

DIANNE FEINSTEIN
CALIFORNIA



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United States Senate

WASHINGTON, DC 20510-0504
<http://feinstein.senate.gov>

November 20, 2018

The Honorable Matthew Whitaker
Acting Attorney General
Department of Justice
Washington, D.C. 20530

The Honorable Kirstjen Nielsen
Secretary
Department of Homeland Security
Washington, D.C. 20528

2018 NOV 21 PM 3:13
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Dear Acting Attorney General Whitaker and Secretary Nielsen:

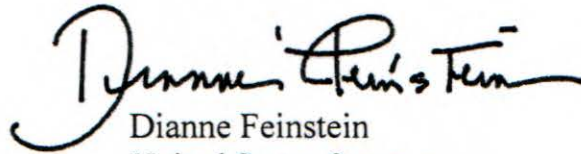
I urge you to rescind the new regulation banning certain unaccompanied children from receiving asylum in the United States. The regulation, combined with the recent Presidential Proclamation, illegally bans legitimate asylum seekers from receiving asylum. I write to emphasize the particular harm this new policy has on unaccompanied children.

For over a decade, I have been working to ensure that children are treated with dignity by our immigration system. Unaccompanied children are acutely vulnerable to trafficking. Because they rely on the guidance of adults to enter the United States, these children often lack the capacity or ability to control when or how they enter the United States. They should not be punished for entering the United States between ports-of-entry. Furthermore, forcing unaccompanied children seeking asylum to wait weeks and months in Mexico puts them in grave danger of falling prey to violence in Mexico.

To protect unaccompanied children from the unique dangers they face, Congress passed the Trafficking Victims Protection Reauthorization Act. This law recognizes that unaccompanied children, regardless of how they entered our country, should receive asylum after evaluation by a specially-trained Asylum Officer in a non-adversarial setting. Applying the asylum ban to unaccompanied children turns this system on its head and creates a confusing and harmful landscape for these children. To address this situation, I ask your response to the questions provided in the attachment to this letter.

Thank you for your assistance on this matter. I appreciate the work you do on behalf of unaccompanied children, and I look forward to working with you to protect them from harm.

Sincerely,

A handwritten signature in black ink that reads "Dianne Feinstein". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish at the end.

Dianne Feinstein
United States Senator

Questions on Asylum Ban

1. Following implementation of the asylum ban, will USCIS retain initial jurisdiction over asylum applications filed by unaccompanied alien children (UACs)?
2. How will USCIS schedule asylum interviews for UACs? Will they be subject to the "Last in First Out" scheduling practice used for other asylum cases? How will upcoming Immigration Court hearing dates affect the scheduling of asylum interviews for UACs?
3. Will Immigration Judges grant continuances for UACs that have pending asylum applications before USCIS? If not, how will Immigration Judges obtain jurisdiction over applications for asylum filed by UACs with USCIS?
4. Will Immigration Judges conduct individual hearings on withholding of removal and any other relief and protection from removal when an application for asylum and withholding removal is pending before USCIS? Will Immigration Judges issue orders of removal for a UAC with a pending asylum case before USCIS?



U.S. Citizenship
and Immigration
Services

February 4, 2019

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

Thank you for your November 20, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

The comment period for the November 9 interim final rule and proclamation referenced in your letter closed on January 8, 2019, and U.S. Citizenship and Immigration Services (USCIS) is currently reviewing and assessing the comments received. We have enclosed our responses to your specific questions answered to the best of our ability, given the matter is currently the subject of ongoing litigation.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "LFC", written over a faint circular stamp.

L. Francis Cissna
Director

Enclosure

**The Department of Homeland Security's Response to
Senator Feinstein's November 20, 2018 Letter**

- 1. Following implementation of the asylum ban, will USCIS retain initial jurisdiction over asylum applications filed by unaccompanied alien children (UACs)?**

The interim final rule did not change the statutory provision that gives U.S. Citizenship and Immigration Services (USCIS) initial jurisdiction over any asylum application filed by an unaccompanied alien child.

- 2. How will USCIS schedule asylum interviews for UACs? Will they be subject to the "Last in First Out" scheduling practice used for other asylum cases? How will the upcoming Immigration Court hearing dates affect the scheduling of asylum interviews for UACs?**

As announced on January 31, 2018, USCIS began scheduling asylum interviews for recent applications ahead of older filings (last in, first out) in an attempt to stem the growth of the agency's asylum application backlog. Under this scheduling approach, an asylum application recently filed by an unaccompanied alien child will be treated like any other recently-filed asylum application under this scheduling prioritization. Asylum applications filed by unaccompanied alien children are not otherwise prioritized for scheduling at this time, though an individual applicant or his/her representative may request prioritized interview scheduling from the office with jurisdiction over the case. Presently, information about future immigration court hearing dates is not generally considered in the scheduling of an asylum interview with USCIS.

- 3. Will Immigration judges grant continuances for UACs that have pending asylum applications before USCIS? If not, how will Immigration Judges obtain jurisdiction over applications for asylum filed by UACs with USCIS?**

The Department of Homeland Security (DHS) defers to the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR).

- 4. Will Immigration Judges conduct individual hearings on withholding of removal and any other relief and protection from removal when an application for asylum and withholding removal is pending before USCIS? Will Immigration Judges issue orders of removal for a UAC with a pending asylum case before USCIS?**

DHS defers to DOJ EOIR.