

## ***Fraihat v. ICE* // Citations to April 20, 2020 Order**

This document provides cites to the April 20, 2020 order by Judge Bernal granting Plaintiffs' class certification and preliminary injunction.

It includes citations on: medical indifference (P. 1), punitive conditions of detention (P. 2), irreparable harm (P. 2), balance of the equities (P. 2), possibility of release (P. 2), orders (P. 2) and subclass definitions (P. 2).

Lastly, factual findings regarding conditions of individual facilities can be found on pages 3 through 6, listed by alphabetical order.

### **MEDICAL INDIFFERENCE**

"Defendants made an intentional decision to promulgate only non-binding guidance for the first month of the pandemic, despite some knowledge of the risk posed by COVID-19." P. 29.

"Defendants do not directly dispute that ICE itself does not track medically vulnerable and/or disabled detainees with specificity. Nor does the Docket Review Guidance mandate action aimed at them." P. 29-30.

"[The Pandemic Response Requirements] document also includes no mention of enforcement mechanisms." P. 30.

"Defendants also do not dispute that 15% of individuals in the Subclasses who ultimately contract COVID-19 will die, or that those who survive are likely to suffer life-altering complications. At the larger detention facilities, a COVID-19 outbreak could result in dozens of deaths. And as recent ICE COVID-19 case numbers indicate, once a facility has a few cases, the disease spreads rapidly, despite IHSC and CDC protocols." P. 30.

"Defendants have not provided even nonbinding guidance to detention facilities specifically regarding medically vulnerable detainees, pending individualized determinations of release or denial of release." P. 31.

"Defendants delayed mandating adoption of the CDC guidelines, and unreasonably delayed taking steps that would allow higher levels of social distancing in detention." P. 31.

"[A]ny medically vulnerable individual in an ICE facility likely confronts an unreasonable risk of infection, severe illness, and death." P. 31.

"[T]he Docket Review Guidance is objectively unreasonable ... [I]t omits a CDC-defined risk factor; [...] it does not apply to medically vulnerable individuals held in 'mandatory' detention, who remain in harm's way; [...] it does not protect individuals while release determination are being made; [...] it gives ICE FODs responsibility for identifying individuals at risk, not medical professionals; [...] it does not require action within a specific time period; [...] it fails to provide clinical guidance; [it is, and remains, mere guidance and is not determinative; [and] it does not have a strong presumption of release." P. 32.

"As a result of these deficiencies, many of which persist more than a month into the COVID-19 pandemic, the Court concludes Defendants have likely exhibited callous indifference to the safety and wellbeing of the Subclass members. The evidence suggests systemwide inaction that goes beyond a mere 'difference of medical opinion or negligence.'" P. 32 (citing *Bell v. Mahoney*, 2019 WL 6792793 (C.D. Cal. Aug. 29, 2019)).

"In addition, the [March 26, 2020] guidelines do not include access to hand sanitizer and use of masks for individuals with a cough; do not include guidance for administrators to plan surge capacity needs; do not provide guidance on when to test patients for COVID-19 other than by reference to the CDC; do not propose

identification of individuals with high risk of illness and death from COVID-19; and largely ignore CDC guidelines for social distancing strategies.” P. 11.

“[I]t appears ICE does not have a centralized screening, let alone tracking, mechanism or procedure to identify medically vulnerable or disabled individuals in its custody during the COVID-19 pandemic.” P. 13.

**PUNITIVE CONDITIONS OF CONFINEMENT**

“During a pandemic such as this, it is likely punitive for a civil detention administrator to fail to mandate compliance with widely accepted hygiene, protective equipment, and distancing measures until the peak of the pandemic, and to fail to take similar systemwide actions as jails and prisons.” P. 34.

“[A]ttendance at hearings cannot be secured reliably when the detainee has, is at risk of having, or is at risk of infecting court staff with a deadly infectious disease with no known cure. Participation in immigration proceedings is not possible for those who are sick or dying, and is impossible for those who are dead.” P. 34.

**IRREPARABLE HARM**

“The number of immigration detainees testing positive for COVID-19 continues to increase at an alarming rate.” P. 36.

**BALANCE OF EQUITIES / PUBLIC INTEREST**

“[T]here can be no public interest in exposing vulnerable persons to increased risks of severe illness and death.” P. 37.

“An immigration facility outbreak would also menace the non-detained: a surge in preventable cases would further strain local hospital and healthcare resources.” P. 6.

**POSSIBILITY OF RELEASE**

“There are a number of tools available to ICE to decrease population density or to release medically vulnerable individuals. ICE may choose to release people on bond or conditional parole, and in the past, has exercised detention authority to release individuals with serious vulnerabilities or medical conditions. (...) Even individuals required to be detained by stat-

ute can be and were released pursuant to ICE guidelines. Even individuals required to be detained by statute can be and were released pursuant to ICE guidelines and policies, and statutory and regulatory provisions and policies, and statutory and regulatory provisions.” P. 10.

The Court has noted (...) probable serious failures to act (...) the failure to take measures within ICE’s power to increase the distance between detainees and prevent the spread of infectious disease, for example by promptly releasing individuals from detention to achieve greater spacing between medically vulnerable individuals and the general population. P. 31.

Plaintiffs also provide several reasons the Docket Review Guidance is objectively unreasonable. (...) it does not apply to medically vulnerable individuals held in “mandatory” detention, who remain in harm’s way (...) it does not have a strong presumption of release. P. 32.

**ORDERS**

“[ICE] shall identify and track all ICE detainees with Risk Factors...within ten days of this Order or within five days of their detention, whichever is later[.]” P. 38.

“[ICE] shall make timely custody determinations for detainees with Risk Factors, per the latest Docket Review Guidance[.]” P. 38.

“The above relief shall extend to detainees with Risk Factors regardless of whether they have submitted requests for bond or parole, have petitioned for habeas relief, have requested other relief, or have had such requests denied[.]” P. 38.

**SUBCLASSES**

1. All people who are detained in ICE custody who have one or more of the Risk Factors placing them at heightened risk of severe illness and death upon contracting the COVID-19 virus. Risk Factors:

- a. Being over the age of 55;
- b. Being pregnant;
- c. Having chronic health conditions:
  - i. Cardiovascular disease (congestive

- heart failure, history of myocardial infarction, history of cardiac surgery);
- ii. High blood pressure;
- iii. Chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases);
- iv. Diabetes;
- v. Cancer;
- vi. Liver disease;
- vii. Kidney disease;
- viii. Autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus);
- ix. Severe psychiatric illness;
- x. History of transplantation; and
- xi. HIV/AIDS.

2. All people who are detained in ICE custody whose disabilities place them at heightened risk of severe illness and death upon contracting the COVID-19 virus. Covered disabilities include:

- a. Cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery);
- b. High blood pressure;
- c. Chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases);
- d. Diabetes;
- e. Cancer;
- f. Liver disease;
- g. Kidney disease;
- h. Autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus);
- i. Severe psychiatric illness;
- j. History of transplantation; and
- k. HIV/AIDS.

#### **FACILITY-SPECIFIC FACTUAL FINDINGS**

##### **1. Adelanto Processing Center (Adelanto, California)**

“[A]s of March 18, 2020, two dorms in the Adelanto West building were in quarantine or cohorting. [...] On the morning of March 19, 2020 the Adelanto East building was also quarantined” P. 14.

“[D]etainees report to [Al Otro Lado] that guards did not wear gloves or masks in early to mid March.” P. 14.

“Detainees clean most of the facility and do not have masks themselves, and report a shortage of cleaning supplies.” P. 14.

“Nurses and doctors had not visited to perform check-ups on the quarantined individuals.” P. 14.

“As of March 24, 2020, [Fraihat] had not received information about COVID-19 from ICE or Adelanto staff, and noted that soap was not easier to access, despite the outbreak.” P. 14.

“[Fraihat] stated that social distancing is not possible due to the close quarters.” P. 14.

“[Fraihat] observed that newly detained individuals still arrive at the facility...” P. 14.

“A guard told Fraihat that older individuals are cohorted in a unit that shares a door with a unit for individuals exhibiting COVID-19 symptoms.” P. 14.

“[Munoz] stated that individuals in the [Adelanto dorm for older individuals] have not had temperature checks or tests and are not spaced more than six feet apart.” P. 14.

“Guards move between units for count, and detainees who deliver meals also circulate between the units, as do the pill pass nurses.” P. 14.

“Some guards wear masks and gloves, but older detainees cannot access PPE, to [Munoz’s] knowledge.” P. 14.

“If a detainee had a fever, he or she would have to submit a ‘kite,’ which takes 24 hours to review.” P. 14.

“Defendants also state Adelanto has identified detainees ‘at greater risk for contracting COVID-19,’ ... but do not say what measures are being taken to protect those detainees, or whether the criteria used conform with CDC guidelines.” P. 14-15.

**2. Aurora Contract Detention Center  
(Aurora, Colorado)**

“Up to eighty people live in a dorm with a maximum capacity of eighty-two ... The dorm consists of four- to eight-person cells, where it is ‘impossible to stay away from other people.’” P. 15.

“Detainees do not have access to hand sanitizer, have not been tested for COVID-19, have no access to masks, and have not changed cleaning procedures.” P. 15.

“Eighty detainees share a single sink with a timed faucet that only stays on for a few seconds and that has low water pressure.” P. 15.

“According to another detainee’s report, the only guaranteed way to get a bar of soap is to buy it for \$3 at commissary.” P. 15.

“Aurora added about thirteen new people to the declarant’s dorm from March 18 to 21, 2020, and some purportedly came from jails with symptomatic individuals.” P. 16.

“The screening procedures for transferees consisted of a questionnaire and temperature check, and the detainees were concerned about asymptomatic individuals gaining admission to their dorm.” P. 16.

**3. Etowah County Detention Center  
(Gadsden, Alabama)**

“Hernandez states that as of March 24, 2020, he had not received formal education about COVID-19, though there was an informative flyer in the dorm, which is in English only.” P. 13.

“Hernandez had not had his body temperature checked and has not seen other individuals having their temperatures taken.” P. 13.

“Soap must be purchased at commissary ...” P. 13.

“Hernandez did not observe officers wearing gloves or masks.” P. 13.

“New detainees and guards enter the facility regularly.” P. 13.

“[A] transferee reported feeling sick, and went to medical, where he did not have his temper-

ature taken or receive any treatment, but was restricted to his cell.” P. 13.

“Defendants do not state whether Etowah has identified detainees at greater risk for contracting COVID-19, and do not say what measures are being taken to protect those detainees.” P. 13.

“An FMC assigned to Etowah reports that he has been informed of Etowah’s COVID-19 protocols, and the facility is conducting intake screenings for COVID-19 symptoms (but not for COVID-19 risk factors) ...” P. 13.

**4. Folkston ICE Processing Center  
(Folkston, Georgia)**

“[A] detainee caller from Folkston reported he lacked access to soap and sanitizer, and at least one person in his housing unit had symptoms of cough, fever, or shortness of breath, but had not been removed from the unit.” P. 16.

**5. Houston Contract Detention Facility  
(Houston, Texas)**

“A detainee at this facility declares that as of March 24, 2020, he did not receive formal information about COVID-19 beyond informational flyers, and observed no increase in cleaning supplies to support additional hand-washing.” P. 18.

“Detainees with cleaning assignments had to mop and sweep without gloves or protective equipment, and guards did not wear gloves or masks.” P. 18.

“Social distancing in the 40-person open dorm with bunk beds four feet apart was not possible.” P. 18-19.

“The week prior, new transferees from Otay Mesa were added to the facility.” P. 19.

**6. Irwin Detention Center (Ocilla, Georgia)**

“One detainee at Irwin reported ... that there were confirmed cases of COVID-19 in the facility and it is under quarantine.” P. 17.

“[A] detainee caller reported that neither ICE nor guards had given information about COVID-19, and that at least one person in his housing had a worsening cough, but had not

been removed from the unit.” P. 17.

**7. Joe Corley Detention Facility  
(Conroe, Texas)**

“The facility places 36 people in each barrack.” P. 18.

“Cafeteria workers organized a three-day strike, and access to food was disrupted, resulting in one detainee suffering an epileptic seizure.” P. 18.

“Clients report ... [that] there are others in their dorms sick with what seems like the flu, and who have been denied medical visits.” P. 18.

“Two clients have asthma and have not received inhalers, and another detainee with bullets in his legs has not been able to obtain pain medication.” P. 18.

“Deportation Officers have informed all but one Las Americas clients that ICE will not consider their parole applications, because they were formerly placed in Migrant Protection Protocols (“MPP”), even though such individuals are eligible and similarly situated clients have obtained parole before.” P. 18.

**8. LaSalle Detention ICE Processing Center  
(Jena, Louisiana)**

“SIFI staff received a March 19, 2020 call from an individual held at LaSalle who complained of fever, chest pain, difficulty breathing while trying to sleep, and of coughing blood. The detainee stated he tested negative for the flu but had not been tested for COVID-19, and he could only obtain ibuprofen, syrup, and salt. He reported sharing a unit with others with similar symptoms.” P. 17.

“[The detainee] stated that GEO staff were not routinely using gloves.” P. 17.

“ICE Response to requests for release “remains spotty” and many applications are denied or receive no decision for months.” P. 17.

**9. Otay Mesa Detention Center  
(San Diego, California)**

“Al Otro Lado staff observed Otay Mesa employ-

ees shaking hands, patting shoulders, and working in close proximity to each other.” P. 15.

“Attorneys were allowed to enter the facility for non-contact video teleconference visits, without screening procedures.” P. 15.

“Visiting attorneys did not have their temperature taken, and were not asked if they had COVID-19 symptoms.” P. 15.

“Telephones were not cleaned prior to the visit.” P. 15.

**10. Pine Prairie Detention Center  
(Pine Prairie, Louisiana)**

“[D]etainees informed a SIFI staff member that they lacked access to hand soap, and that the facility operator, GEO Group, had not altered protocols in response to the pandemic.” P. 18.

“During a visit, the SIFI staff member submitted to a temperature check and questionnaire, but noted staff and detainees did not wear masks or gloves.” P. 18.

“[A] detainee told SIFI staff that he and about 60 others in Charlie Alpha unit were under quarantine, after someone in the unit was suspected of having COVID-19.” P. 18.

“Individuals in the unit had to clean their own unit, and had no access to hand soap or sanitizer, except soap they had for showers.” P. 18.

“No spacing measures had been implemented.” P. 18.

“[A] detainee in another unit stated they were receiving hygiene supplies every two days, and that two individuals with COVID-19 symptoms had been removed from the unit.” P. 18.

“The detainees stated they did not have masks inside the unit, and that detainees were still cleaning the dorm without gloves.” P. 18.

“Transferees or newly detained individuals continued to be admitted to the unit.” P. 18.

**11. South Louisiana ICE Processing Center  
(Basile, Louisiana)**

“The legal director of Las Americas Immigrant

Advocacy Center reports that detainees have no access to soap or sanitizer, and that guards ran out of gloves.” P. 17.

“Toilet paper is limited, adding to hygiene concerns, and multiple people in the barracks were coughing.” P. 17.

“One immune-compromised detainee was working in the facility kitchen until at least March 20, 2020.” P. 17.

“Las Americas reports HIV positive detainees are scheduled to be transferred by bus and/or plane, through various detention centers.” P. 17.

### **12. South Texas Processing Center (Pearsall, Texas)**

“[S]ix detainees reported they had not received information about COVID-19 from the facility.” P. 19.

“Detainees did not know what precautionary measures they should be taking, and no protective gear was available.” P. 19.

“New arrivals continued to come to the facility, without information as whether they had been screened.” P. 19.

“None of the detainees reported temperature checks.” P. 19.

“Court rooms at the facility were functioning as normal, with judges, attorneys, court staff, and respondents in close proximity.” P. 19.

“Respondents were held in a [sic] crowded, closed cells before and after their hearings.” P. 19.

### **13. Stewart Detention Center (Lumpkin, Georgia)**

“Some but not all facility staff wore gloves, and no staff wore masks.” P. 16.

“Defendants state Stewart has identified detainees at greater risk for contracting COVID-19, but do not say what measures are being taken to protect those detainees in particular.” P. 16.