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JOSEPH H. HUNT
Assistant Attorney General
U.S. Department of Justice
Civil Division
WILLIAM C. PEACHEY
Director
Office of Immigration Litigation
District Court Section
JEFFREY S. ROBINS
Deputy Director
LINDSAY M. VICK (MA 685569)
ANNA L. DICHTER (NJ 304442019)
450 5th Street, N.W., Rm 5223
Washington, D.C. 20530
Telephone: (202) 532-4023
Facsimile: (202) 305-7000
lindsay.vick@usdoj.gov
anna.l.dichter@usdoj.gov
Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH
FRAIHAT, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

**DEFENDANTS' EX PARTE
APPLICATION TO RE-NOTICE
PLAINTIFFS' EMERGENCY
PRELIMINARY INJUNCTION
AND CLASS CERTIFICATION
MOTIONS [ECF NOS. 81, 83] FOR
A HEARING DATE IN
ACCORDANCE WITH THE
LOCAL RULES**

**MEMORANDUM OF POINTS AND
AUTHORITIES**

**DECLARATION OF LINDSAY M.
VICK**

1 **EX PARTE APPLICATION**

2 Pursuant to Local Rule 7-19, Defendants respectfully apply to this Court *ex*
3 *parte* to re-notice Plaintiffs’ Emergency Preliminary Injunction and Class
4 Certification Motions (ECF Nos. 81 and 83) for a hearing date in accordance with
5 the local rules.

6 **Urgency:** This order is sought by means of an *ex parte* application because Plaintiffs
7 filed both an emergency motion for a preliminary injunction and an emergency
8 motion for class certification on March 25, 2020, and noticed each motion for six
9 days later on Tuesday, March 31, 2020. When the parties met and conferred on
10 Plaintiffs’ motions, Plaintiffs’ counsel did not inform Defendants’ counsel of their
11 intent to disregard Local Rule 6-1 and notice the motion hearing dates for less than
12 28 days in advance other than that they reserved the right to seek “emergency relief.”
13 Plaintiffs, however, have neither sought emergency relief via an *ex parte* application
14 for a temporary restraining order nor complied with the local rules governing the
15 noticing of motions. Accordingly, Defendants’ response time remains entirely
16 unclear. Plaintiffs’ motions involve very important issues concerning this case and
17 include hundreds of pages of argument, declarations, and exhibits. Defendants wish
18 the Court to be fully apprised of Defendants’ positions as to these issues, and require
19 adequate time to respond. Therefore, the hearings on these motions should be re-
20 noticed in accordance with the local rules and set no sooner than April 27, 2020.
21 Defendants will be prejudiced if they are unable to adequately respond to Plaintiffs’
22 motions as a result of Plaintiffs’ failure to follow the Local Rules. *Mission Power*
23 *Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal.
24 1995).

25 **Notice:** On March 25, 2020, Defendants’ counsel notified Plaintiffs’ counsel
26 regarding Defendants’ intent to file an *ex parte* application to re-notice the hearing
27 dates for Plaintiffs’ Emergency Preliminary Injunction and Class Certification
28 Motions. Declaration of Lindsay M. Vick (Vick Decl.) ¶ 8. Plaintiffs’ counsel

1 indicated that “Plaintiffs oppose the application given Plaintiffs’ belief that the
2 circumstances are exigent.” *Id.*

3 Pursuant to L.R. 7-19.1, Defendants’ counsel communicated the Rule 7-19.1
4 notice to Plaintiffs’ counsel by email on March 25, 2020. Vick Decl. ¶ 8. Pursuant
5 to L.R. 7-19, Defendants’ counsel, Jared Davidson’s address and contact information
6 are as stated at Vick Decl. ¶ 9. This *ex parte* application is based on this Notice of
7 *Ex Parte* Application, the attached memorandum in support, the attached
8 declaration, and the record in this case. A proposed order is lodged herewith.
9

10 Dated: March 25, 2020

Respectfully submitted,

11 JOSEPH H. HUNT
12 Assistant Attorney General

13 WILLIAM C. PEACHEY
14 Director

15 JEFFREY S. ROBINS
16 Deputy Director

17 /s/ Lindsay M. Vick
18 LINDSAY M. VICK
19 Trial Attorney
20 United States Department of Justice
21 Office of Immigration Litigation
22 District Court Section

23 /s/ Anna L. Dichter
24 ANNA L. DICHTER
25 Trial Attorney
26 United States Department of Justice
27 Office of Immigration Litigation
28 District Court Section

Attorneys for Defendants

1 **MEMORANDUM IN SUPPORT OF EX PARTE MOTION**

2 Defendants hereby move to re-notice Plaintiffs’ Emergency Preliminary
3 Injunction and Class Certification Motions (ECF Nos. 81 and 83) for a hearing in
4 accordance with the local rules.

5 Local Rule 6-1 provides that, with respect to the filing of a notice of motion
6 and motion, “[t]he notice of motion shall be filed with the Clerk not later than
7 twenty-eight (28) days before the date set for hearing.” In addition, Local Rule 7-3
8 provides that the conference of counsel before filing any motion “shall take place at
9 least seven (7) days prior to the filing of the motion.”

10 On March 20, 2020, Plaintiffs first indicated their intention to seek
11 “emergency relief” from the Court on behalf of medically vulnerable people and
12 people with disabilities in ICE custody as a result of the threat posed by the COVID-
13 19 pandemic. Vick Decl. ¶ 2. Soon thereafter on March 22, 2020, Plaintiffs informed
14 Defendants that they intended to file motions seeking emergency relief and class
15 certification. *Id.* at ¶ 3. At Plaintiffs’ request, Defendants made themselves available
16 the next day to meet and confer on Plaintiffs’ motions. *Id.* at ¶ 4. In addition,
17 acknowledging that none of the issues raised by Plaintiffs’ motions were amenable
18 to resolution without the Court’s intervention, Defendants agreed to waive the seven
19 day waiting requirement for Plaintiffs’ class certification motion under Local Rule
20 7-3. *Id.* at ¶ 5. At no point during the conference of counsel did Plaintiffs notify
21 Defendants that they intended to notice the hearings on their motions for the
22 following week, in complete disregard of Local Rule 6-1. Furthermore, at no point
23 did Plaintiffs indicate that they would not follow the local rules without notifying
24 Defendants other than that they reserved the right to seek “emergency relief.” *Id.* at
25 ¶ 2. Plaintiffs, however, have neither sought emergency relief via an ex parte
26 application for a temporary restraining order nor complied with the local rules
27 governing the noticing of motions.

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DECLARATION OF LINDSAY M. VICK

I, Lindsay M. Vick, declare pursuant to 28 U.S.C. § 1746 that:

1. I am an attorney with the Office of Immigration Litigation, Civil Division, Department of Justice, Washington, D.C., and, in such capacity, have been assigned by the Department of Justice as lead counsel to the defense of this action. This Declaration is submitted in support of Defendants’ *Ex Parte* Application to re-notice Plaintiffs’ Emergency Preliminary Injunction and Class Certification Motions (ECF Nos. 81 and 83) for a hearing in accordance with the local rules.

2. On March 20, 2020, Plaintiffs first indicated their intention to seek “emergency relief” from the Court on behalf of medically vulnerable people and people with disabilities in ICE custody as a result of the threat posed by the COVID-19 pandemic.

3. Soon thereafter, following further correspondence between the parties, on March 22, 2020, Plaintiffs informed Defendants that they intended to file motions seeking emergency relief and class certification.

4. The parties met and conferred on March 23, 2020. At the meet and confer, Plaintiffs indicated the type of motions they would file and the issues that they would address therein. Defendants indicated that none of the issues as described by Plaintiffs were amenable to resolution without court intervention and that they would oppose Plaintiffs’ motions.

5. On March 24, 2020, after conferring with their clients, Defendants’ counsel agreed, at the request of Plaintiffs’ counsel, to waive the seven day waiting period after the conference of counsel under Local Rule 7-3.

6. On March 25, 2020, at 3:30 a.m. ET, Plaintiffs filed an Emergency Motion for Preliminary Injunction. Plaintiffs noticed this motion for a hearing six days later on March 31, 2020.

1 7. On March 25, 2020 at 1:59 p.m. ET, Plaintiffs filed an Emergency Motion to
2 Certify Subclasses. Plaintiffs noticed this motion for a hearing six days later on
3 March 31, 2020.

4 8. On March 25, 2020, I e-mailed Plaintiffs' counsel informing them that
5 Defendants intended to file this *ex parte* application to re-notice Plaintiffs'
6 Emergency Preliminary Injunction and Class Certification Motions for a hearing
7 date in accordance with the local rules. I accurately informed Plaintiffs of the
8 substance of the *ex parte* motion. Plaintiffs' counsel stated that "Plaintiffs oppose
9 the application given Plaintiffs' belief that the circumstances are exigent."

10 9. Attached hereto as Exhibit 1 is a copy of the email exchanges between the
11 parties.

12 9. Jared Davidson is counsel for Defendants and his contact information is:
13 Jared Davidson
14 Southern Poverty Law Center
15 201 St. Charles Avenue, Suite 2000
16 New Orleans, Louisiana 70170
17 504-526-1510
jared.davidson@splcenter.com

18
19 I declare under penalty of perjury that the foregoing is true and correct.
20 Executed this 25th day of March, 2020, in the City of Washington, District of
21 Columbia.

22
23 /s/ Lindsay M. Vick
24 LINDSAY M. VICK
25
26
27
28

EXHIBIT 1

Vick, Lindsay (CIV)

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Wednesday, March 25, 2020 3:43 PM
To: Vick, Lindsay (CIV)
Cc: Tim Fox; Elizabeth Jordan; Lisa Graybill; Stuart Seaborn; William Alderman; Robins, Jeffrey (CIV); Dichter, Anna L. (CIV); Sarkany, Sergio F. (CIV)
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

Counsel,

Please note that our position is the same given the urgency of the situation.

Thank you,



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

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From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>
Sent: Wednesday, March 25, 2020 2:38 PM
To: Jared Davidson <Jared.Davidson@splcenter.org>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>; Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

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Jared,

Defendants plan to include in our ex parte application a request to re-notice the hearing for Plaintiffs' class certification motion, as well. Please let me know if your position is the same with respect to that request.

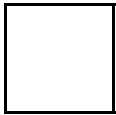
Lindsay M. Vick
Trial Attorney
District Court Section
Office of Immigration Litigation
United States Department of Justice
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
Tel: 202-532-4023

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Wednesday, March 25, 2020 1:52 PM
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>; Robins, Jeffrey (CIV) <jerobins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

Counsel,

Please indicate in your filing that Plaintiffs oppose the application given Plaintiffs' belief that the circumstances are exigent.

Sincerely,



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

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From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>
Sent: Wednesday, March 25, 2020 12:32 PM
To: Jared Davidson <Jared.Davidson@splcenter.org>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>; Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

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Counsel,

We received the motions you filed yesterday and today. We note that your motion for preliminary injunction is not noticed in accordance with the local rules. The corresponding hearing on the preliminary injunction must be noticed for at least 28 days from today, which gives the Government 7 days to respond. As a result, we plan to file an ex parte application to re-notice the hearing in accordance with the local rules. Please let us know Plaintiffs' position on our ex parte application as soon as possible.

Regards,

Lindsay M. Vick
Trial Attorney
District Court Section
Office of Immigration Litigation
United States Department of Justice

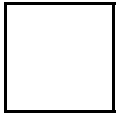
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
Tel: 202-532-4023

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Tuesday, March 24, 2020 4:24 PM
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>; Robins, Jeffrey (CIV) <jerobins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19
Importance: High

Counsel,

Thank you for your email. We have previously reviewed the Rivera Declaration and this Order. Unfortunately, neither extinguishes our very serious concerns about ICE's ongoing failure to adequately address COVID-19, especially for medically vulnerable people. We appreciate your willingness to waive the 7-day requirement. We will note that our Motion for Leave is unopposed and also note that Defendants do not object to our filing before the 7-day period. Please let me know as soon as possible if you object to this framing.

Thank you,



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

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From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>
Sent: Tuesday, March 24, 2020 3:13 PM
To: Jared Davidson <Jared.Davidson@splcenter.org>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>; Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

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Counsel,

In an effort to resolve or narrow the issues with respect to your motions, please see the attached Declaration of Dr. Ada Rivera Deputy Assistant Director for Clinical Services/Medical Director of the ICE Health Services Corps, filed last week in *Dawson v. Asher*, No. 20-0409-JLR-MAT (W.D. Wash. Mar. 18, 2020). This declaration demonstrates that ICE is far from indifferent to the issues that COVID-19 presents and that ICE policies and practices continue to be reviewed and revised as conditions change and remain very fluid. The Court in *Dawson* denied the TRO because it found that plaintiffs did not show that they were likely to succeed on the merits or that they were likely to face irreparable harm. Specifically, the

court noted the lack of support for the proposition that detention becomes excessive solely due to the risk of a communicable disease, even one as serious as COVID-19. The court further found no evidence of an outbreak at the particular facility at issue or that "Defendants' precautionary measures are inadequate to contain such an outbreak or properly provide medical care should it occur." See attached Order at 6.

Declarations similar to the one attached here are being filed in cases across the country. We wanted to bring this to your attention in order to determine whether any of your positions may change in light of our proposed evidence.

Nevertheless, with respect to the meet and confer requirement, we do not object to waiving the 7-day waiting period if we are unable to resolve or narrow any issues concerning your imminent motions.

Regards,

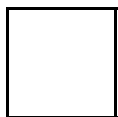
Lindsay M. Vick
Trial Attorney
District Court Section
Office of Immigration Litigation
United States Department of Justice
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
Tel: 202-532-4023

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Tuesday, March 24, 2020 11:54 AM
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>; Robins, Jeffrey (CIV) <jerobins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

Counsel,

I am writing to follow-up on Plaintiffs' request that Defendants agree to waive the 7-day waiting period for the filing of motions following a meet and confer. We understand from our conversation yesterday that you intended to confer with your clients about this following our meet and confer. We intend to file a Motion for Leave to File an Emergency Motion for Provisional Class Certification later today, and we would like to know if we can note that Defendants agree to this waiver and therefore are unopposed to the Motion for Leave. Please let us know as soon as possible.

Sincerely,



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

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From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>
Sent: Monday, March 23, 2020 10:20 AM

To: Jared Davidson <Jared.Davidson@splcenter.org>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>; Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

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Jared,

Defendants are not in a position to agree to Plaintiffs' requests at this time where motions to sever, transfer, and dismiss some or all of Plaintiffs' claims remain pending. Moreover, based on Plaintiffs' email below and from Friday, it is not clear what relief Plaintiffs will seek through an emergency motion or what would be the basis for such relief. Likewise, it is not clear what the class of plaintiffs would be that would form the basis for your provisional class certification motion. As a result, Defendants cannot agree to waive the meet and confer requirement, the waiting period for filing motions, or to stipulate to any of the elements for class certification.

If Plaintiffs intend to file a motion, we are available to meet and confer today at 3 p.m. ET.

Regards,

Lindsay M. Vick
Trial Attorney
District Court Section
Office of Immigration Litigation
United States Department of Justice
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
Tel: 202-532-4023

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Sunday, March 22, 2020 2:32 PM
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>; Robins, Jeffrey (CIV) <jerobins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19
Importance: High

Counsel,

I write on behalf of the Plaintiffs in the above-referenced matter regarding the issues expressed in our e-mail of March 20, 2020 (below).

As we explained, we are deeply troubled by Defendants' inadequate responses to the COVID-19 pandemic. Our review of ICE's guidance that you reference below does not extinguish our concerns; in fact, that guidance is inadequate for many of the same reasons we assigned in our initial email.

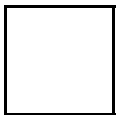
Accordingly, as a result of ICE's failure to adequately respond to the emergent and lethal threat of COVID-19, Plaintiffs intend to file a motion for emergency relief on behalf of medically vulnerable people and people with disabilities in ICE

custody. Because these inadequacies imminently threaten not only the named Plaintiffs but also similarly situated people, we also intend to file an emergency motion for provisional class certification.

The Local Rules generally require a meet and confer prior to the filing of a motion for class certification. We are writing to request that, in light of the urgent and life-threatening consequences of COVID-19, Defendants agree to waiving the meet and confer requirement. In the alternative, we request that Defendants meet and confer with Plaintiffs tomorrow and waive the waiting period.

In addition, Plaintiffs request that Defendants stipulate to class certification for these emergency purposes. If Defendants are unwilling to stipulate to class certification, please let us know if Defendants will stipulate to any of the underlying requirements of Rule 23, such as numerosity. In our view, these issues are not controversial given the systemic nature of Plaintiffs' suit and the generally applicable relief we seek.

Please let us know as soon as possible.



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

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From: Vick, Lindsay (CIV) <Lindsay.Vick@usdoj.gov>
Sent: Friday, March 20, 2020 3:26 PM
To: Jared Davidson <Jared.Davidson@splcenter.org>; Sarkany, Sergio F. (CIV) <Sergio.F.Sarkany@usdoj.gov>; Robins, Jeffrey (CIV) <Jeffrey.Robins@usdoj.gov>; Dichter, Anna L. (CIV) <Anna.L.Dichter@usdoj.gov>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: RE: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19

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Jared,

Please review ICE's current and evolving guidance at <https://www.ice.gov/covid19>, last updated today. ICE continues to update its protocols to remain consistent with CDC guidance. Once you and your team review ICE's guidance, let us know if you continue to have concerns.

I hope you, your team, and your families are staying safe.

Regards,

Lindsay M. Vick
Trial Attorney
District Court Section
Office of Immigration Litigation
United States Department of Justice
P.O. Box 868 Ben Franklin Station

Washington, D.C. 20044
Tel: 202-532-4023

From: Jared Davidson <Jared.Davidson@splcenter.org>
Sent: Friday, March 20, 2020 2:32 PM
To: Vick, Lindsay (CIV) <lvick@CIV.USDOJ.GOV>; Sarkany, Sergio F. (CIV) <ssarkany@CIV.USDOJ.GOV>; Robins, Jeffrey (CIV) <jerobins@CIV.USDOJ.GOV>; Dichter, Anna L. (CIV) <adichter@CIV.USDOJ.GOV>
Cc: Tim Fox <tfox@creeclaw.org>; Elizabeth Jordan <ejordan@creeclaw.org>; Lisa Graybill <Lisa.Graybill@splcenter.org>; Stuart Seaborn <sseaborn@dralegal.org>; William Alderman <walderman@orrick.com>
Subject: 5:19-cv-01546-JGB-SHK Fraihat et al. v. ICE et al.: Notice of Urgent Concerns re COVID-19
Importance: High

Counsel,

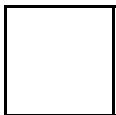
We are writing on behalf of our named Plaintiffs and the putative class they represent to notify you of our urgent concerns about ICE's response to the COVID-19 pandemic and to demand that ICE take immediate precautionary steps to protect the safety of the people in its custody.

On or about March 6, 2020, ICE Health Services Corps (IHSC) issued "Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19)," which contains protocols for responses to COVID-19 in ICE facilities. Those protocols are critically deficient from a public and institutional health perspective. In particular, the protocols fail to prescribe any process for screening medically vulnerable individuals in ICE custody to assess precautionary measures—including but not limited to release—to protect health and safety. The protocols also fail to contemplate how ICE intends to ensure adequate responses to the COVID-19 epidemic notwithstanding already existing deficiencies in ICE's provision of care, including but not limited to inadequate staffing and inadequate access to qualified medical care. These omissions are all the more concerning in light of the recent announcement that staff at ICE facilities have tested positive for COVID-19, underscoring the fact that this deadly and highly infectious virus is likely already running rampant throughout ICE facilities. Further, ICE continues to conduct internal enforcement and detaining arrestees, thereby expanding the risk of community spread within facilities.

For these reasons, we demand that ICE immediately modify its protocols to assess these and any other deficiencies, including the immediate implementation of processes to conduct risk-assessments for the individuals in its custody. We further demand that ICE immediately inform us if any additional guidance, policies, or practices have been issued or implemented since the March 6 guidance or will be issued in the immediate future.

Remediating ICE's failure to adequately prepare for and respond to COVID-19 is urgent—failure to do so will cost lives in the very near future. We reserve all rights, including seeking emergency relief from the Court, if ICE does not immediately rectify these defects.

Sincerely,



Jared Davidson he/him/el
Senior Staff Attorney | Criminal Justice Reform
Southern Poverty Law Center
T 504.526.1510
jared.davidson@splcenter.org | www.splcenter.org
Admitted in Louisiana, New York

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH
FRAIHAT, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

**[PROPOSED] ORDER RE:
DEFENDANTS' EX PARTE
APPLICATION TO RE-NOTICE
PLAINTIFFS' EMERGENCY
PRELIMINARY INJUNCTION
AND CLASS CERTIFICATION
MOTIONS [ECF NOS. 81, 83] FOR
A HEARING DATE IN
ACCORDANCE WITH THE
LOCAL RULES**

GOOD CAUSE HAVING BEEN SHOWN, Defendants' *Ex Parte* application to re-notice the hearing dates for Plaintiffs' Emergency Preliminary Injunction and Class Certification Motions is **HEREBY GRANTED**. The hearing on Plaintiffs' Motions is hereby noticed for a hearing date on _____.

IT IS SO ORDERED.

Dated: _____

The Honorable Jesus G. Bernal
UNITED STATES DISTRICT JUDGE

Presented by:
JOSEPH H. HUNT
Assistant Attorney General
JEFFREY S. ROBINS
Deputy Director, Office of Immigration Litigation
/s/ Lindsay M. Vick
LINDSAY M. VICK
Trial Attorney
United States Department of Justice
Civil Division, Office of Immigration Litigation
Attorneys for Defendants