

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Robson Xavier Gomes

v.

Civil No. 20-cv-453-LM

U.S. Department of Homeland
Security, Acting Secretary

ORDER ON MEDICAL EVIDENCE

During a hearing on May 18, 2020, in this case, the court learned that United States Immigration and Customs Enforcement ("ICE") does not maintain a complete set of medical records for detainees in its custody. That is, ICE does not require facilities to send medical records with detainees as they move them from one facility to another. When ICE transfers a detainee out of facility 1 into facility 2 and then into facility 3, that detainee arrives at facility 3 with no medical records from facilities 1 or 2. According to counsel for ICE, facility 3 conducts an intake interview with the detainee to develop its medical record for that detainee. Thus, in this case, when ICE provides petitioners' counsel with medical records for a detainee housed in Strafford County House of Corrections, the medical records often consist only of medical records compiled by the Strafford County House of Corrections.

They do not include all records compiled while the detainee has been in ICE custody.

The court is currently holding bail hearings for high-risk detainees on a continuing basis. A threshold issue in these cases is whether a detainee qualifies as "high-risk." Going forward if a detainee has no Strafford County House of Correction medical record to substantiate his medical vulnerability claim, petitioners may go forward without a medical record if the detainee can testify credibly that s/he suffers from a qualifying medical condition. The court will permit petitioners' counsel to submit a detainee's testimony on his medical condition at a sealed video hearing prior to the bail hearing. In those limited situations when petitioners' counsel deems it necessary, the court will permit counsel to introduce corroborating testimony of a family member to help establish a prima facie case of that detainee's vulnerability to COVID.

As explained in the court's order dated May 4, 2020 (doc. no. 52), if respondents wish to rebut a petitioner's prima facie case, they may do so "with evidence that a detainee's claimed medical condition is false or fabricated, or is obviously excluded from the CDC/ERO guidance. . . . A retained medical

expert is not necessary, however, to make these screening decisions.” Doc. no. [52](#) at 8.

SO ORDERED.



Landya McCafferty
United States District Judge

Date: May 20, 2020

cc: Counsel of Record.