

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 19-1546 JGB (SHKx)**

Date March 10, 2021

Title *Faour Abdallah Fraihat, et al. ~~V. FBI~~ ~~OR~~*

timely evaluate or re-evaluate whether continued

4. Detention of Subclass members not subject to mandatory detention

As noted above, “ [o]nly in rare cases should a Subclass member not subject to mandatory detention remain detained, and ... a justification is required.” (Enf’t Order at 17.) Plaintiffs argue that Defendants’ biweekly production on the results of custody redeterminations show that Defendants continue to detain a large number of these Subclass members not subject to mandatory detention. (Mot. at 12.) Class Counsel reviewed the spreadsheet of current detainees to measure the results of the custody redeterminations of individuals not subject to mandatory detention. (Fox Decl. ¶ 6.) They found that out of 2,177 such redeterminations, 712 resulted in “ Detained in custody-no bond” or “ No change-original determination upheld” findings, for a continued detention rate of approximately 33%. (*Id.*) This is far beyond the “ rare cases” envisioned by the Court.

Defendants present yet more unpersuasive responses. They argue that the Docket Review Guidance, revised PRR, and October 27 Broadcast Message ensure that the presence of a risk factor is given significant weight and that a justification for continued detention is required. (Opp’n at 15 (citing PRR at 19; Guadian Decl. ¶ 7; Broadcast Message).) They add that the Court did not order release nor define “ rare” in its Orders. (*Id.*) Finally, Defendants represent that 88% of Subclass members not subject to mandatory detention had been released as of January 23, 2021. (Vassilio-Diaz Decl. ¶ 6.) But that 88% of Subclass members not subject to mandatory detention were eventually released (almost always through deportation) sheds no light on Defendants’ compliance with the Court’s Orders on custody reviews. This figure does not take into account how many detainees were denied release after custody redeterminations, or the delays between custody redetermination and eventual release, which have been documented to be more than two months. (Fox Reply Decl. ¶¶ 5, 8-9, Ex. A.) Moreover, Defendants’ more recent January 2021 spreadsheets show that 57% of detainees not subject to mandatory detention

“ that more than 60% of mandatory detention individuals have been released shows that Defendants are complying with the custody revi

members remain at heightened risk of severe illness or death. It is now clear that Defendants' compliance with the PI and Enforcement Orders requires more active monitoring than the Court is able to provide with the urgency required. The Court therefore finds that appointing a Special Master is appropriate here.

B. Parameters of Appointment

The parties shall meet and confer regarding parameters for the appointment of a Special Master, and submit a joint report by **March 19, 2021**. The joint report must include (1) three candidates to be considered for the appointment of Special Master; (2) a detailed description of the scope of the Special Master's mandate, including proposed duties and responsibilities; (3) a proposed fee arrangement to cover the Special Master's fees and expenses; and (4) a proposed