

April 1, 2020

Mr. James R. McHenry III
Director
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041

Dear Director McHenry:

I write on behalf of the American Bar Association (ABA) to strongly encourage the Executive Office for Immigration Review (EOIR) to temporarily suspend all immigration court hearings and appearances for unaccompanied children held in Office of Refugee Resettlement (ORR) custody. The nature of removal proceedings for children in ORR custody presents unique obstacles to providing a safe and confidential environment for legal representation and support during the current COVID-19 crisis.

The American Bar Association is the largest voluntary association of lawyers and legal professionals in the world. The ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, and works to build public understanding around the world of the importance of the rule of law. Through its Commission on Immigration, the ABA provides continuing legal education and develops and assists in the operation of *pro bono* legal representation programs along the southwest border.

During the month of February, there was an average of 3,617 unaccompanied children in ORR's nationwide shelter care system, extending from Texas to California to New York.¹ Most of these children are held in congregate care facilities that have anywhere from 25 to 1,200 beds. The average length of care is 56 days.² The ABA operates a direct service project in South Texas that has extensive experience providing legal information and representation to unaccompanied children in ORR custody in the Rio Grande Valley. When these children need to attend removal hearings, they are transported by shelter staff to immigration court, where dozens of children from various shelters may congregate in one courtroom waiting for their cases to be called.

Even if there were a way for unaccompanied children to attend court without being physically transported and congregating in groups, the ABA's project in Texas and other legal service providers currently face insurmountable challenges to adequately interview children and prepare their cases due to precautionary measures limiting in-person contact between providers and children. Furthermore, many of the areas where unaccompanied immigrant children are

¹U.S. Department of Health & Human Services website at: <https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2020/index.html> (last visited 3/31/20).

² *Id.*

currently housed have invoked shelter-in-place requirements that limit non-essential travel. Legal service providers also rely on U.S. Citizenship and Immigration Services (USCIS) offices, which are currently closed to the public, as well as state courts – many of which have closed or limited operations – to adjudicate portions of cases regarding unaccompanied children. USCIS adjudicates Special Immigrant Juvenile (SIJ) visa applications and asylum applications for unaccompanied children, and state courts are responsible for issuing state orders necessary for SIJ applications. Currently, these procedures are either delayed or suspended for the foreseeable future.

As a nation, we rightly prioritize the welfare of all children regardless of their immigration status. A recent study reported in the New York Times revealed that children may be infected by the coronavirus at rates that are comparable to adults, and there is a spectrum with regard to the seriousness of infection, with at least 6% falling seriously ill.³ [CDC guidelines](#) currently recommend maintaining social distance, and the [White House Guidelines](#) recommend against gathering in groups of more than 10 individuals. Due to the severity of the pandemic and the rapidly increasing rates of transmission in the United States, we recommend that EOIR suspend all unaccompanied children’s proceedings to avoid a potential outbreak among detained children or those with whom they interact, including shelter care workers, court personnel, legal service providers, and child advocates.

We understand that there may be exigent cases which would necessitate that some hearings proceed by telephone or televideo during this period. We urge that such instances be kept to a minimum and take place only with the consent of a child’s attorney.

The ABA recognizes the enormity of the challenges facing our country as a result of the COVID-19 pandemic. However, we must ensure that the health and welfare, and the legal rights, of these vulnerable children are protected. The best course of action to accomplish that goal is to temporarily suspend removal hearings for unaccompanied children.

Thank you for considering our recommendations. If you have any questions or need additional information, please contact Kristi Gaines in our Governmental Affairs Office at kristi.gaines@americanbar.org.

Sincerely,



Judy Perry Martinez
President

³ Pam Belluck, Children and Coronavirus: Research Finds Some Become Seriously Ill, the New York Times, March 17, 2020. <https://www.nytimes.com/2020/03/17/health/coronavirus-children.html>.