

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

May 11, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

After nearly two months of inactivity, your staff has informed the Minority that you are intending to announce the Committee's first public proceeding in the wake of the coronavirus epidemic. While we are grateful that you have finally chosen to resume the Committee's business, your decision to convene a virtual proceeding—instead of a traditional hearing—violates the rules of the House and the Committee and raises constitutional concerns. A virtual proceeding also presents a serious risk to fair minority participation, a concern exacerbated by your track record of ignoring minority rights as Chairman. We urge you to call the Committee back to work in person in Washington to address the serious issues facing our country.

You have indicated that on May 13th the Subcommittee on Immigration and Citizenship plans to hold a virtual "forum," open to the public online, concerning the immigration detention of aliens during the epidemic. Instead of bringing the Committee back to work and pursuing bipartisan objectives, as your first official Committee event in months you have chosen to focus your efforts on politicizing immigration enforcement and detention. Activist court decisions have ordered the release of dangerous criminal aliens, including some who have been charged with or convicted of crimes such as homicide, rape, and child sex offenses. Based on the information you have provided, it appears that this Committee "forum" is designed to use the coronavirus pandemic as a pretext to push for the release of more criminal aliens into our communities.

As the "forum" has been described, it appears to be an official Subcommittee hearing in everything but name. Members will present opening statements. Then witnesses will present opening statements and answer questions from Members. The Committee's five-minute rule for statements and questions will be observed. The proceeding will be made publicly available on the Committee's website.

You cannot skirt the Constitutional requirements associated with an official hearing simply by choosing to call the event by another name. The Constitution requires Members to be physically present to conduct business.¹ This requirement is reflected in both House and

¹ *United States v. Ballin*, 144 U.S. 1 (1892).

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Committee rules.² Longstanding precedent in the House requires a quorum of Members are physically present. Consistent with these requirements and precedent, Committees have always required a quorum of Members be physically present to conduct business.³ You cannot ignore these requirements for political expedience.

The virtual nature of the Subcommittee's forum also heightens the concern about how you will ensure fundamental fairness and honor minority rights in the proceeding. As Chairman, you are charged with upholding order and ensuring the Committee conducts its business in a fair and respectful manner. Yet, time and again, during hearings in Washington, you have failed to recognize the procedural rights of minority Members. You have ignored privileged motions, failed to recognize points of order, and unilaterally shut-down debate on matters before the Committee.⁴ During this Congress—and especially during the Democrats' sham impeachment effort—you have failed to fairly and consistently enforce fundamental rules of procedure.

If you cannot guarantee fundamental fairness during a traditional hearing, we have little confidence you will honor minority rights in a virtual proceeding. In person, you have silenced minority Members by talking over them, ignoring them, or rushing through votes. In a virtual proceeding, the risk for abuse is even greater. You could silence a minority Member with a single computer stroke. You could decide to take the camera off of a minority Member during his or her statement. Even more concerning, you control access to the proceeding—meaning you could exclude a minority Member from the virtual proceeding altogether.

As you and Ranking Member Jordan have discussed, we strongly believe the Committee's work should be done in person. America's first responders and health care workers are working around the clock. America's farmers are tending to their crops and America's truckers are delivering goods. Millions of our constituents do not have the luxury to work remotely. They have to show up to work—and so should we.

There is important work that the Committee can do in person. We could examine how to reduce regulatory barriers to job creation to return the economy to its pre-epidemic heights. We could examine whether our federal law-enforcement officers have the resources needed to address the epidemic effectively. We could support the Justice Department in protecting our Constitutional liberties from assault by activist state and local governments. These are common-sense priorities on which the Committee should be focused as we resume our work.

² *Rules of the House of Representatives*, 116th Cong., Rule XI (2019). H. Comm. on the Judiciary, 116th Cong., *Rules of Procedure*, Rule 2.

³ Even when the House allowed proxy voting in Committees prior to 1995, proxy voting did not count toward quorum requirements.

⁴ See e.g. *Markup of Motion Pursuant to House Rule XI, Clause 2(2)(B)...*, *Motion Pursuant to House Rule XI, Clause (1) (2) (C)...*, and *H.R. 5, the "Equality Act"*, 116th Cong. (2019).

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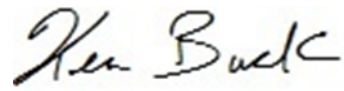
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The Senate has returned to work in Washington, as have other House committees. The Judiciary Committee should return to Washington too, in order to undertake the work of the American People—not to engage in partisan politics. It is time for us to show up and do our job.

Sincerely,



Jim Jordan
Ranking Member



Ken Buck
Ranking Member
Subcommittee on Immigration
and Citizenship

cc: The Honorable Zoe Lofgren, Chair, Subcommittee on Immigration and Citizenship