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DOJ Defends Keeping Immigration Courts Open In Pandemic

By **Suzanne Monyak**

Law360 (April 14, 2020, 6:01 PM EDT) -- The U.S. Department of Justice is standing by its decision to keep open dozens of immigration courts across the U.S. during the coronavirus pandemic, insisting to a D.C. federal judge that the immigration courts have "responded appropriately" to the crisis.

In a Monday filing, the DOJ fired back at a **request by legal advocacy groups** to suspend all immigration court hearings and give immigrants in detention the option to proceed with hearings remotely, claiming that such a court order would illegally limit the department's flexibility.

The DOJ's Executive Office for Immigration Review, which oversees the U.S. immigration court system, has suspended in-person hearings for individuals not in detention but has allowed hearings for those still detained to continue, **leaving it to individual judges** to field requests to postpone hearings or hold them remotely.

"Plaintiffs want a one-size-fits-all remedy, disregarding the fact that immigration courts and detention centers across the country have responded appropriately, taking local conditions into account and considering the operations of their individual dockets," the federal government told U.S. District Judge Carl J. Nichols.

The DOJ argued that the D.C. federal court doesn't have the authority to grant the advocacy groups' "extraordinary" requests, and that the court cannot legally force the department to conduct all immigration court proceedings remotely.

The National Immigration Project of the National Lawyers Guild, American Immigration Lawyers Association, the Immigration Justice Campaign, as well as several detained immigrants, had sued the federal government demanding suspension of hearings in March.

The groups also requested the release of all detained migrants who have no means to remotely access legal representation or the immigration court.

The lawsuit faults the DOJ for failing to impose a blanket policy allowing migrants to reschedule hearings or conduct them through remote access technology, saying that without a uniform policy to protect its courts, individual immigration courts have imposed "wildly inconsistent responses."

For instance, some courts had issued orders that limit attorneys' ability to object to evidence presented at a hearing if they appear telephonically. The suit also claims the failure to close the immigration courts puts attorneys' health at risk.

One attorney had testified in an affidavit attached to the suit that she had appeared at a New York City immigration court in March and began showing symptoms for coronavirus less than two weeks later. She ultimately tested positive for COVID-19 and said she believes she could have been infected at the courthouse.

Another New Jersey attorney said he had communication issues with his client over the phone, since attorneys are barred from visiting clients in-person in detention centers for health reasons.

But in Monday's response, the DOJ dismissed these concerns as speculative. The government questioned why the New York City lawyer "places full blame on the immigration court for her positive diagnosis," raising the possibility that she contracted the virus elsewhere, and that attorneys "do not have some general right to represent clients in a particular way."

"That the attorneys may have to expend some effort to communicate with detained clients within the bounds of defendants' responses to the public health crisis is insufficient" to establish grounds to sue, the government said.

The DOJ has already successfully battled back a recent request from a group of legal services nonprofits, which had filed a separate lawsuit in Oregon federal court last year over case quotas, to force a suspension of in-person immigration court hearings. A federal judge this month denied that request, finding the nonprofits "failed to show that the facts warrant the sweeping relief that they seek."

Representatives for the organizations and the DOJ didn't immediately return requests for comment Tuesday.

The organizations are represented by Sirine Shebaya, Khaled Alrabe, Amber Qureshi and Cristina Velez of the National Immigration Project of the National Lawyers Guild.

The federal government is represented by Lauren C. Bingham, Katherine J. Shinnars, Brian C. Ward, Alexander J. Halaska, William C. Bateman III and Courtney E. Moran of the DOJ's Civil Division.

The case is National Immigration Project of the National Lawyers Guild v. Executive Office of Immigration Review et al., case number 1:20-cv-00852, in the U.S. District Court for the District of Columbia.

--Additional reporting by Alyssa Aquino. Editing by Orlando Lorenzo.