June 1, 2020

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

Re: Concern over Use of Video Teleconference for Unaccompanied Children During their Immigration Proceedings and Recommendations Related to Use

Director McHenry,

I write you today on behalf of the U.S. Conference of Catholic Bishops, Migration and Refugee Services office (USCCB/MRS). The Catholic Church in the United States has played a critical role in the care of unaccompanied children, and USCCB/MRS has been a leader in the protection of and advocacy for this vulnerable population. We welcome our partnership with the federal government in working to protect and care for unaccompanied children. It is through this lens, that I write to express my concern regarding the use of video teleconferencing for unaccompanied children generally except in certain circumstances and concerns regarding VTC use during the COVID-19 global pandemic. I will also provide some short pragmatic and child-focused recommendations for your review which I hope that you will consider.

Since 1994, USCCB/MRS has operated the “Safe Passages” program. This program serves undocumented immigrant children apprehended by the Department of Homeland Security (DHS) and placed in the custody and care of the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services (HHS). Through cooperative agreements with ORR, and in collaboration with community-based social service agencies, the Safe Passages program provides community-based residential care (foster care and small group home placements) to unaccompanied children in ORR custody, as well as family reunification services (pre-release placement screening and post-release social services for families). In fiscal year 2018, the USCCB/MRS Safe Passages program served 1,294 youth who arrived as unaccompanied children—1,365 through the family reunification program and 203 through the residential care programs.

Our work assisting these children is rooted in the belief that they, like all God’s children, were created in His image and have a unique and sacred dignity. While the Catholic Church recognizes governments’ right to control their borders and enforce immigration laws, we also hold a strong and pervasive pastoral interest in the welfare and humane treatment of unaccompanied immigrant children. The protection of immigrant children is an especially important issue for the Catholic Church, as one of Jesus’ first experiences as an infant was to flee for his life from King Herod with his family to Egypt. Indeed, Jesus, Himself, was a child migrant fleeing violence, and the Holy Family is the archetype of the refugee families we see today, both at our borders and around the world. They faced the same difficult migration circumstance as those facing thousands of children fleeing to the United States each year.

In our experience working with unaccompanied children, we have found generally that VTC hearings seriously undermine the children’s ability to have a fair hearing. We were disappointed to
hear about the transition to using VTC for the Houston unaccompanied children’s immigration cases in late February/early March. There are a variety of factors that make VTC a very difficult medium for children given the important consequences that the court appearances carry for the children’s future. Immigration proceedings are already difficult for children to understand, even under child-friendly conditions. Developmentally, it is difficult for children of all ages to stay focused on video proceedings or fully understand their gravity. These challenges are further heightened for very young children and those with mental health conditions. Through our Catholic Charities partners, we have come to observe that the remote nature of the proceedings can make the children feel isolated from the process and less likely to trust the judge and disclose information in court, which can affect the outcome of the proceedings. Additionally, we note from our partners that there are frequently technical barriers such as poor audio connections, limited view of court television monitors which diminish children’s ability to see and hear their own attorney, the ICE attorney, and the interpreter (all of whom may be in the courtroom and not with the children), which limits them from participating fully and understand the proceedings. The telephonic remote nature of the proceeding can also prevent the judge from seeing body language and facial expressions to help gauge a child’s ability to understand the proceedings that they are participating in.

While we note our general concern with VTC for unaccompanied children, we also acknowledge that there may be certain instances where VTC may be necessary. We do have one program, Bethany Christian Services in Nashville, that utilizes VTC due to some extenuating circumstances such as geographical limitations for access to immigration courts, attorneys or USCIS field offices. We understand that there may be other circumstances, including health or medical issues, warranting the potential use of VTC. In light of general concern regarding widespread VTC use, we want to offer some suggested recommendations/guidelines as to when VTC should not be used and when it should be considered in certain specific situations:

- **VTC Is Not Appropriate for Substantive Matters.** VTC should never be used for substantive matters such as pleadings, merits hearing or important advisals. VTC could be utilized for non-substantive matters on a limited basis if it is not feasible to have a hearing in-person due to location being remote.

- **VTC Is Not Appropriate for Urban Areas with Established UC Legal Communities.** VTC should be used to assist in remote locations where attorneys, both governmental and NGO as well as judges have less capacity due to the location. They should not be used in urban areas with developed NGO, government legal capacity and existing judges who have experience and familiarity with UC cases.

- **VTC Is Not Appropriate for Special Needs Children or Cases.** VTC requires extensive staffing on the part of NGO attorneys and is an imprecise and sometimes traumatizing mechanism for engaging children in the adversarial immigration court system. For this reason, VTC should not be used for: tender age children, children with special needs, and children who speak indigenous languages.

In the context of COVID-19, we recognize the great responsibility that you have to keep your staff safe and the many obligations that you face in making these decisions. Please note our great appreciation of the work of immigration judges and court staff. Due to the severity of the COVID-19 global pandemic and the increasing rates of transmission in the United States, USCCB/MRS advocates generally for postponement of all EOIR hearings and court appearances, as well as tolling of filing and case deadlines, for unaccompanied children. We do note that there are likely to exceptions given the legal requirements for children who approach the age of majority and other compelling needs. As immigration court proceedings present substantial health and safety risks for
children, ICE staff, ORR staff, NGO staff and immigration court staff during the COVID-19 pandemic, we urge you to consider this immediate suspension of those proceedings. Appearing by phone or VTC limits the ability for children to get substantive representation, and the health risks outweigh benefits of continuing to schedule hearings for unaccompanied children. If you must continue to utilize VTC, we urge that it only be used in emergency situations that are governed by the best interests of the child and occur only at the request and/or consent of the child’s attorney.

USCCB/MRS recognizes the enormity of the challenges facing our country as a result of the COVID-19 pandemic. We thank you and your staff for the work that you have put into these efforts. We will continue to work on protecting the most vulnerable children as it is central to our mission. We appreciate you taking the time to consider our recommendations. If you have any questions or need additional information, please contact Ashley Feasley, Director of Policy, afeasley@usccb.org. We hope to work with you on this issue and others going forward in this difficult moment.

Sincerely,

U.S. Conference of Catholic Bishops, Migration and Refugee Services

Catholic Charities Dallas

Catholic Charities, Archdiocese of Galveston-Houston

Catholic Charities of Southwestern Ohio

CC: Ms. Heidi Stirrup, Acting Director HHS/ORR

Ms. Jallyn Sualog, Deputy Director HHS/ORR