

DAVID L. ANDERSON (CABN 149604)  
United States Attorney  
SARA WINSLOW (DCBN 457643)  
Chief, Civil Division  
WENDY M. GARBERS (CABN 213208)  
ADRIENNE ZACK (CABN 291629)  
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7031  
FAX: (415) 436-6748  
adrienne.zack@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANGEL DE JESUS ZEPEDA RIVAS, <i>et al.</i> ,	)	Case No. 20-cv-02731 VC
	)	
Plaintiffs,	)	<b>FEDERAL DEFENDANTS' REPLY IN</b>
	)	<b>SUPPORT OF MOTION TO STAY IN LIGHT</b>
v.	)	<b>OF <i>FRAIHAT</i></b>
	)	
DAVID JENNINGS, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

## INTRODUCTION

The Court should grant defendants motion to stay under the first-to-file rule. Both this case and *Fraihat* seek custody determinations for individuals held in immigration detention in Mesa Verde Detention Facility and Yuba County Jail, including some named plaintiffs herein. Moreover, the cases raise similar claims for relief and a goal of both cases is compliance with guidelines that require social distancing. Permitting both cases to proceed could result in ICE being subject to conflicting orders, an outcome the first-to-file rule seeks to avoid.

## ARGUMENT

First, this case should be stayed because defendants should not be subject to potentially competing orders that mandate simultaneous, yet different, requirements to review detainee custody requirements. See *Landscape Specialists, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, No. SACV191419JVSKESEX, 2020 WL 968693, at \*4 (C.D. Cal. Jan. 8, 2020) (“staying the case will serve the purposes of the first-to-file rule by promoting judicial efficiency and avoiding inconsistent judgments”). In *Fraihat*, the court ordered defendants to make timely custody determinations for detainees with risk factors. ECF 26-1 at pp. 39-40 (pp. 38-39 of *Fraihat* order). Here, plaintiffs seek a competing process of custody review, with the Court making custody determinations based on applications brought by plaintiffs. ECF Nos. 5 at 9; 5-7 at 5. Requiring defendants to both conduct their own court-ordered review and simultaneously have the Court conducting review is a waste of judicial and government resources. And plaintiffs have proposed no order in which they may present applications, leaving room for conflict with the court’s order in *Fraihat* requiring review of detainees with risk factors. Because the one of the purposes of the first-to-file rule is to prevent such overlap, the Court should stay this case.

Second, this litigation and *Fraihat* raise substantially similar questions. In *Fraihat*, plaintiffs raised claims of medical indifference in violation of the Fifth Amendment and punitive conditions of confinement in violation of the Fifth Amendment. ECF 26-1 at p. 28 (p. 27 of *Fraihat* order). Here, plaintiffs make claims of deliberate indifference (to medical issues) under the Fifth Amendment and excessive risk (so as to be punitive) under the Fifth Amendment. ECF No. 5 at 19-20. While there may be some small differences in the claims, these are substantially similar and warrant a stay in this case.

*Kohn Law Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d 1237, 1239 (9th Cir. 2015) (“The issues in both cases also need not be identical, only substantially similar.”).

Finally, the named plaintiffs show that there is overlap between the proposed classes here and the *Fraihat* class. The first-to-file doctrine does not require that the parties be identical, but merely that they be substantially similar. In *Adoma v. Univ. of Phoenix, Inc.*, the court found this prong satisfied when “both classes [sought] to represent at least some of the same individuals.” *Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1148 (E.D. Cal. 2010). Here, “at least some of the same individuals” are included in both classes—the named plaintiffs here provide an easy illustration. Subclass One in *Fraihat* consists of those with risk factors, namely being over the age of 55; being pregnant; or having chronic health conditions, including: cardiovascular disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery); high blood pressure; chronic respiratory disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases); diabetes; cancer; liver disease; kidney disease; autoimmune diseases (psoriasis, rheumatoid arthritis, systemic lupus erythematosus); severe psychiatric illness; history of transplantation; and HIV/AIDS. ECF 26-1 at p. 22 (p. 21 of *Fraihat* order). Based on the claimed medical conditions of three of the seven named plaintiffs, they would clearly fall into the *Fraihat* class. Plaintiff Zepeda Rivas, while now released, states that he has diabetes. ECF No. 1 ¶ 15. Plaintiff Mwaura has chronic lung disease caused by a prior condition of Valley Fever. *Id.* ¶ 19. Plaintiff Sanchez Nunez has asthma. *Id.* ¶ 24. Because the parties in *Fraihat* and this action substantially overlap, the Court should stay this matter under the first-to-file doctrine.

//  
//  
//  
//  
//  
//  
//  
//  
//

**CONCLUSION**

For the foregoing reasons and those advanced in defendants' motion, the Court should stay this matter pending *Fraihat* to prevent overlapping claims and inconsistent orders, and because *Fraihat* was first-filed.

DATED: April 27, 2020

Respectfully submitted,

DAVID L. ANDERSON  
United States Attorney

/s/ Adrienne Zack  
ADRIENNE ZACK  
Assistant United States Attorney