

Jun 23, 2022 reuters.com

California urges court to maintain ban on private immigrant detention

(Reuters) - California and a coalition of advocacy groups urged a U.S. appeals court on Tuesday to uphold the state's ban on privately run immigrant detention centers, but some of the judges seemed skeptical of their claim that the law only regulates businesses and not the federal government. Aimee Feinberg of the California Solicitor General's Office told an 11-member panel of the 9th U.S. Circuit Court of Appeals that the 2019 law's incidental impact on government contracting does not render it invalid. Feinberg also argued that because federal law does not expressly authorize U.S. Immigration and Customs Enforcement (ICE) to contract with private prison operators, the state could prohibit it from doing so. The Biden administration and private prison operator GEO Group Inc claim the California law improperly limits the federal government's ability to enter into contracts. In April, a three-judge panel said in a 2-1 ruling that California could not prevent ICE from contracting with companies such as GEO, one of the largest private prison operators in the U.S., to oversee the detention of immigrants awaiting deportation. The en banc court vacated that decision and agreed to reconsider the case later that month. Virtually all immigrant detainees in California are held in privately run facilities, which some critics say lack proper oversight and are driven to maximize profits. ICE has said its reliance on private detention centers stems from significant fluctuations in the number and location of individuals facing deportation, and the prohibitive cost of building and maintaining its own facilities. On Tuesday, three of the judges on the en banc panel pushed back against Feinberg's claims, saying the ban would dramatically change how ICE accomplishes its mission of detaining thousands of people. Circuit Judge Kenneth Lee said federal law authorizes ICE to utilize "any appropriate place of detention," and Congress explicitly mentions privately run facilities when it allocates money for immigrant detention in the federal budget. "It seems the congressional intent is clear unless you're asking for certain magic words that have to explicitly say that in the statute," Lee said. Other members of the panel seemed to side with the state. Circuit Judge Milan Smith told Mark Stern of the Department of Justice that the government appeared to lack standing to seek an immediate block of the ban because its existing contract with GEO Group does not expire until 2024. Stern told the 9th Circuit on Tuesday that by banning contracts with private businesses, California is attempting to overrule policy judgments made by the federal government for good reasons, such as cost effectiveness. "The question here is not the virtues or defects of the way in which ICE is implementing the federal immigration laws," he said. "The question is whether the United States can make the decisions about how it is going to implement them." The state is backed by the American Civil Liberties Union, several of its California chapters, and the National Immigrant Justice Center. ACLU lawyer Michael Kaufman represented the groups at Tuesday's arguments. The case is GEO Group Inc v. Newsom, 9th U.S. Circuit Court of Appeals, No. 20-56172. For GEO Group: Michael Kirk of Cooper & Kirk. For the United States: Mark Stern of the Department of Justice. For California: Deputy Solicitor General Aimee Feinberg. For amicus: Michael Kaufman of the American Civil Liberties Union of Southern California.