

Gov't Says Detained Children's Due Process Case Is Moot

By **Nadia Dreid**

Law360 (November 22, 2019, 7:21 PM EST) -- Even though the government rolled back the requirements for relatives hoping to take in detained immigrant children, a Virginia federal judge wavered Friday on whether that made the lawsuit challenging those rules moot.

But parsing the mootness issue is at the top of her list, U.S. District Judge Leonie M. Brinkema said Friday morning at the close of the motion hearing.

"The real concern for everybody in this case should be the minors," Judge Brinkema said. "One thing we should all agree on is that these children don't need to be held by [the Office of Refugee Resettlement] any longer than necessary."

And since the suit was brought to challenge procedures that the government says it has now largely stopped — specifically requiring fingerprints from all the members of a household that want to take in children — the judge said she was interested in how the plaintiffs felt about numbers showing that the average time children spent in detention had dropped off.

"The bottom line is that the time in which children are kept in ORR custody has reduced significantly," Judge Brinkema said, adding that she wondered how the class would respond to the argument that "you essentially got what you wanted, those children spending less time in custody."

But their case is not about the children who have already been released from government custody, but rather about those who remain there, Rebecca Woloizin of the [Legal Aid Justice Center](#) told the court.

And while the government maintains it has no plans to return to fingerprinting would-be host families in the near future, attorneys for the immigrant children said it seems like the government is trying to "leave the door open" to the possibility that it might change its mind later.

Since that is still a possibility, the challengers said they want a ruling that alleviates the concerns that triggered the lawsuit in the first place.

They argue that children are being left languishing in detention much longer than they should be because family members were hesitant to step forward, out of fear that their fingerprints may be used to target them for deportation. Their suit accused the government of putting in place the policy in violation of federal rules requiring notice and comment as well as in violation of the children's

constitutional rights to due process.

The U.S. Department of Health and Human Services, which the ORR operates under, and the Department of Homeland Security have an agreement to share information related to unaccompanied immigrant children, and have admitted to using that information in the past to generate leads on possibly removable individuals.

But as of February, a DHS appropriations agreement limited the extent to which the departments could swap information on family sponsors.

Government attorney Catherine Yang pointed to the agreement as evidence that the suit's claims are now moot. When Judge Brinkema reminded her that the agreement only extended to the end of the year, Yang informed her that Congress voted Thursday on an extension.

"For another 30 days," Brinkema said.

The class of children and their families is represented by Rebecca Wolozin of the Legal Aid Justice Center and Dallin Glenn of Sterne Kessler.

The government is represented by Catherine M. Yang of the U.S. Attorney's Office for the Eastern District of Virginia.

The case is J.E.C.M. et al. v. Lloyd et al., case number 1:18-cv-00903, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Suzanne Monyak. Editing by John Campbell.