

## Children's Advocates Call for Immediate Suspension of Plan to Subject Unaccompanied Children to Remote Video Hearings

March 5, 2020

Each of the undersigned organizations advocates on behalf of unaccompanied and separated children in Houston. We write today to express our deep concern and opposition to the Department of Justice's (DOJ) plan to use video-teleconferences (VTCs) to hear the cases of immigrant children in government custody in Houston and Corpus Christi. The preliminary rollout of this policy could affect up to 1500 children, including very young children and children with diagnosed mental illness and acute trauma. All of the children are in government custody, separated from parents and family members.

Federal law requires the government to ensure that children have a fair opportunity to be heard, including the opportunity to present their claims for protection in a manner that reflects their status as children. Yet children face many obstacles to a fair day in immigration court where they carry the burden to show that they are eligible for protection from deportation. There is no right to counsel free-of-charge for children, regardless of indigency. With few exceptions, children are subject to the same substantive and procedural requirements as adults. Only the most vulnerable children are appointed an independent Child Advocate to fight for their best interests.

Until 2018, the use of VTCs in children's cases was exceptional and rare. That year, the DOJ radically—if temporarily—expanded the use of VTCs for children in government custody. Children's advocates pushed back and not long after, DOJ ended this "experiment" with VTCs for children. However, the undersigned organizations have learned that the government intends to use VTCs for all children's cases in the Houston immigration court, starting on March 9, 2020. Our understanding is that the Office of Refugee Resettlement will still transport children from the facility to court only to have a judge in the Atlanta immigration court hear the cases. We have also learned that this may be the first step in a national initiative by the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS) to create a single national VTC docket for all detained, unaccompanied children of all ages and for all types of hearings. The DOJ is not only reinstating the usage of VTC, but it is happening at the same time they are reminding judges they must expedite children's cases. This will result in children having all of their immigration court hearings over video—within days or weeks of their arrival in custody, while they are pending reunification with family members—and never having the opportunity to explain to a judge in person why they need protection in the United States.

Attorneys and child advocates who have participated in hearings where children appeared by VTC at prior times have identified three specific ways that these hearings render children's proceedings unfair and increase the risk of unsafe outcomes. **First, VTCs diminish children's ability to express their wishes and make informed decisions.** Many children find it difficult to understand immigration court proceedings, even in person, because they are interacting with government systems for the first time and are doing so in a different language. This is exacerbated for children appearing via VTC. VTCs lead to unnecessary delays and inefficiencies in immigration courts, as there has been no manner to convey documents from government

attorneys or the Court to child respondents and attorneys and vice versa. As a report commissioned by the DOJ acknowledged, immigration judges lose the ability to analyze children's nonverbal communications because gestures and facial expressions are lost over video.<sup>1</sup> Most importantly, children are unable to interact and develop a relationship with the immigration judge—the person charged with making decisions about their future.

**Second, VTCs deprive children of the most effective representation.** Attorneys representing or accompanying children subjected to VTCs court are forced to make a difficult decision between being with the child and providing them with in-person support, or being in the same court as the immigration judge in order to directly engage with the judge and the attorney fighting on behalf of DHS. If a child's attorney cannot be physically present in the same courtroom as the judge, it can impede their ability to present their arguments or recommendations, to fully understand what is happening in the room, and to respond effectively and persuasively to the proceedings. For children required to appear in the Houston immigration court, attorneys would need to travel almost 800 miles in order to be present in the Atlanta immigration court where the judge sits. But even if the attorney can make that trip, he or she will not be physically present with the child. They will lose the opportunity to confidentially confer with the child before, during or after proceedings. An attorney's inability to be with the child can lead children to lose trust in their attorney, as they do not feel assured that their allies are on their side and adequately representing their wishes. These same concerns apply to cases where there is a child advocate making recommendations about the child's best interests.

**Lastly, the procedural challenges inherent in VTC have very concrete, substantive results: children are at risk of being sent back to situations of danger and persecution because their ability to present a case is impaired.** Immigrants appearing through VTCs are less likely to seek counsel, be granted relief, and less likely to seek voluntary departure, which means they would end up with removal orders.<sup>2</sup> Children in custody without any hope that they will be able to present their case to a judge in person are more likely to relinquish otherwise viable claims for legal relief that would allow them to remain safe in the United States.

Not surprisingly, immigration judges and federal courts expressed concerns about VTCs and their negative impact on determining the credibility of asylum-seekers applying for legal relief. Immigration judges have noted themselves that there is a benefit to being able to “just have a conversation in person” with a child during hearings.<sup>3</sup> Furthermore, federal courts have expressed concerns about VTCs and their negative impact on credibility determinations.<sup>4</sup> Even in preliminary master calendar hearings, VTCs increase the risk that children will hastily waive their rights because they do not have counsel or do not understand their rights or the gravity of the proceedings. In contrast, children who have in-person court hearings are better able to understand their cases, receive the guidance of legal counsel, and seek relief.

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<sup>1</sup> *Legal Case Study: Summary Report*, DEPT. OF JUSTICE EXECUTIVE OFFICE OF IMMIGRATION REVIEW 22 (Apr. 6. 2017), available at [https://www.americanimmigrationcouncil.org/sites/default/files/foia\\_documents/immigration\\_judge\\_performance\\_metrics\\_foia\\_request\\_booz\\_allen\\_hamilton\\_case\\_study.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/immigration_judge_performance_metrics_foia_request_booz_allen_hamilton_case_study.pdf).

<sup>2</sup> Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 NORTHWESTERN UNI. L. REV. 933, 961 (2015).

<sup>3</sup> *Id.* at 987.

<sup>4</sup> *See Rusu v. INS*, 296 F.3d 316, 322 (4th Cir. 2002) (“More specifically, video conferencing may render it difficult for a factfinder in adjudicative proceedings to make credibility determinations and to gauge demeanor.”).

Ultimately, VTCs dehumanize children. Children's status as children makes their in-person appearance in court integral to their ability to understand and fully participate in hearings that were designed for adults and which are already difficult to navigate. Furthermore, a child's presence in court is integral to their right to be heard, which is guaranteed in our Constitution. Each child has a unique story to tell. Their stories are often traumatic, and children exhibit great courage when they speak about what happened to them. A child's presence in immigration court, in the same room as the decision maker, ensures that their humanity, their individuality, and their status as a child is front and center in their case.

Our organizations are deeply concerned about DOJ's plan to implement the use of VTCs for children before the Houston Immigration Court or any proposals to expand such use to other immigration courts. The use of VTCs weakens due process and access to protection for unaccompanied children. We therefore urge the immediate reversal of these plans.

**Cabrini Center for Immigration Legal Assistance,  
Catholic Charities, Archdiocese of Galveston-Houston**

**Houston Immigration Legal Services Collaborative**

**Kids in Need of Defense (KIND)**

**Tahirih Justice Center**

**YMCA Houston**

**Young Center for Immigrant Children's Rights**