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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION – RIVERSIDE**

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,

21 v.

22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,

24 Defendants.
25
26
27
28

Case No.: 19-cv-01546-JGB(SHKx)

**Plaintiffs' *Ex Parte* Application for
Order Requiring Issuance of Notice
to Class Members of the Preliminary
Injunction Order, and to Obtain
Information and Documents from
Defendants Necessary to Monitor
Compliance with that Order**

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**Pro Hac Vice Application Forthcoming

Pursuant to Local Rule 7-19, Plaintiffs hereby apply ex parte for an order requiring Defendants to: (1) issue notice to the class, in the manner described below, of the April 20 and 21, 2020 Orders Granting Plaintiffs' Motions for a Preliminary Injunction ("PI Order")¹ and Class Certification;² and (2) produce documents and information necessary to monitor Defendants' compliance with the Preliminary Injunction order.

Because the PI Order properly requires immediate action by the Defendants (for example, they must identify most detained individuals with risk factors within 10 days of the April 20 order (PI Order at 38)), and because the pandemic continues to exponentially spread in detention centers (there are currently almost 300 confirmed cases), Plaintiffs request that the normal briefing schedule for motions be expedited, and that the deadlines for Defendants' response be set at April 28, 2020, and for Plaintiffs reply be set at April 29, 2020.

Plaintiffs' attempts to meet and confer with Defendants: On April 22, 2020, Plaintiffs' counsel sent an email to Defendants' counsel requesting that the parties schedule a call for the afternoon of April 23 to meet and confer concerning production of information relevant to Defendants' compliance with the PI order, and provision of notice to the class. Although Defendants initially agreed to schedule the meet and confer call, later that day they stated that they were still reviewing some matters and would be in touch the next day. On the morning of April 23, Plaintiffs' counsel provided Defendants with the specific documents and information sought through this application, along with the specific notice to the class and proposed dissemination plan. Plaintiffs again requested a meet and confer call that afternoon. Defendants responded that they would not be prepared to meet

¹ Order (1) Granting Mots. to File Amicus Brs.; (2) Granting Pls.' Emergency Mot. to Certify Subclass; (3) Granting Pls.' Mot. for Prelim. Inj.; and Denying as Moot Pls.' Ex Parte Appl. to File Suppl., ECF No. 132.

² Order on Pls.' Emergency Mot. for Provisional Class Certification, ECF No. 133.

1 and confer that afternoon but would be back in touch shortly. Plaintiffs responded
 2 by stating that, in light of the urgency of these issues, they would need to hear back
 3 from Defendants by the morning of April 24, and the Defendants responded that
 4 that would not be possible.³

5 **I. NOTICE SHOULD BE ISSUED TO CLASS MEMBERS INFORMING**
 6 **THEM OF THE REQUIREMENTS OF THE PRELIMINARY**
 7 **INJUNCTION ORDER.**

8 Pursuant to Federal Rule of Civil Procedure 23(c)(2)(A), Plaintiffs
 9 respectfully request that the Court order implementation of the Notice procedures
 10 described herein in order to ensure that all members of the certified subclasses
 11 receive notice of this Court's order. Defendants' control of access to Detention
 12 Facilities necessitates that Defendants be charged with implementing notice
 13 procedures to ensure class members have notice of the of the preliminary
 14 injunction and its obligations as soon as possible.

15 **Written Notice to Class Members.** Attached hereto as Exhibit A is a
 16 proposed written notice to class members. Plaintiffs request that the written notice
 17 also be translated into and provided in Spanish as well the three most-spoken
 18 languages at each facility. Interpreters must be provided to read the notice to
 19 anyone who speaks any other language. Defendants must provide means for
 20 communicating the notice to individuals with vision disabilities or who cannot
 21 read. Such means must include braille, large print, and audio announcements.

22 **Posting of Written Notice.** The written notice shall be provided and
 23 prominently displayed in each dormitory, all common areas, law library, reception
 24 area, and be hand-provided to individuals in any
 25 isolation/segregation/solitary/quarantine unit, including but not limited to those in
 26 medical isolation.

27 ³ Decl. of Timothy P. Fox in Supp. of Pls.' Ex Parte Appl. for Order Requiring
 28 Issuance of Notice to Class Members of the Prelim. Inj. Order, and to Obtain Info.
 and Docs. from Defs. Necessary to Monitor Compliance with that Order.

1 **Written Notice Provided at Intake.** A copy of the written notice shall be
 2 provided to each individual upon intake and communicated to the detained person
 3 in their language.

4 **Written Notice Read at Legal Orientation Program (“LOP”)**
 5 **presentations.** Each facility with an LOP shall ensure that the LOP presentations
 6 cover the written notice in their presentations.

7 **Copies of Court Orders in Law Library.** Each facility shall maintain a
 8 minimum of five copies of the Court’s April 20 and April 21 orders in the Law
 9 Library.

10 **Requirement that Defendants Facilitate Toll-Free Method to**
 11 **Confidentially Contact Class Counsel.** Class members require a method to
 12 contact Class Counsel confidentially in order to discuss their rights under the
 13 Court’s orders (“Hotline”). Because Defendants control the mechanisms for
 14 facilitating confidential calls by detained persons, Plaintiffs respectfully request
 15 that the Court order Defendants to immediately confer with Plaintiffs and negotiate
 16 a method for Class members to be able to contact Plaintiffs via telephone
 17 confidentially and free of charge. Plaintiffs further respectfully request that the
 18 Hotline be functionable by May 3, 2020. Plaintiffs further respectfully request that
 19 the Class Member Notice be amended to reflect the Hotline number and that
 20 Defendants not impede Plaintiffs’ ability to provide instructions to Class Members
 21 for calling the Hotline.

22 **II. DEFENDANTS SHOULD BE REQUIRED TO PRODUCE**
 23 **INFORMATION AND DOCUMENTS NECESSARY TO MONITOR**
 24 **COMPLIANCE WITH THE PRELIMINARY INJUNCTION ORDER.**

25 Attached as Exhibit B is a list of eight categories (with subparts) of
 26 information and documents, together with a production schedule, which are
 27 necessary to monitor Defendants’ compliance with the Preliminary Injunction
 28 order.

1 This Court has the “inherent authority to monitor and enforce its prior
 2 orders,”⁴ and courts frequently order defendants to produce information and
 3 documents relevant to assessing whether they are in compliance with preliminary
 4 injunctions. *See, e.g., Aguayo v. S. Coast Refuse Corp.*, No. CV 02-6258 AHM
 5 JTLX, 2002 WL 34705394, at *3 (C.D. Cal. Oct. 10, 2002) (requiring the
 6 defendant to make available extensive documentation, in part to monitor the
 7 respondents’ compliance with the terms of a preliminary injunction order); *United*
 8 *States v. Stoll*, No. C05-0262 RSM, 2005 WL 1763612, at *8 (W.D. Wash. Apr.
 9 26, 2005) (“The United States shall be permitted to engage in post-injunction
 10 discovery to monitor defendants’ compliance with this and any other order entered
 11 by this Court.”).

12 Here, each of the categories of information and documents listed in Exhibit
 13 B is necessary to monitor compliance with specific requirements of the Preliminary
 14 Injunction order:

15 Request 1: This request seeks basic information – a list of the facilities in
 16 which people detained by ICE are held and related information – necessary to
 17 monitor the order;

18 Request 2: This request seeks information and documents showing that ICE
 19 has informed all field office directors of the requirements of the Preliminary
 20 Injunction order, and the substance of those communications, which is directly
 21 relevant to this Court’s requirement that “Defendants shall provide ICE Field
 22 Office Directors with the Risk Factors” and shall monitor and enforce compliance
 23 with the Pandemic Response Requirements and the Performance Standard. PI
 24 Order at 38-39.

25 Request 3, 4 & 6: These requests seek information and documents directly
 26

27 ⁴ *Abdi v. McAleenan*, No. 1:17-CV-00721 EAW, 2019 WL 1915306, at *3
 28 (W.D.N.Y. Apr. 30, 2019).

relevant to this Court's order that defendants shall "identify and track all ICE detainees with Risk Factors," and shall "provide necessary training to any staff tasked with identifying detainees with Risk Factors." *Id.* at 38.

Request 5: This request seeks information and documents directly relevant to this Court's order that defendants shall make "timely custody determinations for detainees with Risk Factors." *Id.*

Request 7: This request seeks documents and information directly relevant to this Court's order that Defendants shall "promptly issue a performance standard or a supplement to their Pandemic Response Requirements" defining the "minimal acceptable detention conditions for detainees with Risk Factors." *Id.*

Request 8: This request seeks documents and information directly relevant to this Court's order that Defendants shall "monitor and enforce facility-wide compliance with the Pandemic Response Requirements and the Performance Standard." *Id.* at 39.

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this *ex parte* application be granted.

DATED: April 24, 2020

Respectfully submitted,

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Exhibit A

NOTICE OF COURT ORDER REQUIRING CUSTODY RE-DETERMINATIONS OF INDIVIDUALS WITH RISK FACTORS FOR COVID-19

IF YOU ARE

- **OVER THE AGE OF 55**
- **PREGNANT**
- **HAVE MEDICAL OR MENTAL HEALTH ISSUES OR A DISABILITY THAT PLACES YOU AT RISK OF COVID-19**

THEN ICE MUST REVIEW WHETHER IT CAN CONTINUE DETAINING YOU.

On April 20, 2020, a federal court approved a “class action” in a lawsuit called *Frailhat v. ICE*, which challenges medical conditions in ICE detention facilities. A class action is a law suit brought on behalf of a group of people. You are part of this “class” if you have one of the following Risk Factors which puts you at risk of harm from coronavirus/COVID-19:

Being over the age of 55;	Kidney disease
Being pregnant;	Auto-immune diseases
Having chronic health conditions, including: cardiovascular disease (congestive heart failure, history of myocardial infarction or, history of cardiac surgery)	Chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases);
High blood pressure	Severe psychiatric illness
Liver disease	History of transplantation
Diabetes	HIV/AIDS
Cancer	

If you have any of these Risk Factors above, then ICE **must** review whether it can continue to hold you in detention. This applies even if you have previously been denied parole, bond, or habeas. This also applies no matter your custody classification, even if you have previously been convicted of a crime that subjects you to mandatory detention.

The lawyers representing the class are working to make sure that ICE follows the court’s April 20 order regarding its response to the COVID-19 pandemic, but will not be able to represent you in your immigration case. The law firms for the class are the Southern Poverty Law Center, Civil Rights Education & Enforcement Center, Disability Rights Advocates, Orrick Herrington & Sutcliffe LLP, and Willkie Farr & Gallagher LLP.

If you need additional information about the court's April 20 order or wish to provide additional information, please contact: To Be Provided Pursuant to Order that ICE Ensure Confidential Calling Method

Exhibit B

1. A spreadsheet listing all facilities in which people detained by ICE are held (“Facilities”), the number of such people currently held at each Facility, which field office the Facility falls within, and the name and contact information of the field office director (including email and mailing address)
2. Documents showing that ICE has informed all field office directors of all of the steps required by the Preliminary Injunction order, and the substance and date of those communications. This includes any documents advising field office directors what the risk factors are, as well as any additional guidance as to risk factors and how to conduct custody assessments.
3. **Determination of whether Current Detainees have risk factors:** For people who, as of April 30, 2020, have been in ICE custody for at least five days (“Current Detainees”), we request the following information to be produced no later than May 4, 2020:
 - A. The number of Current Detainees for whom ICE has not yet determined whether they have one or more risk factors, the Facilities in which they are detained, the reasons why this determination has not yet occurred, and when that determination is expected to occur;
 - B. With respect to Current Detainees for whom ICE has made a determination as to whether they have one or more risk factors, and, on a weekly basis, those Current Detainees for whom such determination is made after April 30, 2020 (preferably in the form of an electronic spreadsheet):
 1. The person or persons who made that determination;
 2. The training, experience and/or background that made those people competent to make such determinations;
 3. When the determinations were made;
 4. A list with the names, countries of origin, A-numbers, dates of birth, Facility at which each is detained, and custody status of each person identified as having a risk factor, and the risk factor or factors they were determined to have.
 5. For Current Detainees who claim to have a risk factor, but ICE finds otherwise, a spreadsheet listing the names, countries of origin,

A-numbers, dates of birth, Facility at which each is detained, custody status and claimed risk factor of each such person, and the basis for ICE's determination that the person did not have a risk factor.

4. **Determination of whether Future Detainees have risk factors:** For people who, as of April 30, 2020, have been in ICE custody for less than five days, or who are detained after April 30, 2020 ("Future Detainees"), we request the following information to be produced (preferably as an electronic spreadsheet) on a weekly basis beginning May 4, 2020:

A. The number of Future Detainees for whom ICE has not, within five days of their placement in detention, determined whether they have one or more risk factors, the Facilities in which they are detained, the reasons why this determination has not yet occurred, and when that determination is expected to occur;

B. With respect to Future Detainees for whom ICE has made a determination as to whether they have one or more risk factors:

1. The person or persons who made that determination;
2. The training, experience and/or background that made those people competent to make such determinations;
3. When the determinations were made;
4. The names, countries of origin, A-numbers, dates of birth, Facility at which each is detained, and custody status of each person identified as having a risk factor, and the risk factor or factors they were determined to have.
5. For Future Detainees who claim to have a risk factor, but ICE finds otherwise, the names, countries of origin, A-numbers, dates of birth, Facility at which each is detained, custody status and claimed risk factor of each such person, and the basis for ICE's determination that the person did not have a risk factor.

5. **Custody redeterminations.** On a weekly basis, beginning on May 4, 2020, for each Facility (preferably in the form of the spreadsheet):

A. The number of detained people determined to have one or more risk factors;

- B. The name, country of origin, date of birth and A-Number, of each such person;
 - C. For each such person that has undergone a custody redetermination:
 - 1. The result of that redetermination;
 - 2. The identity and position of the person who made the redetermination;
 - 3. Where ICE determines that the detained person will be released, when that release occurred, and any conditions placed on release (e.g. ankle monitor). If the person has not yet been released, when release is anticipated to occur.
 - 4. Where ICE determines that the detained person will not be released, the specific basis for that determination, and the provision under the Immigration and Naturalization Act under which ICE alleges such person is detained.
 - D. For each person identified as having one or more risk factors that has not yet undergone a custody redetermination, when that determination will take place.
6. **Training.** By May 4, 2020, all materials related to training of people tasked with identifying detained people with risk factors, including timing of such trainings.
7. **Performance Standards.** By May 4, 2020, the following information and documents concerning the Performance Standards (as defined in the Preliminary Injunction order):
- A. If Performance Standards have not been issued by May 4, 2020, the date that such Standards will be issued, as well as any drafts of those Standards.
 - B. To whom ICE is issuing the Standards.
 - C. Any training materials concerning the Standards.
 - D. Any additional guidance addressing implementation, or meaning, of the Standards.

8. **Monitoring and enforcement.** By May 4, 2020, and on a monthly basis thereafter:

A. The name, position and contact information (email and mailing address) of the people tasked with monitoring and ensuring compliance with the PRR and the Performance Standard, and for each, the Facilities for which he or she is responsible. This request extends to individuals at ICE central office or IHSC with oversight over the entire system or multiple Facilities.

B. Documents showing specifically how this will be accomplished, including whether each Facility will be subject to in-person inspections, how often, what forms or documents will be used in connection with this, and the consequences if a Facility is determined not to be in compliance with the PRR and the Performance Standard.

C. On an ongoing basis, documents that are generated from this process.