

April 27, 2020

Via FedEx

[REDACTED]
IAH Secure Adult Detention Facility
3400 FM 350 South
Livingston, TX 77351

Re: [REDACTED] (IAH Secure Adult Detention Facility);
Request for Custody Redetermination Required by Federal Court Order in Fraihat v. ICE,
Case No 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020) (“*Fraihat*”)

[REDACTED]

We write to request a prompt custody redetermination on behalf of our client, [REDACTED], as required by court orders dated April 20, 2020 in the above-referenced case (the “Orders”).¹ See Ex. 2 at 38–39; Ex. 3 at 1–2. The Orders require ICE to make a timely custody redetermination of [REDACTED] because his HIV status places him among the class of detainees entitled to redetermination under the Docket Review Guidance. The Orders found that people in [REDACTED] position are potentially at higher risk of serious illness from COVID-19.² See Ex. 2 at 38; Ex. 3 at 1–2. Based on the Orders, **by April 30, 2020**, you are required to identify him as someone at potentially higher risk of serious illness. Because [REDACTED] submitted a parole request over a month ago, detailing the facts justifying his release, we request that ICE also redetermine his custody and grant release by **April 30, 2020**. Moreover, because there is already **at least one confirmed case** of COVID-19 at IAH Secure Adult Detention Facility, [REDACTED] is in immediate danger of contracting the virus and must be released as soon as possible.

¹ Attached as Exhibit 1 are two Forms G-28, in which [REDACTED] has authorized my colleague, R. Kent Piacenti, and me to represent him.

² [REDACTED] has an outstanding Request for Parole, filed March 17, 2020, which is attached hereto as Exhibit 8. Even if the Request for Parole remains pending or has been denied, the Orders require a timely custody redetermination because the Orders apply “regardless of whether [a detainee has] submitted requests for bond or parole, ha[s] petitioned for habeas relief, ha[s] requested other relief, or ha[s] had such requests denied.” Ex. 2 at 38.

I. The Orders require ICE to timely redetermine its custody of [REDACTED].

Fraihat is a federal class action lawsuit in which, in part, immigrant detainees with serious health conditions have challenged the constitutionality of their continued detention in conditions that prevent them from protecting themselves from serious illness and death from COVID-19. On April 20, 2020, the court entered the Orders, granting a preliminary injunction and provisionally certifying two subclasses of vulnerable ICE detainees. The court found a number of serious systemic deficiencies in ICE’s detention of at-risk detainees including, among other things: (1) failure to require individualized custody determinations and (2) discrepancies between the risk factors identified by the court and those triggering individualized custody determinations under ICE’s April 4, 2020 “Docket Review Guidance.” Ex. 2 at 37; Ex. 4. Accordingly, the court ordered that ICE, among other things:

- Identify and track all ICE detainees with Risk Factors . . . *within ten days of this [April 20, 2020] Order*; and
- Make *timely custody determinations for detainees with Risk Factors*, per the latest Docket Review Guidance.

Ex. 2 at 38 (emphasis added). The covered Risk Factors and disabilities are defined in the certified subclasses as follows:

- *Subclass One*: 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. The Risk Factors are defined as being over the age of 55; being pregnant; *or having chronic health conditions, including . . . HIV/AIDS*.
- *Subclass Two*: 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 . . . HIV/AIDS*.

Ex. 3 at 1-2. Because [REDACTED] is living with HIV, the Orders require ICE to make a timely determination of his custody per the latest Docket Review Guidance.

II. [REDACTED] merits release under the Docket Review Guidance.

[REDACTED] HIV status “should be considered a significant discretionary factor weighing in favor of release.” Ex. 4 at 1–2; Ex. 2 at 37–38 (requiring that HIV status be considered among the criteria that warrant review under the Docket Review Guidance of whether continued detention remains appropriate in light of the COVID-19 pandemic); Ex. 3 at 1–2 (same). [REDACTED] does not have

any criminal history. *See* Ex. 8M.³ There is no basis to find he is a danger to property or persons. *See* Ex. 8 (Part II.d). Nor is he a flight risk. *See* Ex. 8 (Part II.c); Ex. 1; Exs. 8D-8K. With regard to “arriving [individuals] . . . eligible for consideration of parole from custody,” like ██████████, “under current circumstances and absent significant adverse factors, the fact that [he] is potentially higher-risk for serious illness from COVID-19, may form the basis for a determination that ‘continued detention is not in the public interest,’ [and] justify release under 8 C.F.R. § 212.5(b).” Ex. 4 at 3.⁴

In accordance with the Docket Review Guidance, ICE should exercise its discretion to release ██████████ from custody immediately.

III. Conclusion

Continued detention places ██████████ in grave danger of illness and death from COVID-19 because of the impossibility of practicing consistent social distancing and the lack of necessary access to hygiene and sanitation products. The situation is dire and warrants his immediate release: there is already at least one confirmed COVID-19 case at IAH Secure Adult Detention Facility, and it is only a matter of time before the virus spreads throughout the facility, as it has in other Texas facilities. *See* Ex. 5, <https://www.ice.gov/coronavirus> (“Confirmed Cases”); Ex. 6, “Immigrant detention center in North Texas erupts in COVID-19 cases,” *Dallas Morning News* (April 22, 2020) (reporting outbreak of two dozen COVID-19 cases at Prairieland Detention Center in Alvarado, Texas). ICE has not implemented all the measures necessary to adequately protect ██████████ from COVID-19, and its continued detention of him prevents him from protecting himself. *See* Ex. 2 at 29 (discussing ICE’s systemwide inaction toward individuals with disabilities or certain risk factors, such as ██████████, and its failure to mount an adequate response despite knowledge of the grave risk of COVID-19). In fact, our clients detained at IAH Secure Adult Detention Facility have reported the following: earlier this week, they were told there is *not* a COVID-19 case at the facility, even though ICE had previously disclosed a confirmed case on its website; staff, including nurses and medical staff, are still not all wearing protective gear; and detainees are exposed to people exhibiting symptoms consistent with COVID-19 when moving about the facility. Additionally, until last week, our clients were not provided any signage or other education on COVID-19 regarding precautions they need to take, and they had to purchase soap if they ran out.

³ The Request for Parole, attached as Exhibit 8, includes attachments designated by letters. Attachments to the Request for Parole are referred to herein as “Ex.8[Letter].”

⁴ ██████████ has presented documentation evidencing his community ties and sponsors who will provide for him upon his release. Ex. 8C, 8H, 8J. Attached to this request is documentation showing that an additional sponsor could provide food, lodging, and transportation for ██████████. *See* Ex. 7.

For the reasons herein and in the March 17, 2020 Request for Parole, we request that, by ***April 30, 2020***, ICE redetermine its custody of [REDACTED], in accordance with the court's Orders and the Docket Review Guidance, and release him from detention.

We expect a prompt response to this request

Sincerely,

/s/ Thomas S. Leatherbury

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³ The Request for Parole, attached as Exhibit 7, includes attachments designated by letters. Attachments to the Request for Parole are referred to herein as “Ex.7[Letter].”

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Sincerely,

/s/ Thomas S. Leatherbury

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