

United States Senate

WASHINGTON, DC 20510

March 11, 2020

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

Dear Director McHenry:

We write to express our concern and seek answers regarding the Executive Office for Immigration Review's (EOIR) reported order to immigration court judges and staff to remove from EOIR facilities all posters with public health information about coronavirus disease 2019 (COVID-19). Yesterday morning, members of our staff visited the Boston Immigration Court and confirmed there were no COVID-19 posters displayed in the waiting areas. We are pleased that EOIR seems to have quickly reversed this decision in response to a news report—and that the posters were hanging in the Boston Immigration Court later in the day yesterday—but we remain concerned that COVID-19-related policy decisions appear to be driven primarily by publicity-related—rather than public health—considerations, and that this episode reflects a lack of coordination in the federal government's response to the virus. Moreover, we urge EOIR to mandate the posting of COVID-19 information and prevention signage in all courtrooms and waiting areas.

According to the Miami Herald, EOIR “told all judges and staff members in an email Monday that all coronavirus posters, which explain in English and Spanish how to prevent catching and spreading the virus, had to be removed immediately.”¹ The posters, produced by the Centers for Disease Control and Prevention (CDC), provide uncontroversial and helpful guidance, such as, “Avoid close contact with people who are sick,” and “Wash your hands often with soap and water for at least 20 seconds.”² An email from Acting Chief Immigration Judge Christopher Santoro to immigration court administrators reportedly stated: “This is just a reminder that immigration judges do not have the authority to post, or ask you to post, signage for their individual courtrooms or the waiting areas.... Per our leadership, the CDC flyer is not authorized for posting in the immigration courts. If you see one (attached), please remove it. Thank you.”³ The National Association of Immigration Judges (NAIJ), a union representing

¹ Miami Herald, “Trump administration orders immigration courts to remove coronavirus posters— then takes it back,” Monique O. Madan, March 10, 2020,

<https://www.miamiherald.com/news/local/immigration/article241046076.html>.

² Centers for Disease Control and Prevention, “COVID-19: Stop the Spread of Germs,”

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf>.

³ Miami Herald, “Trump administration orders immigration courts to remove coronavirus posters— then takes it back,” Monique O. Madan, March 10, 2020,

<https://www.miamiherald.com/news/local/immigration/article241046076.html>.

immigration judges, noted the removal order in a tweet, adding, “No, this is not a parody account.”⁴ Based on these directives, the COVID-19 posters—which NAIJ recommended that judges post “in public areas of the courts, including on the door to your courtroom”⁵—“were immediately removed.”⁶

After the NAIJ tweet, and hours after the Miami Herald reported on the directive to remove the posters, the Department of Justice contacted the newspaper and reportedly said “the signs shouldn’t have been removed. It’s now being rectified.”⁷ But “[o]fficials declined to discuss why the email was sent in the first place, and who told the chief immigration judge to issue the directive.”⁸

There have been at least 32 reported deaths from COVID-19 in the United States as of today,⁹ and the virus has been spreading in the country for weeks. It has become increasingly clear that the failure of the Trump Administration to manufacture and distribute COVID-19 tests had resulted in a dramatic undercount of COVID-19 cases, thereby increasing public health risks and creating “an embarrassing fiasco of national proportions.”¹⁰ It is past time for Executive Branch departments to prioritize public health considerations and make their decisions on the basis of recommendations from qualified authorities, such as the CDC, rather than restricting information and creating needless controversy.

We therefore urge EOIR to require the posting of the CDC signage, in English and Spanish, as well as any other relevant languages, in courtrooms and waiting areas to raise awareness of COVID-19 and how to avoid transmitting and contracting it. In addition, we request answers to the following questions by March 18, 2020:

1. Why were immigration judges and immigration court administrators instructed to remove the CDC COVID-19 posters? What “authority” did they purportedly lack to place the posters?
2. Who told Acting Chief Immigration Judge Christopher Santoro to issue the directive? Who in “leadership” was Judge Santoro referring to in his email regarding the posters?

⁴ Immigration Judges (NAIJ), tweet, March 9, 2020, https://twitter.com/Imm_Judges_NAIJ/status/1237151516395536384.

⁵ Letter from Samuel B. Cole, Director of Communications, National Association of Immigration Judges, to immigration judges, March 9, 2020, https://www.naij-usa.org/images/uploads/newsroom/NAIJ_Speaks_to_IJs_Re_Coronavirus.pdf.

⁶ Miami Herald, “Trump administration orders immigration courts to remove coronavirus posters— then takes it back,” Monique O. Madan, March 10, 2020, <https://www.miamiherald.com/news/local/immigration/article241046076.html>.

⁷ *Id.*

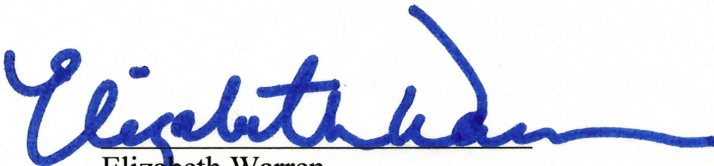
⁸ *Id.*

⁹ CBS News, “Coronavirus updates: WHO declares outbreak is now a pandemic,” March 11, 2020, <https://www.cbsnews.com/live-updates/coronavirus-updates-cases-fears-deaths-us-latest-2020-03-11/>.

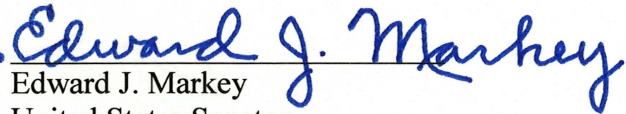
¹⁰ New York Times, “With Test Kits in Short Supply, Health Officials Sound Alarms,” Katie Thomas, Sarah Kliff and Nicholas Bogel-Burroughs, March 6, 2020, <https://www.nytimes.com/2020/03/06/health/testing-coronavirus.html>.

3. Did EOIR consult with qualified public health authorities before issuing its directive to remove the posters?
4. Why was the directive reversed? Did negative publicity play any role in the decision?
5. What steps is EOIR taking to protect immigration judges, support staff, immigrants, attorneys, and the public from the spread of COVID-19?
 - a. Are sick employees and members of the public being told to go home?
 - b. Are cleaning and disinfectant supplies being provided to all employees and to members of the public who come to the courts?
6. How is EOIR coordinating with the rest of the Department of Justice about how to respond to COVID-19? Is it receiving guidance from any other federal agencies, such as CDC?
7. In light of the public health concerns posed by COVID-19, will EOIR instruct immigration judges to allow immigrant respondents the opportunity to reschedule immigration court proceedings as necessary?

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator