

United States Senate

May 3, 2021

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

Dear Acting Director King,

We write to express our continued concern about operations at the Boston Immigration Court during the COVID-19 pandemic, particularly regarding scheduling.

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. These late cancellations result in unnecessary travel, with attendant personal and public health risks during the COVID-19 pandemic. Additionally, without prior notice of cancellations, attorneys and respondents devote time and resources to hearing preparation that goes for naught. Preparing for hearings that are ultimately cancelled is a hardship for both litigants and their counsel. The run-up to a hearing can also be traumatizing for many respondents, such as asylum seekers.

For the past several months, immigration judges and the court's staff have been following a rotating, part-time schedule. For most of this period, the court did not share this schedule with respondents and attorneys, often causing them to appear at court only to learn that their hearing had been cancelled because the judge was not in that day. On October 28, 2020, we wrote to then-Director James McHenry to raise these concerns and request that EOIR be more transparent with scheduling information. Although we never received a response to this letter, we were pleased to see that, on January 19, 2021, EOIR began posting the schedules online. But we have recently learned that the schedules were taken down due to "employee safety and security concerns."

In the place of online scheduling information, the court has given attorneys and respondents three options for checking the status of hearings: (1) the EOIR Automated Case Information online system; (2) the EOIR Automated Case Information hotline; and (3) calling the court directly. According to the New England Chapter of the American Immigration Lawyers Association (AILA NE), these are not viable options for the Boston court due to limited staff capacity. AILA NE reports that cases are remaining on the schedule even if the court already knows a judge will not be in the day of a hearing. Therefore, checking the online system, calling the hotline, or calling the court proves fruitless because the cancelled hearing remains listed on the schedule, sometimes even through the date of the hearing.

If EOIR has legitimate concerns about posting judges' schedules online, alternative options must address the issues of attorneys and respondents preparing for and appearing at cancelled hearings, and the health and safety risks that those unnecessary court visits pose. One proposed idea from AILA NE is to ensure that, when EOIR knows that a judge will not be in on a particular day, hearings are taken off the calendar **at least 60 days prior** to the hearing date. This simple but effective solution would go a long way toward ensuring the safe and efficient operation of the court for all during this difficult time.

We hope you will take these concerns and suggestions seriously and respond promptly. 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,

Handwritten signature of Edward J. Markey in blue ink.

Edward J. Markey
United States Senator

Handwritten signature of Elizabeth Warren in blue ink.

Elizabeth Warren
United States Senator