

## ***Fraihat v. ICE* // COVID-19 Order Frequently Asked Questions**

### **WHAT DOES THIS ORDER MEAN?**

This means that a federal judge found ICE's systemic response to the COVID-19 pandemic to be systemically deficient.

The judge found that ICE's response to the spread of COVID-19 was objectively deliberately indifferent in violation of the U.S. Constitution and federal disability law.

The judge ordered ICE to establish a process to do the following:

- Review all people in ICE custody to identify and track people with relevant Risk Factors (discussed further below) within 10 days of the date the order was issued on April 20, 2020 or within five days of their detention (whichever is later);
- Undergo custody redeterminations for any detained people with Risk Factors. This means that they will review whether people with Risk Factors may be adequately protected from COVID-19 infection in detention or whether they must be released because ICE cannot adequately protect them based on their individual vulnerabilities;
- Update their internal protocol for responding to the pandemic to better protect people who remain in detention from COVID-19 infection; and
- Ensure that the requirements of this order be implemented at every detention facility across the nation, regardless of whether the facility is operated directly by ICE, local authorities, or private companies that have contracted with ICE.

### **WHO DOES THIS APPLY TO?**

This order applies to all people in ICE detention who have Risk Factors that make them particularly vulnerable to COVID-19 infection.

This includes people who are over the age of 55, who are pregnant, or have health conditions or disabilities including:

- Chronic health conditions, such as: **Heart disease** (congestive heart failure, history of myocardial infarction, history of cardiac surgery); **High blood pressure** (hypertension); **Chronic respiratory disease** (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); **Diabetes; Cancer; Liver disease; Kidney disease;**
- Autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus);
- Severe psychiatric illness;
- History of organ transplantation; and
- HIV/AIDS

This order applies to everyone with Risk Factors held in ICE detention (including jails and private facilities), regardless of the reason for their detention or whether ICE says it is mandatory.

This order applies to all people in ICE detention with Risk Factors regardless of whether they have already submitted requests for bond or parole, have petitioned for habeas relief, have requested other relief, or have had any of the previously mentioned requests denied.

**WHAT ACTIONS CAN I TAKE BASED ON THIS CASE?**

Under this order, everyone with a Risk Factors is entitled to a *Fraihat* custody redetermination. This means that even if you have already filed a request for humanitarian parole or habeas petition, you may submit a separate request for a *Fraihat* custody redetermination to the Field Office Director where you are detained. Refer to the attached templates for examples of such a request.

If you have any basis for relief besides the Risk Factors, we encourage you to include those in any request you make for a *Fraihat* custody redetermination. This may include parole based on a positive finding from a Credible Fear Interview or a new bond hearing.

You may also file an individual habeas petition based on your individual conditions of confinement, discussed further below.

**SHOULD I CITE THIS CASE IN MY HABEAS?**

Whether you want to refer to the *Fraihat* order in an individual habeas petition is a strategic decision for you and/or your lawyer.

The *Fraihat* case does not prevent you from seeking other avenues for release (such as humanitarian parole, habeas petitions, or immigration claims).

If you choose to refer to this Order, here are ways that you may consider using it:

- To show ICE's objective deliberate indifference in responding to COVID-19;
- To emphasize that ICE's failure to adequately respond to the pandemic may constitute unconstitutionally punitive conditions of confinement;
- To show ICE's failure to identify, track, and provide reasonable modifications for detained people with disabilities;
- To emphasize the dangers of COVID-19 in immigration detention and other congregate facilities;
- To describe facts addressing the specific detention facilities discussed the order.

Please refer to the attached quotes guide for relevant quotations for each of these points from the order.

**WHAT HAPPENS IF I DON'T GET RELEASED AFTER MY *FRAIHAT* CUSTODY REDETERMINATION?**

If you request a *Fraihat* custody redetermination and are denied release, you are still a subclass member and this order still grants you protections in detention.

If you are not released, please let us know. We will continue to track conditions at your detention center. Details for contacting us to provide this information are below.

**WHAT HAPPENS NEXT?**

In order to ensure that the order is enforced, the *Fraihat* Class Counsel need your help in gathering the following information.

**For attorneys:**

If you seek relief for a client based on the case, please email [FraihatCOVIDcustody@splcenter.org](mailto:FraihatCOVIDcustody@splcenter.org) with the following information:

- Facility where your client was/is held;
- The relevant field office with jurisdiction;
- Your client's Risk Factors;
- The nature of your client's detention;
- The date the *Fraihat* custody redetermination request was made
- The result of the request;
- The date of the result; and
- Your client's name and A number if you are comfortable sharing it.

**For pro se detained individuals:**

Class Counsel is currently working to set up a hotline to take calls from class members. Each facility must also provide a means of telephonically contacting us for free or a method of reaching out to us via email at [FraihatCOVIDcustody@splcenter.org](mailto:FraihatCOVIDcustody@splcenter.org). The hotline number and email address will be listed on notices at each facility.

When the hotline and email address are set up, please contact us to provide the following information:

- Your name and A number;
- The Facility where you were/are held;
- Your relevant Risk Factors;
- The date you made a *Fraihat* custody redetermination request;
- The result of your request;
- The date of the result; and
- If you are still detained, please provide information about:
  - Whether you know if anyone has been released from your facility based after a *Fraihat* custody redetermination; and
  - What measures have been undertaken at your facility to control the spread of COVID-19.

It is important to know that the government may appeal this decision at any time. This means that they may challenge the requirements in the order and ask a court to put enforcement of the order on hold. However, for now, ICE is required to comply with the order.