

Judge Cites Progress On Protecting Migrants From Virus

By Khorri Atkinson

Law360, Washington (April 13, 2020, 10:05 PM EDT) -- A D.C. federal judge Monday declined, at least for now, to grant immediate release of dozens of migrant families at three detention centers in Pennsylvania and Texas amid the coronavirus outbreak, saying the government is "continuing to make substantial progress" to ensure detainees are not infected.

Near the end of a roughly 40-minute teleconference hearing, U.S. District Judge James Boasberg told lawyers for the migrant families they failed to demonstrate that a temporary restraining order is necessary at this point. The judge also asserted he was not convinced by their allegation that immigration authorities staged videotapes of the facilities' living conditions to purport that the government is taking appropriate steps to prevent the spread of the novel coronavirus. The tapes were submitted to the court last week.

Based on documents presented to the court regarding authorities' response to the virus, Judge Boasberg concluded he believes the facilities are in compliance with the Centers for Disease Control and Prevention's guidance for congregate settings such as detention centers and that officials are ensuring detainees practice social distancing. He also noted that hand washing stations have been installed at the facilities in Berks County, Pennsylvania; Dilley, Texas; and Karnes City, Texas.

"I think the government has been operating in good faith and doing a solid job ... for the most part," the judge said. "So I'm not prepared to issue an order [for] release."

Judge Boasberg's decision came as part of a lawsuit lodged last month by Rapid Defense Network, ALDEA — the People's Justice Center, and Refugee and Immigrant Center for Education and Legal Services. Lawyers for the immigration advocacy groups, which provide migrant families seeking asylum with legal services, argued in their March 23 complaint that the detention centers have taken inadequate precautions and that their clients are gravely at risk of getting infected with the disease.

The judge's denial of immediate release mirrors a similar order he issued two weeks ago. In that ruling on March 30, Judge Boasberg ordered immigration authorities to provide the court a report of the capacity of the three facilities, a videotape of living conditions there, an update on the centers' compliance with the CDC's guidelines, and a showing of what's being done to release migrants.

On Monday, the judge instructed the government to turn over more information by April 22. These include statistics on detained migrants seeking asylum who are in the process of and have passed

screening interviews that determine whether they have a "credible fear" of persecution if they were returned to their home countries.

Information on review petitions for asylum denials and migrants awaiting deportation have also been requested, as well as the facilities' compliance with CDC guidelines; medical capabilities, including testing and treatment plans; coordination with local health care; and access to personal protective equipment supplies. The judge has set an April 27 hearing to assess the newly requested information.

So far, none of the facilities have recorded cases of COVID-19, government attorney Vanessa Molina told the judge Monday.

But Morgan Lewis & Bockius LLP partner Susan Baker Manning, an attorney for the migrant families, said the government should disclose the number of symptomatic cases at each facility. Manning argued that her clients have informed her that some detainees are experiencing symptoms of COVID-19.

While repeatedly insisting that officials are complying with the CDC guidelines, Molina confirmed that some detainees have experienced symptoms of the virus. But their medical results came back negative and those individuals have been placed in isolation, she said. The attorney declined to provide specific information about individual migrants' health condition, citing medical privacy concerns.

It's immediately unclear how many detainees were at the facilities before the suit was filed. Judge Boasberg indicated that some have been released and about 826 detainees are currently at the three facilities, two of which he said are 20% under capacity. The third facility is under capacity by 40%, according to the judge.

This case is one of a growing number of lawsuits filed as COVID-19 cases continue to grow across the country each day. Immigration attorneys and others have been urging federal judges to release people held in detention centers amid concerns that U.S. Immigration and Customs Enforcement may not be prepared to handle a potential future outbreak at facilities nationwide, where immigrants are held in communal spaces.

On March 27, U.S. District Judge Dolly Gee of California ordered the government to show it is working toward releasing migrant children, who are referred to the U.S. Department of Health and Human Services' refugee office if they enter the U.S. without a parent, to sponsors and family members. The judge had stopped short of granting an emergency bid seeking releases within seven days of detention.

Two days later, Judge Boasberg instructed the U.S. Department of Homeland Security to provide parents at the three detention centers in Pennsylvania and Texas "the same protocols and procedures as ordered for the children" in Judge Gee's case.

During Monday's teleconference, the judge noted the motion in the California case was sought by attorneys who are part of the 1997 federal consent decree known as the Flores settlement agreement, which held that immigrant minors cannot be detained for longer than 20 days.

Judge Gee has been overseeing the consent decree and Judge Boasberg expressed concerns about going beyond her March ruling.

"I don't want to interfere with what she's doing," the judge asserted.

"Second, I believe the government is making serious strides here to comply with its obligations and to ensure the safety and health of the detainees," Judge Boasberg said. "It's something I'm wary of managing on a day-to-day basis. That shouldn't be the role of federal courts, but I want to ensure the government is complying with the Fifth Amendment."

The migrants are represented by Susan Baker Manning of Morgan Lewis & Bockius LLP, Manoj Govindaiah and Curtis F.J. Doeblner of the Refugee and Immigrant Center for Education and Legal Services, Amy Maldonado of The Law Office of Amy Maldonado, and Sarah T. Gillman and Gregory P. Copeland of Rapid Defense Network.

The government is represented by Vanessa Molina of the U.S. Department of Justice's Office of Immigration Litigation, Civil Division, and Daniel Franklin Van Horn of the U.S. Attorney's Office for the District of Columbia

The case is O.M.G. et al v. Wolf et al, case number 1:20-cv-00786, in the U.S. District Court for the District of Columbia.

--Additional reporting by Suzanne Monyak. Editing by Bruce Goldman.

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