

May 4, 2020

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
Washington, DC 20530

Re: Request for Formal Investigation into EOIR's Failure to Suspend Proceedings for Detained Unaccompanied Children

Dear Inspector General Horowitz:

We, the undersigned 23 legal services organizations serving unaccompanied children, write to request that you conduct a formal investigation into the failure by the Department of Justice (DOJ)'s Executive Office for Immigration Review (EOIR) to suspend immigration court proceedings for detained unaccompanied children in response to the COVID-19 pandemic. Though it is part of DOJ's mission to "ensure public safety against threats foreign and domestic,"¹ this failure is itself a threat to public safety—one that warrants comprehensive inquiry.

For months now, our organizations have observed—and communicated to EOIR²—that in-person court hearings for detained unaccompanied children pose acute COVID-19 transmission risks. These events require the congregate transport of children from Office of Refugee Resettlement (ORR) facilities to the courts, where the children, their attorneys, and court staff must then crowd into waiting and hearing rooms. Media reports have revealed confirmed COVID-19 cases among virtually every population taking part in the hearings³—including the children themselves, ORR shelter staff, immigration attorneys, immigration judges, and ICE prosecutors—rendering them infection tinderboxes.

Yet EOIR has refused to suspend these hearings, despite suspending hearings for non-detained respondents due to many of the same health and safety hazards. In defense of this self-contradictory policy, EOIR has cited the liberty interests of detained populations.⁴ But here those interests generally do not attach to detained unaccompanied children, whose release from ORR custody occurs independently of their court proceedings.⁵ Plainly put, there is no legitimate reason at this time for EOIR to move forward with hearings that imperil the health and safety of these children, their attorneys, court personnel, and ultimately the public at large. Indeed, by appearing in immigration court, individuals may breach state and municipal shelter-in-place orders—orders motivated by the very health and safety risks at issue.

Regrettably, some immigration courts are employing alternatives to in-person hearings that undermine a different pillar of DOJ's mission: the fair administration of justice. Various courts are mandating that

¹ U.S. Department of Justice Website, "About DOJ;" <https://www.justice.gov/about>.

² See, e.g., "Letter from 26 Legal Services Organizations Urging Postponement of Hearings for Detained Unaccompanied Children" (Mar. 19, 2020); <https://supportkind.org/wp-content/uploads/2020/03/Letter-from-26-legal-services-organizations-urging-postponement-of-hearings-for-detained-unaccompanied-children-031920.pdf>.

³ See, e.g., Bill Hutchinson, "Coronavirus outbreak sickens at least 37 children at Chicago shelter for undocumented immigrant youth" ABC News (Apr. 16, 2020); <https://abcnews.go.com/US/coronavirus-outbreak-sickens-37-children-chicago-shelter-undocumented/story?id=70181842>.

⁴ See Erich Wagner, "Despite Coronavirus, 'The Machinery Continues' at Immigration Courts," *Government Executive* (Apr. 20, 2020); <https://www.govexec.com/management/2020/04/despite-coronavirus-machinery-continues-immigration-courts/164759/>.

⁵ In the event that EOIR suspends hearings for detained unaccompanied children, instances may arise in which it is necessary for EOIR to hold a bond hearing remotely. Decisions about any such measures should be governed by the best interests of the child and occur only at the request or otherwise with the consent of the child's attorney or advocate.

detained unaccompanied children appear via video-teleconference (VTC) or telephone, which raise profound due process barriers for this vulnerable population. During these remote hearings, restricted visibility, technical malfunctions, and difficulty identifying the voices of speakers severely limit children's comprehension of proceedings.⁶ Likewise, VTC and telephonic appearances inhibit essential attorney-child communication. At present, attorneys generally must appear for hearings in a separate location than their clients, preventing meaningful conferral. In some circumstances, even while the children, immigration judges, and ICE attorneys appear via VTC, the only safe option for attorneys is to join telephonically, making it even more difficult to represent their clients' interests. Altogether, it is virtually impossible for unaccompanied children to receive fair hearings remotely.⁷

In still other instances, immigration courts are granting continuances of in-person hearings that are unjustifiably brief—some only two weeks long. These minimal durations leave attorneys without adequate time to prepare their clients' cases. Making matters worse, attorneys' current inability to safely meet with detained unaccompanied children during the continuance periods hinders the collection of vital evidence, the establishment of traumatized clients' trust, and other measures essential to meaningful representation. Often, too, the continuances are granted only one or two days prior to the scheduled hearing dates, reflecting haphazard administration of detained juvenile dockets and further undermining case preparation.

To protect the health and safety of, and ensure due process for, detained unaccompanied children during this crisis, there has been and remains only one responsible course of action: the postponement of their proceedings consistent with the policies afforded non-detained dockets. EOIR's refusal to adopt this clear solution has placed lives at risk and undermined due process. A formal investigation is needed to fully probe the reasons behind, and assess the consequences of, this failure.

Thank you for your attention to these critical matters. If you have any questions, please don't hesitate to contact Jennifer Podkul, Vice President of Policy and Advocacy, KIND, at jpodkul@supportkind.org.

Sincerely,

Ascentria Care Alliance Immigration Legal Assistance Program
Ayuda
CAIR Coalition
Catholic Charities, NY, Immigrant and Refugee Services
Catholic Legal Immigration Network, Inc.
Central American Resource Center - CARECEN - of California
Church World Service - Lancaster
Diocesan Migrant & Refugee Services, Inc.
Erie County Bar Association Volunteer Lawyers Project, Inc. (VLP)
HIAS Pennsylvania
Human Rights Initiative of North Texas
Immigrant Defenders Law Center
Jewish Family and Community Services of Pittsburgh
Kids in Need of Defense
Legal Services for Children

⁶ See, e.g., Jennifer Podkul, "Remote hearings for unaccompanied children proves a disaster" [The Hill](https://thehill.com/opinion/immigration/487440-remote-hearings-for-unaccompanied-children-proves-a-disaster) (Apr. 16, 2020); <https://thehill.com/opinion/immigration/487440-remote-hearings-for-unaccompanied-children-proves-a-disaster>.

⁷ In the event that EOIR suspends hearings for detained unaccompanied children, exceptional instances may arise in which it is necessary to hold a hearing remotely. Given significant due process and other concerns associated with remote hearings for children, decisions about any such emergency measures should be governed by the best interests of the child and occur only at the request or otherwise with the consent of the child's attorney.

Michigan Immigrant Rights Center
Orlando Center For Justice, Inc.
Public Counsel
RAICES
Rocky Mountain Immigrant Advocacy Network (RMIAN)
The Door
The Florence Immigrant & Refugee Rights Project
YMCA of Greater Houston