

Fact check: Sotomayor makes false claim about Covid-19's impact on children



Washington (CNN) — Supreme Court Justice Sonia Sotomayor made a significant false claim on Friday about Covid-19's impact on children.

Sotomayor made the remark during a Friday [hearing](#) about the legality of the Biden administration's attempt to require large employers to force workers to be vaccinated for the virus or undergo weekly testing.

Here is a fact check of Sotomayor's claim and claims made at the hearing by two other justices.

A Sotomayor claim about Covid-19 and children

Sotomayor, a liberal, [tried](#) during the Friday hearing to emphasize the danger posed by the omicron variant of the virus. She said, "We have over 100,000 children, which we've never had before, in serious condition, and many on ventilators."

Facts First: *Sotomayor's claim about children wasn't even close to accurate. According to federal [data](#) at the time Sotomayor spoke, fewer than 5,000 people under the age of 18 were hospitalized in the US with confirmed or suspected cases of Covid-19; the reported number of child hospitalizations was 4,464 on Thursday, the day before the hearing, and was still under 5,000 as of Monday afternoon. And though there is no official data on how many of these hospitalized children are in "serious condition" -- a term Sotomayor didn't define but is [used](#) by hospitals to refer to patients who are acutely ill, with vital signs that may be unstable -- it's overwhelmingly likely that not all of them are.*

Sotomayor could have correctly said that the number of children hospitalized with Covid-19 is at a [record level](#), and she could have correctly said that the number has spiked in the last month as omicron has spread. But the claim that "over 100,000 children" are in "serious condition" is just false.

Dr. Rochelle Walensky, director of the Centers for Disease Control and Prevention, [acknowledged](#) in a Sunday interview on Fox that the actual number of children in the hospital with confirmed cases of Covid-19 was under 3,500. Walensky emphasized that "the vast majority of children who are in the hospital are unvaccinated, and for those children who are not eligible for vaccination, we do know that they are most likely to get sick with Covid if their family members aren't vaccinated."

From the beginning of August 2020 to Saturday, a total of 85,369 people under the age of 18 with confirmed cases of Covid-19 had been admitted to hospital, according to CDC [data](#).

The Supreme Court communications office did not respond to CNN requests for comment from Sotomayor.

A Breyer comment about Covid-19 cases

Justice Stephen Breyer, another liberal, said at one point in the hearing that there had been "750 million new cases yesterday or close to that."

Facts First: *Breyer was way off. This comment, however, was clearly a slip of the tongue. Breyer accurately said at other moments in the hearing that there were "close to 750,000" or "three-quarters of a million" new cases of Covid-19 the day prior, not 750 "million." The US had more than 786,000 reported new cases the day prior, according to data from Johns Hopkins University.*

As of this past weekend, the US seven-day average of reported new cases was above 700,000 [for the first time in the pandemic](#).

A Gorsuch claim about flu deaths

Justice Neil Gorsuch, a conservative, noted at the hearing that the federal government does not use the Occupational Safety and Health Administration to require that workers take a flu vaccine, as the Biden administration is trying to do with Covid-19 vaccines (though, again, the administration is also offering the alternative of being tested weekly). And then Gorsuch made a comment about flu deaths that was heard differently by different listeners.

The official Supreme Court [transcript](#) initially quoted Gorsuch as saying: "Flu kills, I believe, hundreds of thousands of people every year." This remark was highlighted by liberals on Twitter who accused Gorsuch of getting the number wrong. But the audio of the hearing suggested Gorsuch actually said "flu kills, I believe, hundreds, thousands of people every year" -- and on

Monday morning, the Supreme Court announced it had corrected the transcript to quote Gorsuch as saying "hundreds, thousands" rather than "hundreds of thousands."

Facts First: *It is true that flu kills thousands of people every year. According to CDC [estimates](#), flu resulted in 12,000 to 52,000 US deaths annually between 2010 and 2020.*

The claim that flu kills "hundreds of thousands" every year -- the claim that the Supreme Court now says Gorsuch did not make -- would still be correct about global flu-death totals, which are [estimated](#) to be in the hundreds of thousands per year, though it would be incorrect about the US in particular.