

United States Senate

October 28, 2020

James McHenry
Director
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, 18th Floor
Falls Church, VA 22041

Dear Director McHenry,

We write to express our concern about operations at the Boston Immigration Court during the COVID-19 pandemic, and ask that you take steps to ensure the safe and efficient operation of the court during this difficult time.

Our overall concern is for the health of all people in the court, including but not limited to the judges, clerks, attorneys, parties, and support staff. We understand that they are often required to work in crowded courtrooms that make safe distancing impossible, and are often called into court only to find that hearings have been canceled or postponed.

The postponement of hearings is a specific concern about the court's operations. In the months since the court resumed hearings for non-detained individuals, respondents appearing before the court — as well as their representatives — have felt widespread confusion surrounding hearings. The court has cancelled many hearings without prior notice to attorneys or respondents, and these late cancellations result in unnecessary travel, despite the personal and public health risks that travel entails during the COVID pandemic. Additionally, without prior notice of cancellations, attorneys and respondents end up needlessly devoting time and resources to hearing preparation that goes for naught when a hearing is ultimately continued. This includes attorneys pushing their clients to locate evidence (often evidence located abroad); meeting them in person to prepare for testimony; and filing supplemental packages within the call-up date, only for the cases to be reset for months or even years after the original hearing date. Preparing for hearings that are ultimately cancelled is a hardship both for litigants and their counsel. The run-up to a hearing can be traumatizing for many respondents, such as asylum seekers. It also requires respondents and their attorneys to take time away from work and family obligations, a particularly heavy burden during the pandemic.

Another issue of concern relates to transparency in scheduling. According to the New England Chapter of the American Immigration Lawyers Association (AILA NE), immigration judges and the court's staff are following a rotating, part-time schedule. This means that, on any given date, some judges are scheduled to be in court to hold hearings, while other judges are scheduled to be out. In non-pandemic times, we understand that judges are typically in court five days a week. Therefore, in the ordinary course, if a judge is scheduled to hear a case next Tuesday, for example, attorneys and respondents expect it will happen. But currently, if a hearing is scheduled next Tuesday, attorneys and respondents don't know if it will go forward because they don't

know whether a judge will be in that day or not. AILA NE has contacted the Acting Court Administrator, the Assistant Chief Immigration Judge, and the EOIR Public Information Officer to request access to these schedules, but to date, EOIR has not shared any information about the judges' and staff's rotating schedule. Doing so would fill a significant gap in public knowledge about the court's operations during the COVID-19 health crisis.

Finally, on October 8, 2020, the court issued a standing order regarding telephonic hearings and related matters. While this order was helpful, it leaves unanswered many questions that AILA NE has brought to our attention, which impact the entire operation of the court, including:

- Will motions to allow respondents' telephonic appearance be granted liberally and in a timely manner?
- Can respondents, including juvenile respondents, have their presence at a telephonic hearing waived?
- Will clerks — who currently are difficult to reach by telephone — be available to speak with attorneys about the status of their motions?
- How do parties join video hearings contemplated by the order?
- Will each immigration judge decide how to conduct a telephonic or video hearing or will there be a court-wide procedure?
- What safety measures, such as limits on the number of respondents going to court on a given date, or enforcement of mask wearing or social distancing, will be in place within the court or the JFK Federal Building — where the immigration court is located — more generally?

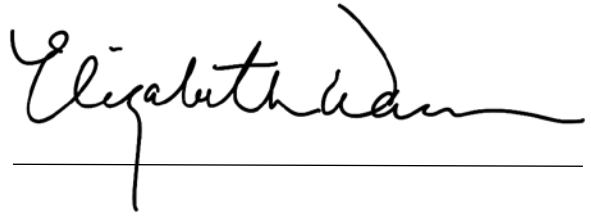
All these concerns go to questions of the safety and efficiency of immigration court operations. In this unprecedented situation of court operations during a pandemic, we urge you to engage with those who practice and appear before the court, and look forward to hearing from you about your progress in addressing their concerns. We have written to you before, on March 11, 2020, and June 23, 2020, about the operations of the immigration courts — including Boston's — during the pandemic, but we have yet to receive responses. We hope you will take these concerns seriously and reply promptly to this letter and our previous ones.

If you have any questions about this matter, please do not hesitate to contact Senator Markey's Chief Counsel Andrew Cohen at andrew_cohen@markey.senate.gov.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator