

October 12, 2023

Sincerely,

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Mayorkas:

We write to ask that you provide us with a briefing and detailed information regarding the Family Expedited Removal Management (FERM) process. On May 10 2023, U.S. Immigration and Customs Enforcement (ICE) announced a new process – FERM – for family units apprehended at the Southwest Border who are placed in expedited removal and indicate an intention to apply for asylum or express a fear of persecution or torture.¹ Under FERM, certain heads of household for family units are placed on Alternatives to Detention (ATD) technology for continuous monitoring and are subject to a curfew.² FERM was initially launched in four destination cities but has rapidly expanded to 33 cities across the country.³

According to ICE, “FERM is designed to ensure family units in the credible fear process participate in a timely credible fear interview with U.S. Citizenship and Immigration Services (USCIS) and any requested review by an immigration judge without being detained.”⁴ Families who receive a final negative credible fear determination will be removed from the United States within 30 days from their enrollment in the FERM process.⁵

While we commend the Department of Homeland Security for ending family detention, we have serious concerns about the FERM process. Reports from attorneys representing families enrolled in FERM indicate that, “[f]amilies are rushed to removal within weeks of their arrival to the United States, without a fair opportunity to present their cases, and often without understanding the proceedings unfolding around them.”⁶ Upon arrival at their destination city,

¹ *ICE announces new process for placing family units in expedited removal*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (May. 10, 2023), <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>.

² *Id.*

³ *The Family Expedited Removal Management Program (FERM): A Three-Month Assessment Highlighting the Need for a More Family-Centered Approach*, AMERICANS FOR IMMIGRANT JUSTICE (Sept. 1, 2023), <https://aijjustice.org/ferm-report/>.

⁴ *ICE announces new process for placing family units in expedited removal*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (May. 10, 2023), <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>.

⁵ *Id.*

⁶ *ICE’s Family Expedited Removal Management (FERM) Program Puts Families at Risk*, NATIONAL IMMIGRANT JUSTICE CENTER (Aug. 31, 2023), <https://immigrantjustice.org/research-items/policy-brief-ices-family-expedited-removal-management-ferm-program-puts-families>.

they can have as little as one day, or at most, one week, to undergo their credible fear interview.⁷ If the credible fear interview outcome is negative, they have just one week to seek review by an immigration judge.

Given this rushed timeline, we are concerned that the families enrolled in FERM do not have meaningful access to counsel, which is crucial to ensure families have a fair opportunity to seek protection for which they may be eligible. There is simply not enough time for newly arriving migrants to find attorneys, and for those attorneys to sufficiently prepare them for their credible fear interviews. FERM also does not appear to have a process to help families find attorneys, and legal service providers who want to help these families state they do not have the necessary information to locate them in time to provide meaningful assistance. This is especially concerning given that the credible fear interview is the threshold screening to determine eligibility to apply for asylum.

Additionally, reports indicate that “[i]ndigenous families that speak a rare language are being enrolled in FERM and forced to proceed in a ‘second best’ language.”⁸ DHS’s refusal to provide these families with interpretation in their Indigenous languages raises additional concerns related to due process and has reportedly resulted in wrongful negative credible fear findings.⁹

In light of these concerns, we request that the Department of Homeland Security provide us with a comprehensive briefing and detailed information regarding FERM, including the timelines for each step of the process, what type of language access and interpretation services are provided, and whether there are any procedures in place to ensure that migrants have timely and meaningful access to counsel and interpreters. We also request the Department provide a detailed breakdown of the family units placed in the FERM program including nationality, primary language spoken, if that family was represented by counsel, if proper language interpretation was provided during their interview and/or court hearing.

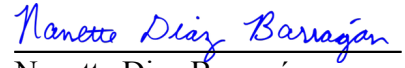
⁷ *Id.*

⁸ *The Family Expedited Removal Management Program (FERM): A Three-Month Assessment Highlighting the Need for a More Family-Centered Approach*, AMERICANS FOR IMMIGRANT JUSTICE (Sept. 1, 2023), <https://aijjustice.org/ferm-report/>.

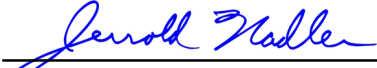
⁹ *ICE’s Family Expedited Removal Management (FERM) Program Puts Families at Risk*, NATIONAL IMMIGRANT JUSTICE CENTER (Aug. 31, 2023), <https://immigrantjustice.org/research-items/policy-brief-ices-family-expedited-removal-management-ferm-program-puts-families>.



Pramila Jayapal
Ranking Member
Subcommittee on
Immigration Integrity,
Security, and Enforcement



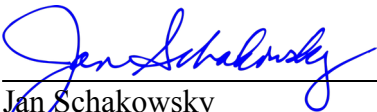
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Member of Congress
Chairwoman, Congressional
Hispanic Caucus



Jerrold Nadler
Member of Congress
Ranking Member, Committee
on the Judiciary



Raúl M. Grijalva
Member of Congress



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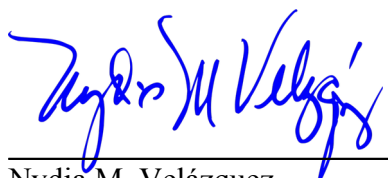
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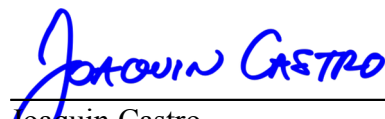
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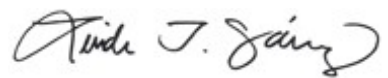
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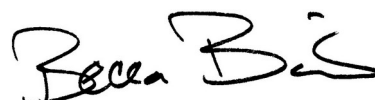
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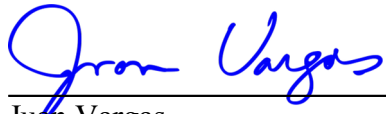
Ilhan Omar
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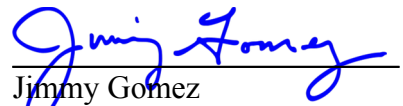
Grace Meng
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Bonnie Watson Coleman

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Member of Congress



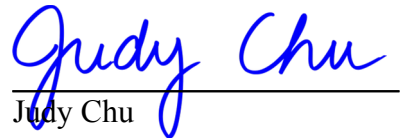
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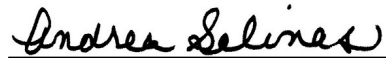
Judy Chu
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Tony Cárdenas
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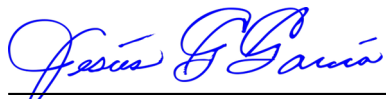
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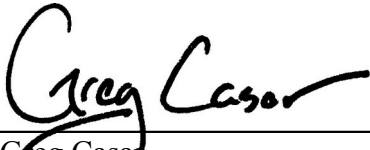
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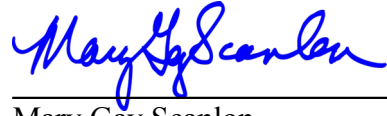
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J. Luis Correa
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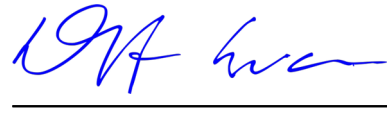
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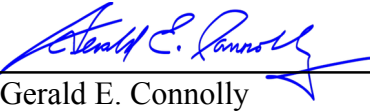
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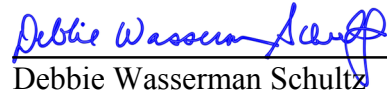
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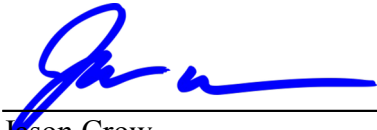
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