Twitter Thread by Aaron Reichlin-Melnick



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Just jumped into listening to the Tipton status hearing in the Texas case and the Texas AG just said something wildly incorrect, that all 14,000 people held in ICE detention would be released—but that's just completely wrong. It only applies to those with final orders!

Tipton, admitting his lack of knowledge on immigration law, asks a series of questions about detention that suggests he completely buys into Texas's argument that anyone with a criminal record is per se dangerous. But they served their time! If they were a citizen they'd be out.

Kirschner pushing back on Tipton and the AG's focus on detention, making clear that the case is about "removal," not detention. He asks Tipton to lay out his questions fully so they can answer them.

Texas's AG office completely botches Zadvydas, claiming that if removable is not foreseeable the government has no authority to detain them.

That is simply false (DHS can always continue to detain on public safety grounds), and @CodyWofsy jumps in to correct that issue.

Pushing back, @CodyWofsy makes clear that "as a practical matter, people who have final removal orders are often detained for years," including in circumstances where there are practical issues with their removal (diplomatic issues, e.g.) and Texas's claim was just wrong.

Now @CodyWofsy is explaining the very basics of the removal system's interaction with the criminal justice system to Judge Tipton, making clear that removal is not automatic on conviction, that there's a whole immigration court process.

Tipton now goes to the basic question at the top, asking whether or not people who don't have final orders of removal are covered by the memorandum (they are not!).

Kirschner for DOJ explains that the memo is ONLY about final orders.

Tipton thanks @CodyWofsy for background.

Tipton: "Are people who have been in prison, served their debt, are they covered by this pause.... or are they governed by some other statute about what happens to them on release?" He should read our IHP fact sheet. https://t.co/IPBpqdl9eE

Tipton is clearly very open to learning more about the immigration system, and keeps asking for more information about how it actually works, which is good... but he already jumped in before getting the info, which is not good. @CodyWofsy doing a great job explaining basics.

Tipton says that he is going to extend the Temporary Restraining Order to "get it into a fashion for appellate review" and "I just want to make sure that the Fifth Circuit has the best record that it can, and that the parties have had the opportunity to provide fulsome briefing."

Tipton proposes a briefing schedule where Texas's briefing will be due on February 5th, DOJ's response due February 12, and a reply brief due Tuesday February 16th, and an argument on February 19. He asks for practical concerns from the parties first. Texas says they agree.

My fundamental issue with Tipton's solicitude to the schedules of the lawyers involved (he keeps apologizing for rushing them and empathizing with the work they have to do) is that the burden on lawyers doing more work is far less than the burden on people being deported.

Kirschner says that the Solicitor General will be making a determination as to whether to appeal Tipton's decision, but that he's going to be working along Tipton's schedule no matter what.

Tipton asks about appealability of TROs in general and conversion to a PI.

Kirschner says that they'll follow Tipton's schedule, but also that DOJ may try to appeal Tipton's decision anyway.

Tipton asks Texas to agree that DOJ's filing a brief on the extended TRO schedule isn't waiving their right to appeal the extension of the TRO. Texas agrees.

Now we're just on to practical question about word counts for briefs. But long story short, the TRO is going to be extended to February 23, and then Tipton will try to get a ruling in on converting it into a preliminary injunction or not. However, DOJ may appeal the extension.