

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER, a AWA WntD S, SA W AWAWv.94 0 1w 24 -1815 Td [T0-1 (A

ORDER DENYING MOTION TO SEVER AND TRANSFER VENUE

Defendants United States Department of Homeland Security and U.S. Immigration and Customs Enforcement (“Defendants”), by and through their undersigned counsel, respectfully submit this Reply to Plaintiff, Southern Poverty Law Center’s (“SPLC”), Response to

Here, the recharacterization of SPLC's case as primarily a conditions of confinement matter is a "significant change in the facts of the case" which warrants reconsideration because it directly impacts the reasoning of the Court's denial of Defendants' Motion to Transfer. This change is most recently encapsulated in the Court's recent dismissal of SPLC's access to counsel claim. *See* Defs.' Mot. Reconsider 5–6, ECF No. 216. SPLC attempts to sidestep this in two ways: first, they argue that this development is "procedural" not "factual." SPLC's Response 6, ECF No. 217. However, it is indisputable that this matter now primarily focuses on conditions of confinement and not nationwide policies or their enforcement. *See* Mem Op. 2, ECF No. 201 (noting "Plaintiff alleges that *their clients' conditions of confinement violate* the Fifth Amendment and the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq*") (emphasis added). It is also indisputable that this development directly undermines the Court's original reasoning for denying transfer. *Compare*

as condition of confinement claims. *See, e.g.*, Mem. Op. 13, ECF No. 201 (“In other words, to determine whether Defendants *in fact* violated Plaintiff’s client’s right to access to counsel for the purposes of removal proceedings by setting certain conditions of confinement, the Court must look to the effects on the representation in the removal proceedings themselves.”); *see also id.* at 13 (comparing the case to *Nat’l Immigration Project* where “several detainees and legal services organizations challenged *the same kinds of conditions of confinement* as raised in this case, alleging that those conditions of confinement violated, among other things, the Fifth Amendment’s guarantee of access to counsel as to removal proceedings”) (emphasis added).

Moreover, this recharacterization matches the positions SPLC has taken in discovery to date. While SPLC argues that this is an “incomplete” picture of all of the discovery in the case, this misses the point. The Court’s original order denied severance because “[r]esolution of the legal and factual issues in this case—even conditions that may differ from one facility to another—would seem to turn on those national standards and Defendants’ enforcement of them.” Mem. Op. 2, ECF No. 62. This directly contradicts the argument SPLC has made that it is entitled to facility specific discovery. Pl. Mot. Compel 31, ECF No. 116 (“Facility staff members would likely possess not only relevant but also crucial information at the very heart of SPLC’s claims.”). SPLC’s position that facility specific discovery and custodians “have crucial information at the very heart of SPLC’s claims” cannot be reconciled with the Court’s rationale that “because this case focuses predominantly on Defendants’ policy and enforcement decisions at the national and regional levels . . . [m]ost of the evidence as to those issues is likely found in this jurisdiction [D.C.] and other jurisdictions outside of the Middle District of Georgia.” Mem. Op. 4, ECF No. 62. This clearly demonstrates that the “gravamen” or “heart” of SPLC’s claim is

not enforcement of national standards, but conditions at the three specific facilities, warranting reconsideration of severance and transfer.

Finally, while SPLC objects to the Court considering Defendants' (now filed) Partial 12(c) Motion for Judgment on the Pleadings, ECF No. 219, on the grounds that it has "no effect on the current nature of the case," *see* SPLC's Response 6 n.6, ECF No. 217, dismissal of four of SPLC's five remaining claims, including its Administrative Procedure Act claim, would

for reconsideration. *See, e.g., Brennan Ctr. for Just. at New York Univ. Sch. of L. v. United States Dep't of Just.*, No. CV 18-1860 (RDM), 2021 WL 2711765, at *14 (D.D.C. July 1, 2021) (“[T]he Court is persuaded that the public disclosure o (d.002 TTj -0.002 Tcai)-2 (ok6t)-2 (MDum)-2 (b (e)-1 (r)-2 (a)-1

Rather than engage with this new argument SPLC asserts that venue is not appropriate in the Middle District of Georgia, “because the named Defendants do not reside there and the federal decision-making for which SPLC seeks to hold Defendants accountable occurred in D.C., not Georgia.” SPLC’s

national interests involved.”) (quoting Mem. Op. 4, ECF No. 62). SPLC asserts this, however, despite the fact that its access to counsel claim was specifically dismissed by the Court. It is unclear how SPLC can continue to assert that this case is about the “national issues of immigrants’ access to counsel during detention” when the access to counsel claim itself has been dismissed. *See* Mem. Op. 2, ECF No. 201.

The Court should conclude that, on balance, all the relevant private and public interest considerations weigh in favor of transferring the cases to Louisiana and/or Georgia. The mere fact that national policy is implicated by the case does not automatically warrant jurisdiction in Washington, D.C., especially “when countervailing considerations strongly favor a transfer.” *Montgomery v. Barr*, 502 F. Supp. 3d 165, 178 (D.D.C. 2020). Here, the increased interests of the Western District of Louisiana and the Middle District of Georgia in reviewing access to court issues within their own jurisdiction warrant severance and/or transfer.

III. The Court May Sever SPLC’s Claims In Its Discretion As Part of a Decision to Transfer

SPLC’s assertion that Defendants “waive any argument regarding severance” and only “seek to transfer this case *in toto*” is incorrect and misrepresents the nature of Defendants’ Motion for Reconsideration. *See* SPLC’s Response 3, 4. First, Defendants’ motion specifically notes how the changed posture of this case undermines the Court’s original rationale for “in an exercise of its discretion . . . find[ing] that the claims in this case should not be severed.” Mem. Op. 2, ECF No. 68. In its motion, Defendants explain how the Court’s reasoning for denying severance, that resolution “of the legal and factual issues in this case . . . would seem to turn on . . . national standards and Defendants’ enforcement of them” and “the gravamen is not the practices of the different contractors running the three facilities, but rather Defendants’ responsibility for enforcing their own standards,” *see id.*, are directly undermined by the fact that this matter now focuses

Court to exercise its discretion. *See* Motion to Transfer 18 n.8 (“If the Court declines to exercise its discretion to sever the claims, Defendants’ request, in the alternative, that the Court transfer

CONCLUSION

For the foreg

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022, I served a copy of the foregoing upon all counsel of record via the Court's CM/ECF filing system.

/s/ Richard G. Ingebretsen
Attorney for Defendants