"Rocket" NTA Filings for Unaccompanied Children:
A Waste of Government Resources and Denial of Due Process

Immigration and Customs Enforcement (ICE)'s ongoing practice of filing Notices to Appear (NTAs) with the local immigration court for unaccompanied children within days of their arrival to the United States creates severe operational inefficiencies and undermines children's ability to secure counsel and prepare their cases. **These harms have grown particularly acute during the COVID-19 pandemic, when the Office of Refugee Resettlement (ORR) is initially staging unaccompanied children in quarantine shelters, then transferring them weeks after arrival to shelters located hundreds of miles away from the immigration courts where ICE filed their NTAs.** To conserve resources, promote orderly operations, and ensure due process in this vulnerable population's proceedings, ICE should immediately reinstate its prior practice of delaying NTA filings until at least 60 days after unaccompanied children's arrival.

ICE's Institution of "Rocket" NTA Filings for Unaccompanied Children

Under longstanding previous practice, ICE generally waited a minimum of 60 days after an unaccompanied child's arrival before filing an NTA[1]—the charging document that formally places that child into immigration court proceedings before the Executive Office of Immigration Review (EOIR). In recent years, however, ICE began swiftly filing NTAs as part of the Trump administration's larger initiative to restrict these children's access to protection and ramp up deportations. Importantly, this shift has done nothing to diminish EOIR's case backlog, as most unaccompanied children's applications for relief are adjudicated by U.S. Citizenship and Immigration Services (USCIS) independent of EOIR's court hearing schedule. Instead, the change in practice has produced two key consequences: (1) broad government inefficiency/waste of resources; and (2) reduced fairness in children's proceedings. The pandemic has dramatically compounded these adverse effects.

Government Inefficiency and Waste of Resources

"Rocket" NTA filings have resulted in serious operational inefficiencies during the pandemic. Currently, as a health and safety precaution, once Customs and Border Protection refers unaccompanied children at the U.S. southern border to ORR, ORR places them in quarantine shelters for a period of several weeks before transferring them to different shelters located throughout the United States. ICE's "rocket" filings mean that NTAs are filed with, and hearings scheduled at, immigration courts in the EOIR jurisdictions of the quarantine shelters rather than of the shelters to which the children are then transferred for longer-term stays. Government personnel and LSPs must therefore expend substantial time and resources—often in the face of imminent court dates—changing venue to the new locations.

The administrative burdens associated with avoidable court venue changes, however, long precede the current public health emergency. Now and in the past, ORR has released within the post-arrival 60-day period a large proportion of unaccompanied children to sponsors who reside in EOIR jurisdictions distinct from those of the ORR shelters from which the children were released. These circumstances informed ICE's

[1] *See* Vera Institute, "Express Injustice: Expedited Immigration Hearings Pose Danger to Detained Children's Right to a Fair Process" (Jul. 2020); https://www.vera.org/express-injustice-expedited-immigration-hearings.

prior adoption of the 60-day delay before filing NTAs, which minimized the need to change immigration court venues to reflect sponsors' location. At present, ORR is releasing some children directly from quarantine facilities to sponsors located in different jurisdictions. In other cases, shortly after children are transferred from ORR quarantine shelters to shelters in different EOIR jurisdictions, ORR releases those children to sponsors residing in a *third* jurisdiction—or even in the jurisdiction of the initial ORR placement—requiring a *second* change of venue within the 60-day period.

In all, "rocket" NTA filings needlessly strain the resources of a host of government agencies, including:

- **EOIR.** In 2018, EOIR itself acknowledged that changes of venue can "create problems in caseload management and operational inefficiencies in our courts."[2] Immigration judges at courts where ICE originally filed the NTAs must review and approve requests for change of venue. Court staff at both the prior and new venues must process those changes. This workload imposes substantial administrative burdens on EOIR at a time that it already faces a backlog exceeding 1.2 million cases.[3]

- **ICE.** By regulation, IJs "may grant a change of venue only after the other party has been given notice and an opportunity to respond."[4] ICE—typically "the other party" in the venue change requests described—must therefore dedicate resources to addressing the requests necessitated by its own inefficient "rocket" filing practice.

- **ORR.** Court venue changes resulting from "rocket" NTA filings take up substantial ORR shelter staff resources. While shelter staff's responsibilities vary based on the facility and whether the change of venue request stems from reunification, facility transfer, or other impetus, in many cases these staff directly prepare the requests, as well as associated change of address requests—often on tight timeframes—while coordinating with ICE and LSPs.

LSPs likewise must devote significant staff time to completing change of venue and address motions while communicating with ORR shelter personnel, EOIR, ICE, and LSPs at other shelters. Oftentimes, LSPs spend substantial resources on hearing preparation tailored to a specific court, only to have to overhaul that preparation—or begin it anew—in light of a changed venue. And because many children are transferred to different facilities days before scheduled hearings, EOIR frequently does not process change of venue requests prior to those hearings, requiring LSPs to attend them and assist the court with the change of venue process. These added workloads diminish providers' overall capacity to provide legal representation to unaccompanied children, over half of whom already lack attorneys.[5]

Denial of Due Process

In addition to systemic inefficiencies, "rocket" NTA filings lead to rushed immigration court proceedings that preclude many unaccompanied children from a meaningful opportunity for legal protection. These filings regularly prompt scheduling of unaccompanied children's initial immigration court hearings within several weeks of their arrival to the United States—a period insufficient to properly secure and build rapport with attorneys, obtain evidence, and otherwise prepare cases. Without counsel to assess their eligibility for

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[2] EOIR Memorandum, "Operating Policies and Procedures Memorandum 18-01: *Change of Venue*" (Jan. 17, 2018); http://web.archive.org/web/20180122152930/https://www.justice.gov/eoir/page/file/1026726/download.
[3] TRAC Immigration, "Immigration Court Backlog Tool (last updated Nov. 2020);" https://trac.syr.edu/phptools/immigration/court_backlog/.
[4] 8 C.F.R. § 1003.20(b)
[5] Kids in Need of Defense, "KIND Blueprint: Concrete Steps to Protect Unaccompanied Children on the Move" (Nov. 2020); KIND-Blueprint-Concrete-Steps-to-Protect-Unaccompanied-Children-on-the-Move-FINAL-2.pdf (supportkind.org).

humanitarian relief and advocate for them during adversarial hearings, it is virtually impossible for children to navigate the U.S. immigration system. During Fiscal Year 2018 and the first half of Fiscal Year 2019, immigration judges were 70 times more likely to grant relief to unaccompanied children with representation than to those without it— making plain that attorneys often mean the difference between relief and deportation.[6]

"Rocket" filings also leave many children without adequate time for mental health counseling to treat trauma resulting from past harm, flight from countries of origin, and arduous passage to the United States. Left unaddressed, such trauma may impair children's ability to present their protection claims in immigration court. In some cases, "rocket" filings have forced recently arrived children who are still undergoing quarantine protocols and therefore face restrictions on social interaction, recreation, and other activities to nonetheless appear for court hearings via video-conference—a technology that itself raises severe due process barriers for children.[7]

Examples of Recent "Rocket" NTA Filings

Example 1: ICE recently "rocket" filed an NTA for an unaccompanied child placed in an ORR quarantine facility. The child remained in that facility for 16 days before being transferred to an ORR facility located in a different state and EOIR jurisdiction. Due to the rocket filing, EOIR scheduled the child's initial court date in the EOIR jurisdiction of the quarantine facility on what would have been the child's 20th day there. By the time KIND learned of this situation, only two business days remained before the court date, forcing KIND and ORR shelter staff to rush to prepare and obtain signatures on the change of venue paperwork and for EOIR, in coordination with ICE, to rapidly process and reset the case. A waiting period of 60 days before NTA filing would have made this labor-intensive process unnecessary.

Example 2: ICE recently "rocket" filed an NTA for a separate unaccompanied child placed in an ORR quarantine facility. ORR then transferred that child to an ORR facility located in a different state and EOIR jurisdiction. Subsequently, ORR released that child to a sponsor located in a *third* EOIR jurisdiction. The "rocket" filing therefore necessitated two changes of venue. A 60-day NTA filing delay would have prevented the need for both while conserving government and LSP resources.

Recommendation

The solution to the waste of resources and due process deprivations caused by "rocket" NTA filings is straightforward: ICE should immediately reinstate, and formalize through guidance, its previous and successful practice of delaying unaccompanied children's NTA filings for a minimum of 60 days after their arrival to the United States. Doing so would promote government efficiency, eliminate confusion, and help ensure that vulnerable children receive a fair day in court.

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[6] KIND calculated this figure based on EOIR data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview," p. 15 (Oct. 9, 2019); https://fas.org/sgp/crs/homesec/R43599.pdf.

[7] *See* Jennifer Podkul, "Remote hearings for unaccompanied children proves a disaster" The Hill (Mar. 16, 2020); https://thehill.com/opinion/immigration/487440-remote-hearings-for-unaccompanied-children-proves-a-disaster.