



October 5, 2021

Secretary Alejandro Mayorkas  
U.S. Department of Homeland Security  
500 12th St. SW Washington, D.C. 20536

Acting Director Tae D. Johnson  
U.S. Immigration and Customs Enforcement  
500 12th St. SW Washington, D.C. 20536

**Re: The Critical Need for a Functioning Universal System of Discretionary Release from ICE Detention**

Dear Secretary Mayorkas and Acting Director Johnson:

The American Immigration Council and the American Immigration Lawyers Association (AILA), through our joint initiative the Immigration Justice Campaign, write to follow up on our March 25, 2021, letter regarding the need for the Department of Homeland Security (DHS) to establish a functioning universal system of receipt and adjudication of discretionary requests for release from U.S. Immigration and Customs Enforcement (ICE) custody. Our previous letter described the significant barriers to release attorneys have reported to us. Since then, attorneys have continued to report similar barriers without improvement.

**Importance of a Functioning System of Release from Detention**

ICE detention has been shown to cause significant barriers to access to counsel,<sup>1</sup> as well as severe physical and mental harm.<sup>2</sup> It is therefore crucial that people in ICE custody have an opportunity for release whenever possible. The only proven solution to these harms of detention is release, with the provision of community-based support services as needed.<sup>3</sup>

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<sup>1</sup> Ingrid Eagly and Steven Shafer, American Immigration Council, “Access to Counsel in Immigration Court,” September 28, 2016, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

<sup>2</sup> American Immigration Council and American Immigration Lawyers Association, “Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility,” June 4, 2018, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_demands\\_investigation\\_into\\_inadequate\\_medical\\_and\\_mental\\_health\\_care\\_condition\\_in\\_immigration\\_detention\\_center.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf).

<sup>3</sup> American Immigration Council and Women’s Refugee Commission, “Factsheet: Community Support for Migrants Navigating the U.S. Immigration System,” February 26, 2021,

## Continued Due Process Failures and Fundamental Unfairness in Current System

We believe that recent litigation<sup>4</sup> supports the need for the administration to standardize release protocols across ICE field offices and re-affirm that a functioning system of release—both from ICE custody and from CBP processing—is in the interest of both the U.S. government and people seeking protection in our immigration court system.

## Continued Due Process Failures and Fundamental Unfairness in Current System

As we raised in March, ICE's current system of discretionary release is replete with due process failures that lead to the unnecessary detention of individuals. The system is fundamentally unfair because it is arbitrary and lacks clear and consistently applied guidelines on eligibility for release. The following are a few of the many barriers that detained individuals and their attorneys continue to face in requesting release.

1. ICE frequently does not make individualized custody determinations when reviewing custody determinations under Acting Director Tae Johnson's February 18, 2021, memo *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* ("Enforcement Priorities Memo").<sup>5</sup> For example, the Denver Field Office has repeatedly responded to release requests with boilerplate denials almost identical to the following: "In consideration of this request your supporting evidence, your client's administrative file, medical records, criminal history, and previous release denials were reviewed. After consultation with management, Immigration and Customs Enforcement has determined a favorable exercise of discretion is not warranted in this case at this time."<sup>6</sup> In some cases, ICE's denials of release requests incorrectly state the name of the detained individual or state the date of custody review as before the date the individual arrived in the United States. In at least one case, the San Antonio Field Office stated by phone only that a request had been denied based on "higher orders", with no written response.
2. Consistent with the failure to make individualized custody determination, in all of the field offices in which we work,<sup>7</sup> ICE frequently issues boilerplate denials of requests for release from individuals who are eligible for one or more forms of release and who have clearly demonstrated that they are not a flight risk or danger to the community. One attorney's client was detained for over a year, despite being diagnosed with at least four different COVID risk factors. Her U.S. citizen minor child also has serious conditions. This woman's criminal history does not include an aggravated felony and is the direct result of the severe human trafficking she has suffered, but

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<https://www.americanimmigrationcouncil.org/research/community-support-migrants-navigating-us-immigrationsystem>.

<sup>4</sup> Texas v. Biden, No. 21-10806 (5th Cir. 2021)

<sup>5</sup> Tae Johnson, *Interim Guidance: Civil Immigration Enforcement and Enforcement Priorities*, February 18, 2021, [https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf).

<sup>6</sup> See Exhibit D.

<sup>7</sup> The Immigration Justice Campaign recruits, trains, and mentors pro bono attorneys for the purpose of representing individuals detained in ICE facilities across the United States. We currently place cases in the Atlanta, Denver, El Paso, New Orleans, San Antonio, and San Diego field offices.

she was denied release at least three times by the local field office and once through the ICE Case Review process.”<sup>8</sup> The Denver Field Office denied a request that an attorney made for her client to be released, even temporarily, to attend his son’s funeral.<sup>9</sup> The New Orleans Field Office denied release for a young man who had recently turned 18, had no criminal history, was grieving the deaths of his father and his aunt who served as his caregiver, and was at risk of losing eligibility for Special Immigrant Juvenile classification if he remained detained. The denial was later affirmed through the ICE case review process.<sup>10</sup>

3. Similarly, ICE frequently does not provide “justification for continued detention” pursuant to *Fraihat v. ICE*, as required by court order.<sup>11</sup> The Denver Field Office has stated by phone that denial of release pursuant to *Fraihat v. ICE* does not require an individualized explanation. ICE also frequently does not follow the court order’s instructions that “[d]efendants shall ensure that the presence of a Risk Factor is given significant weight and that the custody reviews are meaningful.”<sup>12</sup> For example, the Denver Field Office has denied release to multiple people who it admits are *Fraihat* class members solely because of their criminal history.<sup>13</sup> The Atlanta Field Office informed multiple individuals that they would be released under *Fraihat v. ICE* but later told them that ICE Headquarters had reserved the decision and that they would remain detained.
4. In all of the field offices in which we work, attorneys report that detained individuals who submit a request for release often wait weeks or months for a response, or do not receive one at all. This failure to adjudicate requests often amounts to a de facto denial with no justification, because the individual continues to be detained without knowing why. One attorney submitted 25 requests for release to the El Paso Field Office, and only through very intensive follow up eventually received three responses. The El Paso Field Office has stated over the phone to an attorney that it is too difficult for the agency to have to communicate with attorneys about all decisions. Without seeing release denials with individualized justifications, attorneys cannot understand the field office’s release eligibility requirements. They therefore cannot assess whether clients may be eligible for release or what evidence they need to provide to be eligible. Instead, attorneys must blindly submit release requests for all of their detained clients, including those that are unlikely to be granted, wasting time for both the attorney and ICE.

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<sup>8</sup> See Exhibit A.

<sup>9</sup> See Exhibit B.

<sup>10</sup> See Exhibit C.

<sup>11</sup> *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. Oct. 7, 2020), ECF No. 240, [https://www.splcenter.org/sites/default/files/fraihat\\_v\\_ice\\_mte\\_order\\_quotes-oct\\_7\\_2020-final.pdf](https://www.splcenter.org/sites/default/files/fraihat_v_ice_mte_order_quotes-oct_7_2020-final.pdf).

<sup>12</sup> *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. Oct. 7, 2020), ECF No. 240, [https://www.splcenter.org/sites/default/files/fraihat\\_v\\_ice\\_mte\\_order\\_quotes-oct\\_7\\_2020-final.pdf](https://www.splcenter.org/sites/default/files/fraihat_v_ice_mte_order_quotes-oct_7_2020-final.pdf).

<sup>13</sup> See Exhibits E and F.

5. National guidelines for, and oversight of, release determinations are inadequate, leading individual field offices to follow their own arbitrary rules in making these determinations such as the following:

*Atlanta Field Office*

- ICE states it can only release a certain number of people per day, resulting in people being detained for weeks after their initial release approval with no communication regarding their exact release date.
- ICE releases people in roughly alphabetical order over periods of weeks rather than releasing them all at the same time.

*Denver Field Office*

- ICE states it does not have jurisdiction to release people who entered without inspection.
- ICE states that "credible fear parole" and "humanitarian parole" are two separate types of parole and require the submission of two separate requests.
- ICE only releases individuals under *Fraihat v. ICE* if facility medical staff have affirmatively flagged that individual as eligible.
- ICE states that a sponsor's lease agreement must include the name of the detained individual.<sup>14</sup>

*El Paso Field Office*

- ICE states that it does not have jurisdiction to release people who entered without inspection.<sup>15</sup>
- ICE states that it does not have officers on-site at some facilities,<sup>16</sup> so the agency cannot obtain the sponsor information necessary to release individuals from whose records that information is missing and cannot evaluate whether someone is a *Fraihat v. ICE* class member if facility medical staff have not affirmatively flagged them as such.<sup>17</sup>
- ICE states that it cannot release people with prima facie eligibility for Temporary Protected Status (TPS) because ICE Headquarters has not issued the necessary guidance.
- ICE states that it is too difficult for the agency to have to communicate with attorneys about all decisions regarding their clients' cases.

*New Orleans Field Office*

- ICE states that it cannot release people unless they have an identification document, even in cases of an affidavit of identity submitted by a family member.

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<sup>14</sup> See Exhibit G.

<sup>15</sup> See Exhibit H.

<sup>16</sup> See Exhibit I.

<sup>17</sup> See Exhibit J.

- Some ICE officers tell detained individuals that their sponsors should not purchase plane or bus tickets prior to release, while other officers tell the sponsors of these same people that they are required to provide a confirmation number for the tickets in order for the person to be released.

*San Antonio Field Office*

- ICE states that it does not have jurisdiction to release people who entered without inspection.

*San Diego Field Office*

- ICE states that institutional sponsors, such as shelters, must submit financial documents for the release to be granted.
- ICE states that people with prima facie eligibility for TPS are not eligible for release if they have a final order of removal, even if the order is stayed.

**Guidance on Discretionary Release from Custody Must be Included in DHS' Upcoming Enforcement Policy Recommendations**

On January 20, 2021, Acting Secretary of Homeland Security Davis Pekoske directed DHS to complete within 100 days a department-wide review and develop “recommendations to address aspects of immigration enforcement”.<sup>18</sup> Although more than 200 days have passed, these recommendations have not been issued. Until ICE detention can be phased out and support services as well as universal publicly-funded legal representation,<sup>19</sup> we continue to ask DHS to immediately create a functioning system of discretionary release. Such a system should include:

- Clear, nationally consistent guidance on release eligibility including the criteria for demonstrating danger to the community or flight risk, whether the government or the detained individuals sustains the burden of proof, a presumption of release for all detained individuals, and individualized justifications for release denials;
- A procedure for requesting release that is accessible to all detained individuals, regardless of disability, native language, literacy, or whether they have legal representation, and that requires the agency to communicate a decision on the request to the detained individual and their counsel;

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<sup>18</sup> Memorandum from David Pekoske, Acting Secretary of Homeland Security to U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services, “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities,” January 20, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

<sup>19</sup> American Immigration Council and Women’s Refugee Commission, “Community Support for Migrants Navigating the U.S. Immigration System,” February 26, 2021, <https://www.americanimmigrationcouncil.org/research/community-support-migrants-navigating-us-immigration-system>.

- Training on release eligibility and procedure for all ICE officers involved in release decisions, with training materials that are publicly available; and
- Oversight at the national level of the consistent application of all guidance across detention centers and field offices.

Sincerely,

American Immigration Council

American Immigration Lawyers Association

CC: Angela Kelley, Senior Counselor, U.S. Department of Homeland Security

Timothy Perry, Chief of Staff, U.S. Department of Homeland Security

# EXHIBIT A

**From:** [ICECaseReview](#)  
**To:** [Katy Murdza](#)  
**Cc:** [ICECaseReview](#)  
**Subject:** RE: Case Review for [REDACTED]  
**Date:** Monday, May 17, 2021 11:23:17 AM

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Good afternoon.

On May 13, 2021, you contacted U.S. Immigration and Customs Enforcement (ICE) via the Enforcement and Removal Operations (ERO) Office of the ERO Senior Reviewing Official mailbox to request a case review for [REDACTED]. Based upon ERO's consideration of your inquiry, including any supplemental information provided, the prior decision of the ERO field office handling this case will remain in place.

Please note that there is no appeal of the agency's decision whether or not to exercise discretion in an individual non-citizen's case. If you have additional questions or concerns, please contact your local field office. A list of ERO field offices and their contact information is available here: <http://www.ice.gov/contact/ero>.

### *Senior Reviewing Official*

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**From:** Katy Murdza <KMurdza@immcouncil.org>  
**Sent:** Thursday, May 13, 2021 1:06 PM  
**To:** ICECaseReview <ICECaseReview@ice.dhs.gov>  
**Cc:** Rebekah Wolf <RWolf@immcouncil.org>; tjacobs@rmian.org; [REDACTED]  
**Subject:** Case Review for [REDACTED]

**CAUTION:** This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact [ICE SOC SPAM](#) with questions or concerns.

To Whom It May Concern,

We are raising the case of [REDACTED], through the ICE Case Review process because she is not an enforcement priority pursuant to the ICE Interim Guidance on Enforcement and Removal Priorities issued February 18, 2021, by Acting Director Johnson. Her pro bono attorneys, cc'ed, have requested Ms. [REDACTED]'s release at the local level at the field office level but ICE decided to continue detention.

Ms. [REDACTED]'s only criminal history is a direct result of the severe human trafficking she suffered at the hands of her legal husband. She yielded to her trafficker's example in interacting with his children. He often demanded that she hit his children to punish them. If she refused, he would hurt them. She tried to leave him but returned because she felt obligated to protect his children. She is incredibly remorseful for the harm the children experienced and believes her trafficker reported her to prevent her from reporting him to authorities in the United States.



Attached is a case summary, G-28, and the latest denial of Ms. [REDACTED]'s request for release. Please let me know if you would like more information. Thank you for your attention to this issue.

Sincerely,

**Katy Murdza**

Advocacy Manager, Immigration Justice Campaign  
Pronouns: She/Her  
San Antonio, Texas  
202-507-7548 | [kmurdza@immcouncil.org](mailto:kmurdza@immcouncil.org)

**American Immigration Council**

[www.AmericanImmigrationCouncil.org](http://www.AmericanImmigrationCouncil.org)  
Blog: [www.immigrationimpact.com](http://www.immigrationimpact.com)  
Justice Campaign: [www.immigrationjustice.us](http://www.immigrationjustice.us)

# EXHIBIT B

**From:** [ICECaseReview](#)  
**To:** [Katy Murdza](#)  
**Cc:** [ICECaseReview](#)  
**Subject:** RE: Urgent case review for [REDACTED]  
**Date:** Thursday, May 27, 2021 6:46:12 PM

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Good afternoon.

On May 27, 2021, you contacted U.S. Immigration and Customs Enforcement (ICE) via the Enforcement and Removal Operations (ERO) Office of the ERO Senior Reviewing Official mailbox to request a case review for [REDACTED]. Based upon ERO's consideration of your inquiry, including any supplemental information provided, the prior decision of the ERO field office handling this case will remain in place.

Please note that there is no appeal of the agency's decision whether or not to exercise discretion in an individual non-citizen's case. If you have additional questions or concerns, please contact your local field office. A list of ERO field offices and their contact information is available here: <http://www.ice.gov/contact/ero>.

### ***Senior Reviewing Official***

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**From:** Katy Murdza <KMurdza@immcouncil.org>  
**Sent:** Thursday, May 27, 2021 10:16 AM  
**To:** ICECaseReview <ICECaseReview@ice.dhs.gov>  
**Cc:** Rebekah Wolf <RWolf@immcouncil.org>  
**Subject:** Urgent case review for [REDACTED]

**CAUTION:** This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact [ICE SOC SPAM](#) with questions or concerns.

To Whom It May Concern,

We are urgently raising the case of [REDACTED] for case review. His [REDACTED] son died on approximately May 8, 2021, by a murder that is related to [REDACTED] claim for protection. He hopes to be able to attend his son's funeral this Saturday, May 29 at 7:30 a.m. and emotionally support his family, including his adult children and minor child, while they are grieving.

[REDACTED] is not an enforcement priority pursuant to the ICE Interim Guidance on Enforcement and Removal Priorities issued February 18, 2021, by Acting Director Johnson. The priorities are limited to three categories of people: (1) individuals who pose a danger to national security, (2) individuals apprehended at the border on or after November 1, 2020, and (3) individuals who pose a threat to public safety *and* have been convicted of an aggravated felony, have been convicted or an offense for which an element was active participation in a criminal street gang, or who intentionally participated in an organized criminal gang or transnational criminal organization to

further the illegal activity of the gang or transnational criminal organization.

██████████ does not fit within any of these categories. He has no aggravated felony convictions. ██████████'s only convictions were in 2002, when he was sentenced to two days in jail for a misdemeanor, and in 2008, when he was sentenced to five days in jail misdemeanor. His other charges are traffic violations over 11 years old.

Our pro-bono attorney has requested ██████████ release at the local level and asked for case review at the field office level, but both requests have been denied. ICE stated that he had been deemed an enforcement priority on March 8, 2020, without explanation of why. Given the current circumstances of ██████████ son's death and that over eleven weeks have passed, we believe his case merits a new review.

Attached is a case summary, G-28, criminal history, and the denial of ██████████ request for release. Please let me know if you would like more information. We thank you for your attention to this issue.

Sincerely,

**Katy Murdza**

Advocacy Manager, Immigration Justice Campaign  
Pronouns: She/Her  
San Antonio, Texas  
202-507-7548 | [kmurdza@immcouncil.org](mailto:kmurdza@immcouncil.org)

**American Immigration Council**

[www.AmericanImmigrationCouncil.org](http://www.AmericanImmigrationCouncil.org)  
Blog: [www.immigrationimpact.com](http://www.immigrationimpact.com)  
Justice Campaign: [www.immigrationjustice.us](http://www.immigrationjustice.us)

# EXHIBIT C

[REDACTED]

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**From:** Cain, Dustin H <Dustin.H.Cain@ice.dhs.gov>  
**Sent:** Friday, August 13, 2021 17:42  
**To:** [REDACTED]  
**Subject:** [REDACTED]  
**Attachments:** 2021\_08\_13\_17\_40\_50.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Attached is a copy of your clients parole review. Thank you.

*Dustin H. Cain*

*Deportation Officer, Detained Unit  
New Orleans Field Office  
Enforcement and Removal Operations  
Immigration and Customs Enforcement*

U.S. Department of Homeland Security  
1010E Whatley Rd  
Oakdale, LA 71463



**U.S. Immigration  
and Customs  
Enforcement**

08/11/2021

[REDACTED]  
26362 Hwy 115  
Ferriday, LA 71334

In Reference to: A # [REDACTED]

**NOTIFICATION DECLINING TO GRANT PAROLE**

Dear [REDACTED]

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided not to parole you from detention at this time. Under ICE policy, arriving aliens determined by an Asylum Officer to have a credible fear of persecution or torture are initially considered for parole. While the decision whether to grant parole is discretionary, ICE policy is generally to grant parole to aliens determined to have a credible fear if they establish their identity and that they pose neither a flight risk nor danger to the community.

As part of its determination whether to parole you, on \_\_\_\_\_ 10/03/2019 \_\_\_\_\_, ICE conducted an initial interview with you. Your immigration files and any supplemental documentation that you provided were reviewed at that time. After reviewing all available information, ICE has determined that parole is not appropriate in your case at this time based on the following reason(s):

- ☐ You have not established your identity to the satisfaction of ICE.
  - ☐ You did not present valid, government-issued documentation of identity, or any documents you submitted did not, to ICE's satisfaction, establish your identity.
  - ☐ You did not provide third-party verification of your identity, or any third-party information you provided did not, to ICE's satisfaction, establish your identity.
  - ☐ You did not, to ICE's satisfaction, establish your identity through credible statements.
- ☒ You have not established to ICE's satisfaction that you are not a flight risk.
  - ☐ You failed to provide, to ICE's satisfaction, a valid U.S. address where you will reside while your immigration case is pending.
  - ☒ You did not establish, to ICE's satisfaction, substantial ties to the community.
  - ☒ Imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case.

[REDACTED]

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**From:** ICECaseReview <ICECaseReview@ice.dhs.gov>  
**Sent:** Thursday, August 19, 2021 08:59  
**To:** [REDACTED]; ICECaseReview; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Request for Review of Denial to Grant Parole - [REDACTED]  
(A# [REDACTED])

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning [REDACTED],

Based upon ERO's consideration of your inquiry/response below, including any supplemental information provided, the prior decision of the ERO field office handling this case will remain in place.

Please note that there is no appeal of the agency's decision whether or not to exercise discretion in an individual alien's case. If you have additional questions or concerns, please contact your local field office. A list of ERO field offices and their contact information is available here: <http://www.ice.gov/contact/ero>.

Thank you for contacting ICE.

**Senior Reviewing Official**

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**From:** [REDACTED] >  
**Sent:** Tuesday, August 17, 2021 6:59 AM  
**To:** ICECaseReview <ICECaseReview@ice.dhs.gov>; [REDACTED] >  
**Cc:** [REDACTED] >  
**Subject:** RE: Request for Review of Denial to Grant Parole - [REDACTED] (A# [REDACTED])

**CAUTION:** This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact [ICE SOC SPAM](#) with questions or concerns.

Good morning,

Our client is an 18-year-old, who very recently was just a minor child, and who is being effectively prevented from pursuing Special Immigrant Juvenile Status (for which he is squarely and *prima facie* eligible) by the New Orleans ICE Field Office's decision to (1) continue his cruel, soon-to-be prolonged detention; and **(2) by failing to refer his negative credible fear determination for review by EOIR for over two months now**. This is unacceptable, particularly considering the ICE memo issued *just last week* stating:

"Applicants for and beneficiaries of victim-based immigration benefits. When a noncitizen has a pending or approved application or petition for a victim-based immigration benefit, absent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement action against the applicant or petitioner (primary and derivative) until USCIS makes a final determination on the pending victim based immigration benefit application(s) or petition(s), including adjustment of status for noncitizens with approved Special Immigrant Juvenile



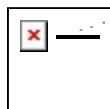
status, or, in the case of a T visa, U visa, or VAWA application, until USCIS makes a negative bona fide or prima facie determination." See Section 2.1 of the memo, available [here](#).

In this case, [REDACTED] is not even able to pursue SIJS from within the confines of the River Correctional Center, as the first step would be his mother filing for his guardianship before the local family court. Our client, a kind youth with no criminal history and no prior immigration history, should absolutely *not* be considered an enforcement priority for this administration. We urge you to reconsider your decision to affirm the local field office's needless, baseless, and cruel continuation of his detention which is keeping him in constant mental stress while separated from his mother and siblings after (1) recently learning that his father was murdered in Brazil and (2) grieving the death of his prior guardian—namely his aunt who died after a painful and protracted battle with cancer.

Thank you in advance for your consideration and exercise of discretion in this case.

Respectfully,

[REDACTED]



[REDACTED]  
[REDACTED] | [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] | [REDACTED]  
[REDACTED]  
[REDACTED]

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify [REDACTED] immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

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**From:** ICECaseReview <[ICECaseReview@ice.dhs.gov](mailto:ICECaseReview@ice.dhs.gov)>

**Sent:** Monday, August 16, 2021 9:40 PM

**To:** [REDACTED] ICECaseReview <[ICECaseReview@ice.dhs.gov](mailto:ICECaseReview@ice.dhs.gov)>

**Cc:** [REDACTED]

**Subject:** RE: Request for Review of Denial to Grant Parole - [REDACTED] (A# [REDACTED])

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening Ms. [REDACTED],

On August 16, 2021, you contacted U.S. Immigration and Customs Enforcement (ICE) via the Enforcement and Removal Operations (ERO) Office of the ERO Senior Reviewing Official mailbox to request a case review for [REDACTED]. Based upon ERO's consideration of your inquiry, including any supplemental information provided, the prior decision of the ERO field office handling this case will remain in place.

Please note that there is no appeal of the agency's decision whether or not to exercise discretion in an individual alien's case. If you have additional questions or concerns, please contact your local field office. A list of ERO field offices and their contact information is available here: <http://www.ice.gov/contact/ero>.

Thank you for contacting ICE.

**Senior Reviewing Official**

**From:** [REDACTED]  
**Sent:** Monday, August 16, 2021 6:12 PM  
**To:** ICECaseReview <[ICECaseReview@ice.dhs.gov](mailto:ICECaseReview@ice.dhs.gov)>  
**Cc:** [REDACTED]  
**Subject:** Request for Review of Denial to Grant Parole - [REDACTED] (A# [REDACTED])

**CAUTION:** This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact [ICE SOC SPAM](#) with questions or concerns.

Dear Supervisory ICE Officials,

I am writing to escalate the Notification Declining to Grant Parole for our client Mr. [REDACTED] (A# [REDACTED]) for further ICE Case Review.

Our team received the attached Notification from DO Dustin Cain on Friday 8/13/21, a full four weeks after our initial submission of the Release Request, also attached.

For the following reasons, we request ICE Case Review to reconsider this Declination:

- The Notification incorrectly states “On 10/03/2019, ICE conducted an initial interview with [Mr. [REDACTED]]”
  - Mr. [REDACTED] did not enter the U.S. until April 2021, and his Credible Fear Interview was not held until July 3, 2021. The incorrect date on this Notification supports our position that the local field office did not conduct an individualized review of this Release Request and their decision to decline parole was arbitrarily made.
- The Notification states that Mr. [REDACTED] has “not established to ICE’s satisfaction that [he is] not a flight risk.”
  - As a vulnerable 18-year-old who is *prima facie* eligible for Special Immigrant Juvenile Status (and as an asylum seeker currently requesting a review hearing before EOIR of the negative credible fear finding), Mr. [REDACTED], who has no family or community remaining in Brazil, has no reason, personal or otherwise, to return to Brazil or to leave the U.S. He has no prior criminal history in the U.S. nor Brazil. For these reasons, it is obvious he is not a flight risk.
- The Notification states that he “did not establish, to ICE’s satisfaction, substantial ties to the community.”
  - Mr. [REDACTED] has two close family members here in the U.S., both of whom are named and described in the attached original Release Request and both of whom provided signed letters of support with copies of corroborating documentation.
  - One substantial tie is his Mother, who is pursuing Lawful Permanent Residence based out of [REDACTED], where she lives with Mr. [REDACTED]’s brothers, and where she will house and financially support him.
  - The other substantial tie is his Uncle, a longtime U.S. Citizen, who is his sponsor alongside his Mother, and who lives close by to the family.
- Further, the Notification states that “imposition of a bond or other conditions of parole would not ensure, to ICE’s satisfaction, [his] appearance at required immigration hearings pending the outcome of [his] case.”
  - Given Mr. [REDACTED]’s significant community ties, including his long-standing USC Uncle and sponsor and his mother, both of whom have gone through immigration processes and attended numerous hearings of their own and both of whom understand the importance of appearance at each and every hearing, it is evident that he has full support and every incentive to attend his future immigration hearings and post-release appointments.

For the above reasons, it is our well-documented position that the instant determination declining to grant parole for Mr. [REDACTED] is arbitrary and capricious. It is evident that the local field office did not conduct an individualized review, nor do we believe that the contents and substance of the request were reviewed to any significant extent in making said determination.

We ask that ICE Case Review Officials review this matter as soon as possible, so that Mr. [REDACTED] can be reunited with his mother, uncle, and brothers and so that he can pursue SIJS status outside of the traumatizing carceral setting not suited for a non-violent youth, and so that he may enroll in his Senior Year of high school to complete his studies.

Respectfully,

[REDACTED]



[REDACTED]  
[REDACTED] | [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] | [REDACTED]

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify [REDACTED] immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

# EXHIBIT D

U.S. Department of Homeland Security  
12445 E. Caley Avenue  
Centennial, CO 80111



**U.S. Immigration  
and Customs  
Enforcement**

April 7, 2021

Attorney [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Request for Custody Redetermination for [REDACTED]

Dear Attorney [REDACTED]:

This letter is in response to the custody redetermination request you submitted for your client, [REDACTED], based on your opinion he is not a priority for enforcement as indicated in the ICE Interim Guidance on Enforcement and Removal Priorities issued February 18, 2021 by Acting Director Johnson. In consideration of this request your supporting evidence, your client's administrative file, medical records, criminal history, and previous release denials were reviewed.

After consultation with management, Immigration and Customs Enforcement has determined a favorable exercise of discretion is not warranted in this case at this time. Your request for released based on the ICE Interim Guidance on Enforcement and Removal Priorities is denied.

Sincerely,

CHRISTOPHER L.  
JONES

Christopher L. Jones  
Assistant Officer in Charge

Digitally signed by  
CHRISTOPHER L. JONES  
Date: 2021.04.07 14:20:50  
-06'00'

# EXHIBIT E

Alien's Name [REDACTED]	File Number A [REDACTED]	Date 06/30/2021
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**NOTICE OF CUSTODY DETERMINATION**  
(Continuation)

Pursuant to a review conducted to comply with requirements in *Fraihat v. ICE*, --- F. Supp. 3d ---, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020), you have been identified as having one or more of the Risk Factors identified by the district court as placing you "at heightened risk of severe illness and death upon contracting the COVID-19 virus."

The Risk Factor(s) in your case are that you:

- ☐ Are age 55 or over
- ☐ Are Pregnant
- ☒ Have a Chronic Care Condition (As confirmed by a medical professional)
- Condition: Major Depressive Disorder, Anxiety Disorder, Amphetamine/Substance Abuse Disorder

Upon review of the totality of the circumstances present in your case, it has been determined that you will:

- ☐ Be released from custody.
- ☒ Remain detained, and the following justification forms the basis for your continued detention: Select ONE

Threat to Public Safety

Comments: Subject has an aggravated felony conviction for Attempted Second Degree Murder with sentencing enhancements for using a firearm and inflicting GBI. Attorney verifies previous gang membership in El Salvador.

Signature

 Christopher Jones

Title

Assistant Officer in Charge

# EXHIBIT F



Alien's Name [REDACTED]	File Number A [REDACTED]	Date 05/26/2021
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**NOTICE OF CUSTODY DETERMINATION**  
(Continuation)

Pursuant to a review conducted to comply with requirements in *Fraihat v. ICE*, — F. Supp. 3d —, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020), you have been identified as having one or more of the Risk Factors identified by the district court as placing you "at heightened risk of severe illness and death upon contracting the COVID-19 virus."

The Risk Factor(s) in your case are that you:

- ☐ Are age 55 or over
- ☐ Are Pregnant
- ☒ Have a Chronic Care Condition (As confirmed by a medical professional)  
Condition: Major Depressive Disorder, Anxiety, Hypothyroidism, Gender Dysphoria, BMI

Upon review of the totality of the circumstances present in your case, it has been determined that you will:

- ☐ Be released from custody.
- ☒ Remain detained, and the following justification forms the basis for your continued detention: Select ONE  
Threat to Public Safety

Comments: Aggravated felony conviction for Lewd or Lascivious Acts with a Child.  
Sentenced to eight years in California DOC.

Signature CHRISTOPHER L JONES	Digitally signed by CHRISTOPHER L JONES Date: 2021.05.26 10:22:34 -06'00'	Christopher Jones	Title Assistant Officer in Charge
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# EXHIBIT G

[REDACTED]

[REDACTED]

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**CF Parole Request: A** [REDACTED]

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[REDACTED], 2021 at 10:29 AM  
To: [REDACTED]  
Cc: [REDACTED]

Good Morning,

In regards to the Credible Fear Parole request submitted for [REDACTED], there are a few documents that will need to be submitted before a decision can be made.

An amended lease agreement will need to be provided as the lease agreement provided does not list Ms. Rodriguez-Ibarra as an authorized occupant of the residence. Current utility bill statements, water, power, gas for that residence will need to be submitted as well. Those items can be mailed directly to Officer [REDACTED] at GEO. If emailing the documents, please ensure legible color copies are provided.

Please advise if you have any questions,

Best Regards,

[REDACTED]

Deportation Officer

Denver Contract Detention Facility, Detained Docket Unit

Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

3130 N Oakland St, Aurora, CO 80010 Office: 303-361-0723 [REDACTED]

# EXHIBIT H



[REDACTED]

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**Borjas, Graciela** <Graciela.Borjas@ice.dhs.gov>  
To: [REDACTED]  
Cc: "Rojas, Enrique" <Enrique.Rojas@ice.dhs.gov>

Tue, Jun 22, 2021 at 12:09 PM

Good afternoon,

I received the Fraihat list from Torrance facility and your client was not on the list. He also does not qualify for parole because he is an EWI. As of right now, there is NO present urgent humanitarian reason or significant public benefit for release.

You can request medical records from Torrance Medical Staff. Your client's case has been referred to the Houston Asylum and is pending CF interview.

Respectfully,

Gracie Borjas

Deportation Officer

El Paso Field Office/Otero County Processing Center

Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

O: (915)834-4853

G: (915)243-3914

# EXHIBIT I



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## Fraihat class members at Torrance

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**Garcia, Gonzalo** <Gonzalo.Garcia@ice.dhs.gov>

Wed, May 26, 2021 at 2:01 PM

To: [REDACTED]  
Cc: "Ortez, Jose P" <Jose.P.Ortez@ice.dhs.gov>, "Sanchez, Azucena" <Azucena.Sanchez@ice.dhs.gov>, OTERO-LegalAccess <OTERO-LegalAccess@ice.dhs.gov>

Good Afternoon [REDACTED],

We're currently working on vetting all the cases at Torrance which may potentially be FRAIHAT class members. As an FYI, cases detained at Torrance are managed by Otero. Anything having to do with their cases, the immigration/legal aspect will be managed by Otero. If you wish to speak to your client(s), please reach out to SDDO Azucena Sanchez to coordinate that call with the facility.

### Information pertaining to case

OTERO-LegalAccess [OTERO-LegalAccess@ice.dhs.gov](mailto:OTERO-LegalAccess@ice.dhs.gov)

### Phone call/communication with client

SDDO Azucena Sanchez [Azucena.Sanchez@ice.dhs.gov](mailto:Azucena.Sanchez@ice.dhs.gov)

Thanks,

**Gonzalo M. Garcia**

Supervisory Detention and Deportation Officer

El Paso Field Office

Otero County Processing Center

**Enforcement and Removal Operations**

**U.S. Immigration and Customs Enforcement**

Office: (915) 834-4808

# EXHIBIT J





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**[Fraihat v. ICE subclass member] Request for custody redetermination ([REDACTED])**

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**De Santiago, Miguel** <Miguel.De-Santiago@ice.dhs.gov>

Mon, Jun 28, 2021 at 12:50 PM

To: [REDACTED]

Good afternoon,

A medical professional evaluated your client to determine whether your client falls within the populations identified by the CDC as potentially being at higher risk for serious illness from COVID-19 and/or the subclasses certified in *Fraihat v. ICE*. The results of this evaluation concluded that your client's condition does not fall within the vulnerabilities listed by the CDC. ERO will not conduct a custody redetermination under *Fraihat v. ICE* in this case.

Respectfully,

Miguel A. De Santiago

Deportation Officer/Asylum Unit

El Paso Field Office/Otero County Processing Center

Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

Desk: 915-834-4843

Cell: 915-892-4462

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**From:** [REDACTED]**Sent:** Monday, June 28, 2021 10:39 AM**To:** De Santiago, Miguel <Miguel.De-Santiago@ice.dhs.gov>**Subject:** Fwd: [Fraihat v. ICE subclass member] Request for custody redetermination ([REDACTED])

**CAUTION:** This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact [ICE SOC SPAM](#) with questions or concerns.

[Quoted text hidden]