

United States Senate
WASHINGTON, DC 20510

March 27, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
Washington, DC 20530

James McHenry
Director
Executive Office of Immigration Review
5107 Leesburg Pike
Falls Church, VA 22401

Dear Attorney General Barr and Director McHenry:

We are writing to urge you to immediately postpone all immigration court appearances and hearings for detained unaccompanied children due to the COVID-19 national emergency. Anything less jeopardizes the health and safety of those children as well as of your employees, other government staff, attorneys, interpreters, and the public at large.

The United States has confirmed more than 86,000 cases of COVID-19 and over 1,300 associated deaths¹—numbers rising by the hour. Crowded immigration courts and waiting rooms violate President Trump’s guidance to limit gatherings to under ten people² and present acute risks of further transmission. Indeed, an Immigration Judge in Denver has reportedly been diagnosed with COVID-19,³ while both an Immigration and Customs Enforcement (ICE) prosecutor in Newark⁴ as well as an immigration attorney who recently appeared at the Atlanta Immigration Court⁵ have tested positive for the virus. In evident recognition of these health and safety threats, the Executive Office of Immigration Review (EOIR) has postponed non-detained hearings, closed some immigration courts altogether, and issued guidance⁶ on new court practices reflecting concern over the pandemic.

It is therefore both inexplicable and dangerous that EOIR continues to mandate immigration court appearances and hearings for detained unaccompanied children. Illustrating that danger,

¹ Johns Hopkins Coronavirus Resource Center, “Coronavirus COVID-19 Global Cases,” (accessed Mar. 27, 2020); <https://coronavirus.jhu.edu/map.html>.

² President Donald Trump, “The President’s Coronavirus Guidelines for America” (Mar. 16, 2020); https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

³ See Dara Lind, “Immigration Courts Are Telling Employees to Come to Work — Ignoring Health Risks and Local Shelter-in-Place Orders” *ProPublica* (Mar. 20, 2020); <https://www.propublica.org/article/immigration-courts-are-telling-employees-to-come-to-work-ignoring-health-risks-and-local-shelter-in-place-orders>.

⁴ Joel Rose, “Growing Calls to Close Immigration Courts And Release Detainees as Virus Spreads” *NPR* (Mar. 21, 2020); <https://www.npr.org/2020/03/21/819275605/growing-calls-to-close-immigration-courts-and-release-detainees-as-virus-spreads>.

⁵ Acacia Coronado, “How is COVID-19 Impacting the Immigration System?” *Texas Observer* (Mar. 18, 2020); <https://www.texasobserver.org/how-is-covid-19-impacting-the-immigration-system/>.

⁶ Director McHenry, “Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak” (Mar. 18, 2020); <https://www.justice.gov/eoir/file/1259226/download>.

last week an employee of the Office of Refugee Resettlement (ORR) tested positive for COVID-19.⁷ As you know, ORR is the agency that houses these children and transports them to and from immigration courts. That same week, a coalition of 26 legal services organizations that serve unaccompanied children stressed the health hazards, in addition to the legal obstacles, raised by the ongoing court appearances and hearings of this vulnerable population.⁸

Specifically, detained unaccompanied children face an impossible choice. Either they, along with their attorneys, shelter staff, sponsors, and witnesses, help prepare their cases and appear in court—thereby risking exposure to COVID-19—or they safeguard their health by not appearing—thereby risking case outcomes that could compel children’s return to grave harm in their home countries. No government office should foist that dilemma upon vulnerable children and those assisting them. Indeed, as a matter of law EOIR must accord these children special protections to guarantee the fairness of their proceedings.⁹ By refusing to postpone these children’s hearings during this national emergency, EOIR is instead stripping such protections away. Even if children do appear in court, the current inability of their attorneys to safely conduct crucial in-person screenings of those children in ORR custody prior to the hearings reduces the effectiveness of legal representation and the children’s likelihood of obtaining relief. No less importantly, EOIR should not force government personnel to choose between preserving their jobs by going to court for these children’s hearings or protecting their safety by staying at home.

There is another way—an alternative that you have already adopted for non-detained respondents and should adopt without delay for detained unaccompanied children. Specifically, we urge that you take the following actions:

- Postpone all hearings and appearances for detained unaccompanied children until public health authorities and medical experts determine conditions are safe to resume regular operations. Upon postponement, exceptional instances may arise during this crisis in which it is necessary to conduct a hearing by video teleconference or telephone. Given substantial due process and other concerns attending remote hearings for children, we urge that decisions about any such emergency measures be governed by the best interests of the child and occur only at the request or with the consent of the child’s attorney;
- Ensure clarity and notice once courts reopen and reschedule hearings;
- Toll all filing and case deadlines for unaccompanied children;

⁷ Hamed Aleaziz, “A Staff Member At A Facility Housing Unaccompanied Immigrant Children Has Tested Positive For The Coronavirus” *Buzzfeed* (Mar. 19, 2020); <https://www.buzzfeednews.com/article/hamedaleaziz/staff-member-coronavirus-diagnosis-unaccompanied-immigrant>.

⁸ 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>.

⁹ *See, e.g.*, 8 U.S.C.A. § 1232(d).

- Confirm that, at least during this period of national emergency, electronic signatures captured in conformity with the E-SIGN Act will be accepted for all filings, and wet-ink signatures will not be required; and
- Announce adequate protections, including relief *nunc pro tunc*, to preserve children's eligibility for benefits and forms of relief notwithstanding birthdays or other developments that happen during this time of national emergency.
- During postponement, urge ORR to release unaccompanied children from their custody when doing so is safe and otherwise in accordance with medical guidance.

By postponing court appearances and hearings for detained unaccompanied children, EOIR would help protect the health and safety of those vulnerable children, their attorneys, government staff, interpreters, and members of the public. By failing to do so, you would continue to place these individuals' health and safety at risk.

We urge you to make the responsible decision during this national emergency. Thank you for your prompt attention to this critical matter.

Sincerely,

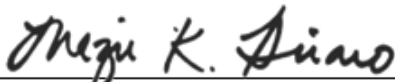
Sincerely,



Richard Blumenthal
United States Senator



Edward J. Markey
United States Senator



Mazie K. Hirono
United States Senator



Kamala D. Harris
United States Senator

TIM KAINÉ

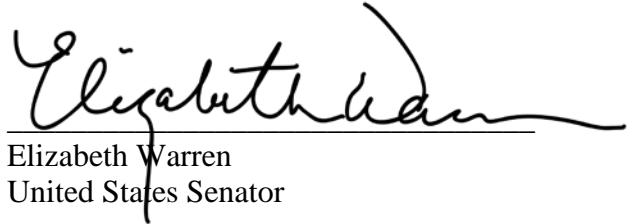
Tim Kaine
United States Senator



Cory A. Booker
United States Senator



Ron Wyden
United States Senator



Elizabeth Warren
United States Senator



Amy Klobuchar
United States Senator



Jacky Rosen
United States Senator