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THE ICE DETAINED PARENTS DIRECTIVE:

HOW CHILD WELFARE AGENCIES AND IMMIGRATION ATTORNEYS CAN ADVOCATE WITH ICE FOR FAIR TREATMENT OF DETAINED OR DEPORTED PARENTS

When a parent or guardian with ongoing child welfare proceedings is detained in the custody of Immigration & Customs Enforcement (ICE), or has been deported, various barriers to family reunification can arise. For example, their detention or deportation may make it incredibly difficult to participate in the child welfare proceedings or comply with family reunification services.

One critical tool to help child welfare agencies address these challenges for detained or deported parents is ICE's own policy on detaining and deporting parents and legal guardians¹. In 2013, ICE issued its first directive regarding parental interests². This directive was replaced by the Trump administration in 2017 with a policy that was less protective of parents facing immigration enforcement³. In July 2022, the Biden administration issued an updated policy called "Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults"⁴. On July 2, 2025, the second Trump Administration issued a new directive entitled "Detention and Removal of Alien Parents and Legal Guardians of Minor Children"⁵. The new Detained Parents Directive (DPD), while limiting and weakening some of the protective policies of the prior directive, is still an important tool for child welfare and immigration advocates to employ in their advocacy on behalf of noncitizen parents and legal guardians of minor children. **The stated policy set forth in the DPD is to ensure that ICE's immigration enforcement activities do not unnecessarily infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children.**

The DPD applies to noncitizen parents or legal guardians who: (1) are primary caretakers of minor child(ren)⁶ in the United States, without regard to the child's citizenship or immigration status; and/or (2) have a direct interest in family or probate court, guardianship, or child welfare proceedings involving a minor child, without regard to the child's citizenship or immigration status.

This resource summarizes the main protections ICE directs its personnel to offer noncitizen parents and legal guardians. The DPD provides the following guidance to ICE:

I. INITIAL ARREST OF A PARENT OR GUARDIAN:

- If minor children are encountered during ICE enforcement actions, ICE should under no circumstances take custody of children or transport them unless ICE is effectuating an enforcement

1. In California, there is also a state law that addresses barriers to reunification for immigrant families. For more information on this law and how it can help immigrant families in the child welfare system, see ILRC & The American Bar Association's Center on Children and the Law, *The Reuniting Immigrant Families Act (SB 1064)*, <https://www.ilrc.org/reuniting-immigrant-families-act-sb-1064>.

2. U.S. Immigration & Customs Enforcement (ICE), *11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* (Aug. 23, 2013).

3. ICE, *11064.2: Detention and Removal of Alien Parents or Legal Guardians* (Aug. 29, 2017).

4. ICE, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022).

5. ICE, *11064.4: Detention and Removal of Alien Parents and Legal Guardians of Minor Children* (July 2, 2025), <https://www.ice.gov/detain/parental-interest> (hereinafter, *Detained Parents Directive*).

6. Note that the prior directive also applied to primary caretakers of "incapacitated adult(s)." The prior directive defined this term to mean: "an individual eighteen years of age or older whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian." ICE, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022). Notably, this population is not covered by the current DPD.

action against them (for example, because they are undocumented or are subject to loss of their current immigration status);

- ICE should affirmatively inquire about parental or legal guardian status of each individual it encounters. ICE should continue to inquire about parental or legal guardian status at each encounter, as that status could change (e.g. birth of a new child, later child welfare involvement);
- ICE should allow parents and guardians to make alternate care arrangements for minor children prior to their detention, unless there are indications of child abuse or neglect⁷; and
- If alternate care arrangements cannot be made or if there are indications of abuse or neglect by a parent or other adult who may be asked to take custody of the minor child(ren), ICE must contact the local child welfare authority or law enforcement to take custody of minor children.

Tips: Although the DPD does not specifically address this, at the time of arrest, a parent, guardian, or their advocate can argue that ICE should not arrest and/or detain them, so as not to unnecessarily infringe upon their caregiving responsibilities and/or parental or guardianship rights. In the past, as a result of this type of advocacy, ICE has declined to arrest or detain one parent when it intended to arrest both parents, for example. In fact, a prior version of the DPD instructed ICE to consider exercising prosecutorial discretion when engaging in enforcement actions against parents or legal guardians of minor children. While ICE may be unlikely to do this in the current immigration enforcement climate, such a request would further the policy set forth in the DPD and individual ICE officers may be sympathetic depending on the circumstances. If ICE insists on arresting a parent or guardian, the individual should request that ICE wait to arrest or detain them until they have made alternate care arrangements for their children, as instructed by the current DPD, regardless of how many phone calls or how much time that might take.

II. DECISIONS ABOUT PLACEMENT OF A PARENT OR GUARDIAN IN DETENTION: When making initial detention placement decisions and subsequent transfers of parents and guardians, ICE should detain parents and guardians in the same area where they were initially arrested if their minor children, or family court, child welfare, or guardianship proceedings are within the initial area of apprehension. ICE should do this unless it is “not operationally feasible, or doing so is dictated by exceptional circumstances or otherwise legally required⁸.”

Tips: Note that ICE will not typically detain people locally, so this will require some advocacy to convince ICE to detain people close to home or transfer them back to the initial area where they were detained if they have already been moved away. Child welfare agencies should advocate with ICE for the local detention of a parent or guardian if it is in the best interest of the child. This will include contacting ICE (as discussed below, and pursuing multiple channels of communication if necessary), explaining that the parent has an open child welfare case that could result in loss of parental rights if the parent is unable to participate (keeping confidentiality concerns in mind), and requesting that the parent be transferred to

7. As under the prior directive, if the parent or legal guardian decides to transfer physical custody of minor child(ren) to a third-party, ICE must document this in the immigration file and relevant data system. DPD, at 5. Further, if the child whose custody is being transferred to a third party was or is determined to be an unaccompanied child – defined in 6 USC § 279(g)(2) as a child who “has no lawful immigration status in the United States; has not attained eighteen years of age; and with respect to whom – there is no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody” – ICE must advise the local Department of Health and Human Services (HHS) office. *Id.*

8. DPD, at 5-6.

the closest ICE detention facility to minimize barriers to the parent's participation. A map of ICE's detention facilities can be found at <https://www.ice.gov/detention-facilities>.⁹ The parent's immigration attorney, if any, could also engage in this advocacy.

III. PARTICIPATION IN CHILD WELFARE PROCEEDINGS: When detained parents or guardians have active family court, child welfare, or guardianship proceedings, ICE should facilitate their participation. ICE must, if practicable, arrange for detained parents and guardians to appear in-person, by video, or by teleconference when the detained parent or guardian's presence is required to maintain or regain custody of minor children, and:

- The parent, guardian, attorney, or child welfare agency or court has submitted a request to ICE that they participate in such hearings;
- The parent, guardian, attorney, or child welfare agency or court has produced evidence of a family court, child welfare, or guardianship proceeding, e.g., notice of hearing, scheduling letter, court order, or other such documentation; and
- If in-person appearance is specifically required, transportation and escort of the detained parent or guardian must not negatively impact or hinder ICE's work; and such transportation and/or escort must not present security and/or public safety concerns.

If an in-person appearance is not operationally feasible, ICE should take reasonable steps to ensure alternative means for the detained parent or guardian to participate in the proceedings, for example, through video or standard teleconferencing.

Tip: Child welfare advocates could argue under this provision that ICE should release any parent or guardian for whom the court has ordered reunification, and provide documentation from the court to support that request. While ICE may be unlikely to grant such a request in the current immigration enforcement climate, it remains true that detention of a parent will hinder their ability to comply with reunification services and thus potentially infringe upon their parental rights.

IV. VISITATION WITH A PARENT OR GUARDIAN IN ICE DETENTION: When a parent or guardian is detained, ICE must facilitate regular visitation with their minor children. If the ICE facility where a parent is detained does not allow contact visits by minors, ICE must arrange, upon written request, for the minor children to have a contact visit within the first 30 days of detention. Following that, upon request, ICE must consider transferring the parent or guardian to a facility that allows visitation. If that transfer is not approved, ICE must continue to arrange for monthly visits. If parent/guardian-child visitation is required by the court or child welfare agency in order for the parent or guardian to maintain or regain custody of children, and proof of that requirement is provided, ICE must accommodate the required visitation. If in-person visitation is not operationally feasible, ICE must permit visitation via video or standard teleconferencing, and if such visitation is ordered or required by a family court or child welfare agency, the video teleconferencing should be at no cost to the parent or guardian.

9. Note that this map may be outdated and may reflect, for example, facilities that have closed.

Tip: If the cost of teleconference visitation is prohibitive for a detained parent or guardian, the child welfare agency should consider ordering the parent to participate in video teleconferencing so that ICE will facilitate it at no cost to the parent or guardian.

V. DEPORTATION OF A PARENT OR GUARDIAN: If a parent or guardian is facing imminent deportation, ICE should accommodate their efforts to make arrangements for their minor children. This may include allowing the parent or guardian to arrange for guardianship for the minor children, thus allowing the children to remain in the United States, or to obtain travel documents for the minor children to accompany them to their country of removal. To do so, ICE must afford parents and guardians a reasonable opportunity to consult with counsel, consulates, notaries, courts, guardians ad litem, and/or family members in the appropriate time preceding their removal so that parents may execute any necessary documents, purchase airline tickets, and make other necessary preparations prior to removal.

Tips: Although the current DPD does not address the possibility of a removed parent returning to the United States via parole to participate in child welfare proceedings, prior versions did encourage this practice, and there is nothing barring such a request from a parent. Child welfare advocates working on cases involving parents who have already been deported should connect with an immigration legal services provider to see if they can assist the parent in requesting parole to return to the United States to participate in a hearing or hearings regarding termination of parental rights or guardianship. It may also be possible to request parole for other important hearings if the need to appear in-person and the connection to parental rights are well-documented. Visit <https://www.immigrationlawhelp.org/> to find an immigration non-profit near you.

Using the Detained Parents Directive as an Advocacy Tool with ICE

Social workers, parents' attorneys, and immigration attorneys can use the DPD to advocate that ICE should release parents from detention. If that is unsuccessful, they can use the DPD to advocate that ICE should:

- Detain parents close to their children and child welfare proceedings;
- Check for any changes in parental or legal guardian status throughout the removal process.
- Arrange for detained and deported parents to attend court hearings;
- Facilitate regular visitation between detained parents and children; and
- If the parent is facing deportation, allow them to make arrangements for their children



HOW TO CONTACT ICE TO ADVOCATE ON BEHALF OF A FAMILY WITH A DETAINED PARENT OR A LEGAL GUARDIAN:

Anyone can contact ICE on parental interests matters, including but not limited to: detained parents, legal guardians, or primary caretakers of minor children in the United States; family or child welfare court officials; social workers or other child welfare authorities; immigration attorneys; family law attorneys; and other child welfare or immigration advocates. It is a good idea to contact both ICE headquarters and the field points of contact for ICE. To contact ICE headquarters about a parent or guardian with a case in the child welfare system, send an email to: Parental.Interests@ice.dhs.gov. To determine who to contact in the field office nearest to the parent or legal guardian, visit <https://www.ice.gov/contact/field-offices>.

You can also contact ICE Headquarters by calling the ICE Detention Reporting and Information Line at 1-888-351-4024 during regular business hours, 8 a.m. to 8 p.m. EST, Monday through Friday. State that your request is a "Parental Interests Inquiry."