0529

May 15, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Barr:

We are extremely troubled by your decision in *Matter of M-S-*, 27 I&N Dec. 509 (A.G.2019), which would make people who are apprehended between ports of entry and have shown a credible fear of persecution ineligible to seek release on bond from an immigration judge. The decision deprives asylum-seekers of their right to show an immigration judge why they should be released from detention and will mean that men and women who have been subjected to persecution and torture in their home countries will stay locked up behind bars for months or even years in U.S. government custody. This move toward indefinite detention is yet another in a long line of cruel and ineffective actions that the Trump administration has taken to discourage migrants from seeking asylum in the United States. Prolonged detention without the opportunity for review doesn't just violate access to due process – your decision will cost American taxpayers billions of dollars, an unnecessary burden on our citizens.

We are further troubled by the Administration's frequent use of the certification process to unilaterally rewrite immigration law. The resulting decisions have stripped immigration judges of basic operational authorities, interfered with judicial independence, and distorted asylum and detention laws. This misuse of executive power is unprecedented: ten cases have been referred to the attorney general over the past two years. By way of comparison, nine cases were referred to the attorney general under the whole of President George W. Bush's administration, and just four during all of President Barack Obama's administration¹. These recent unilateral decisions made by the Department of Justice are attacks on longstanding judicial precedent and wreak havoc on the immigration court system, including ballooning an already massive court backlog.² The certifications have also undermined the court's authority by impugning the appearance of its impartiality.

¹ *Barr's ruling on asylum seekers shows how the attorney general has become a political tool*, THINK PROGRESS, 4/18/2019

² Los Angeles Times, "Trump plan fails to cut immigration court backlog, as caseload soars more than 26%," Molly O'Toole, Feb. 21, 2019, <https://www.latimes.com/politics/la-na-pol-immigration-court-backlog-worsens-20190221-story.html>.

The Constitution guarantees due process in our legal system – indeed, it is integral to America’s identity as a nation. *Matter of M-S-*, along with the many other decisions issued by Attorneys General under the Trump Administration, undermine this bedrock value and are exacerbating the crisis facing our overwhelmed immigration court system.³ Therefore, we request:

- a reversal of the April 16 *Matter of M-S-* decision that migrants who enter the U.S. between ports of entry and subsequently pass the threshold test for asylum eligibility cannot seek release on bond from an immigration judge;
- data regarding the number of migrants who will be impacted by this decision after this policy goes into effect;
- data regarding the estimated wait time of migrants impacted by this decision from apprehension to adjudication of their asylum claims;
- data regarding whether these asylum-seekers first attempted to cross through ports of entry but were unable to;
- the cost of alternative solutions to detention (for example: the Family Case Management Program); and
- the cost of detaining asylum-seekers impacted by this decision.


Asylum-seekers are fleeing violence and often have no other choice but to turn to the United States of America. These men and women are legally entitled to seek our country’s protection. They deserve better in the land of the free than to be detained indefinitely under *Matter of M-S-*. And everyone – immigrants and U.S. citizens alike – deserve an immigration court system that can guarantee a timely and impartial decision.

We look forward to your response.

Sincerely,



TONY CÁRDENAS
Member of Congress



DARREN SOTO
Member of Congress

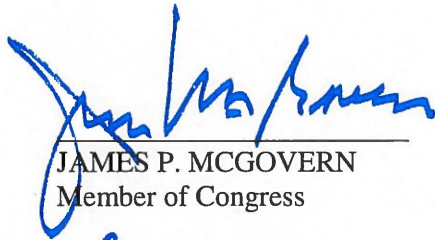
³ See *Matter of Castro-Tum*, 27 I&N Dec. 187, limiting the authority of an immigration judge to administratively close proceedings; *Matter of E-F-H-L-*, 27 I&N Dec. 245, undermining the right of an asylum applicant to have a full evidentiary hearing; *Matter of A-B-*, 27 I&N Dec. 227, aggressively narrowing what qualifies as a “particular social group” for purposes of an asylum application; *Matter of L-A-B-R-*, 27 I&N Dec. 245, stripping immigration judges’ authority to grant a continuance for “collateral” matters to be adjudicated; and *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462, preventing immigration judges and BIA members from terminating or dismissing cases.



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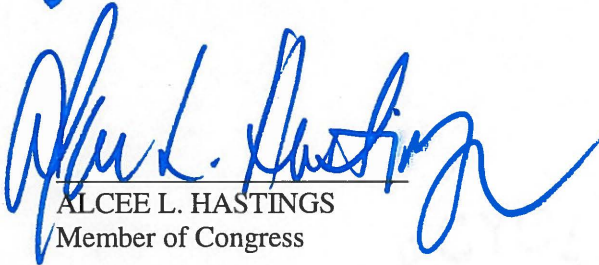
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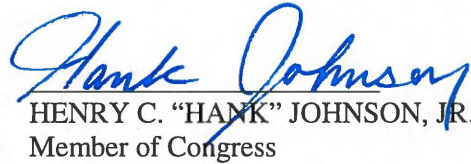
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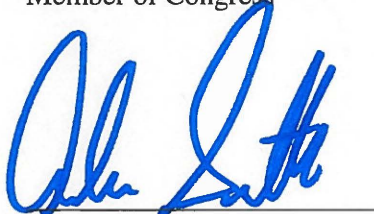
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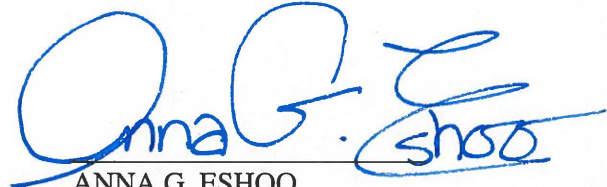


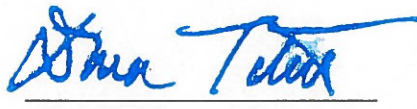
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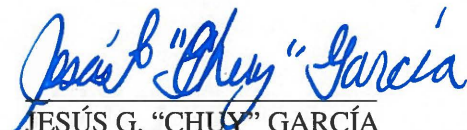

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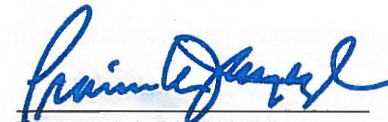

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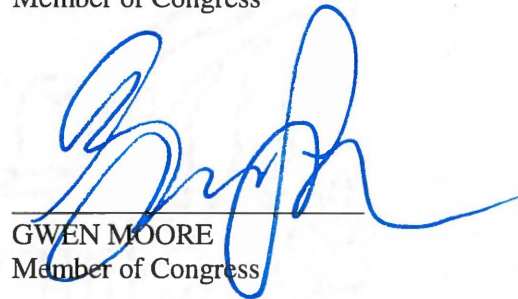

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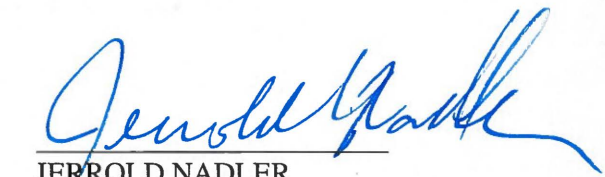

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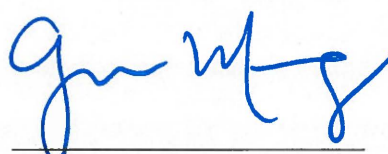

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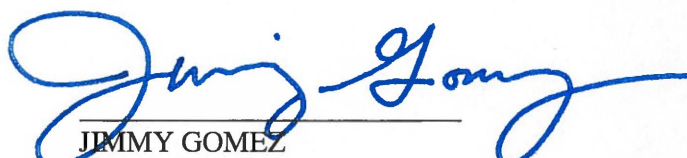

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