IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN POVERTY LAW CENTER, , v. U.S. DEPARTMENT OF HOMELAND SECURITY, , .	Civil Action No. 18-0760 (CKK)

DEFENDANTS' MOTION TO RECONSIDER ORDER DENYING MOTION TO SEVER AND TRANSFER VENUE

Pursuant to Fed. R. Civ. P. 54(b) and, in compliance with section II.7 of this Court's Procedure Order, ECF No. 69, Defendants, by and through undersigned counsel, respectfully move for reconsideration of this Court's May 10, 2019, Order, ECF No. 61, denying Defendants' Motion to Sever and Transfer Venue, ECF No. 47 ("Motion to Transfer). Reconsideration is warranted here in light of the changed case circumstances, and in particular due to the Court's recent dismissal of Plaintiff's access to counsel claim, ECF No. 200. Defendants sought Plaintiff's position on this motion on July 8, 2022. L. Civ. R. 7(m). Plaintiff opposes the motion.

LEGAL STANDARD

Federal Rule of Civil Procedure 54(b) provides that an interlocutory order that does not

law; (2) the discovery of new evidence not previously available; or (3) a clear error of law in the first order." ., 217 F.R.D. 235, 237 (D.D.C. 2003). "Considerations a court may take into account under this standard include whether the court 'patently' misunderstood a party, made a decision beyond the adversarial issues presented to the court, made an error in failing to consider controlling decisions or data, or whether a controlling or has occurred since the submission of the issue to the Court." , 321 F.R.D. 14, 17 (D.D.C. 2017) (Kollar-Kotelly, J.) (citation omitted) (emphasis added). The party moving the court to reconsider "must demonstrate that some harm, legal or at least tangible, would flow from a denial of reconsideration." (citation omitted).

ARGUMENT

This Court, based on Plaintiff's representations, initially perceived this case as a national level challenge to policies enacted and enforced in Washington, DC, and denied Defendants' Motion to Transfer, solely on that perception. Now, over three years later, the course of the litigation and Plaintiff's own discovery requests all demonstrate that this matter is better characterized as a challenge to conditions of confinement at three different detention facilities, not one which "focuses predominantly on Defendants' policy and enforcement decisions at the national and regional levels." Mem. Op. 4, ECF No. 62. Befitting a conditions of confinement case, the majority of issues in the case to date have revolved around evidence located outside of Washington, D.C., strongly suggesting that the private interests of the parties in ease of litigating this case now weigh in favor of transfer. Moreover, the Court's recent narrowing of Plaintiff's cause of action (by dismissing their broad "access to counsel" claim) to a challenge solely over "access to counts," fundamentally shifts the public interest in favor of transfer so that local courts

can hear Plaintiff's claims in the venue in which they allegedly arise. The Court should accordingly take the opportunity at this crossroads in the case to reconsider its decision denying a transfer of venue and transfer this matter to either the Middle District of Georgia or Western District of Louisiana pursuant to 28 U.S.C. § 1404(a).

I. Factual Developments Over the Course of the Litigation Warrant Reconsideration of Defendants' Motion to Transfer Venue

The course of this litigation has greatly changed since the court's decision in 2019 denying Defendants' Motion to Transfer. At that time, the case was largely perceived as a challenge to nationwide standards. Mem. Op. 2, ECF No. 62 ("The main reason that Plaintiffs oppose the severance and transfer is their insistence that this case is about Defendants' administration of detention policies . . . ."). The treatment of this litigation as a conditions of confinement claim at individual facilities as opposed to a challenge to national st ( )Tj 1 Tf0.04 Tc -0.006 .1.15 t tMdp (h)-3.9 (e9-6 (o

any alleged constitutional deficiency with their bond hearing. While "[m]otions for reconsideration of prior rulings are strongly discouraged," Scheduling and Procedures Order II.7, ECF No. 69, this Court has previously noted its willingness to reconsider its decision based on how the case progresses. Tr. August 28, 2019, Initial Scheduling Conf. 17:8–11, ECF No 77 (noting while

headquarters and regional command posts.”

"the gravamen is not the practices of the different contractors running the three facilities." Mem. Op. 2, ECF No. 62. That reasoning now no longer applies, particularly where it is clear that the case is now about the conditions of confinement at each facility, and the gravamen is thus the practices of the different contractors running the three facilities.

B. As a Conditions of Confinement Case, the Private Interests of the Parties Now Favor Transfer of Venue to the District Courts Where the Facilities Reside.

Befitting a conditions of confinement case, the course of litigation over the past two years has turned completely on factual specific questions at each of the individual facilities, not on any national policy or its enforcement by Defendants. , 464 F. Supp. 3d 174, 213 (D.D.C. 2020) ("Resolving [a challenge to condition of confinement] . . . requires a fact-specific assessment of the circumstances of each individual's confinement rather than the pure statutory interpretation inquiry . . . ."). As such, the majority of witnesses and evidence that has been submitted to the court to date has emanated from outside Washington, D.C., primarily stemming from the situs of the three facilities: either the Middle District of Georgia or Western District of Louisiana. Mem. Op. and Order 3, ECF No. 185 (detailing evidence primarily relied on by both Plaintiff and Defendants). Indeed, in recognizing the inherent challenge of adjudicating "factual disputes arising from patterns and practices at Facilities in which 'observation of Defendants' conduct is restricted,'" the Court felt it necessary to appoint a special monitor to inspect each facility before ruling on Plaintiff's Motion to Enforce the Preliminary Injunction. at 4–5.

Accordingly, the development of the case to date directly contradicts the Court's rationale for concluding

." Mem. Op. 4, ECF No. 62 (emphasis added). Moreover, given the Court's recent dismissal of Plaintiff's "access to counsel" claims, the case's current focus is even more so now on the conditions of confinement at the three facilities, therefore shifting the balance of private interests in favor of transfer. 288 F. Supp. 3d 261, 270 (D.D.C. 2018) (concluding that the convenience of witnesses and ease of access to sources of proof favored transfer because they were located outside of the district);

, 235 F. Supp. 3d 298, 308 (D.D.C. 2017) (noting that the facts that "far more witnesses would be located in Florida than in the District of Columbia" and "potential sources of proof . . . would appear to be easier to access in Florida" favored transfer to the Southern District of Florida). As has been the case to date, witnesses and evidence have been predominantly located in Louisiana and Georgia, not Washington, D.C.—evidenced by the fact that the Court felt it necessary to employ a Special Monitor to inspect the three facilities, review

petitions. , No. 7:20-CV-93 (HL), 2021 WL 5413661, at *2 (M.D. Ga. Jan. 15, 2021).

As such, the courts in the Middle District of Georgia and Western District of Louisiana

DATED: July 14, 2022

BRIAN M. BOYNTON

Civil Division

WILLIAM C. PEACHEY

Office of Immigration Litigation:
District Court Section

YAMILETH G. DAVILA

MICHAEL A. CELONE
(D.D.C. Bar ID: MD805677)

Respectfully Submitted,

KEVIN C. HIRST (MD 1812110173)
RUTH ANN MUELLER (DC 1617339)
DAVID J. BYERLEY (DC 1618599)

RICHARD G. INGEBRETSEN (DC 1736200)

U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
202-616-4848 |
richard.ingebretsen@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2022, I served a copy of the foregoing upon all counsel of record via the Court's CM/ECF filing system.

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Attorney for Defendants