Fraihat v. ICE COVID-19 Order

Frequently Asked Questions

WHERE DO I CALL IF I HAVE QUESTIONS?

The Fraihat v. ICE help line operates Tuesdays, Wednesdays, and Thursdays from 1pm to 3pm Eastern Time. For detained people, the speed dial code is 910#. This line is free, does not have a time limit, and is not recorded. Language interpretation is provided.

For non-detained people, the phone number is 866-422-0151.

If you are d/Deaf+, you may email intakes@creeclaw.org and we will set up a call using ASL or communicate via email.

WHAT DID THE ORDER MEAN?

In April 2020, 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.

Faour Abdallah Fraihat, et al v. U.S. Immigration and Customs Enforcement, et al,
Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 132.
DISCLAIMER: THIS FACT SHEET DOES NOT CONSTITUTE LEGAL ADVICE.

However, a higher court ruled that the emergency COVID order should end, and on July 14, 2022, the emergency COVID order officially expired. ICE is no longer required by the court to consider people for possible release based on their COVID risk factors under the order.

WHO DID THIS APPLY TO?

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

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

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

WHAT ACTIONS CAN I TAKE BASED ON THIS CASE?

Under this order, everyone with a Risk Factor was entitled to a Fraihat custody redetermination. This is no longer the case.

If you would like to, 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. However, there is no guarantee this request will receive a response.

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

You, a family member/community member, or a lawyer can follow up to ask why the request was denied and get more information. Templates and instructions for doing that follow-up are linked on the "Submitting a Fraihat Request" page.