



THE ICE DETAINED PARENTS DIRECTIVE

How Child Welfare Agencies Can Advocate with ICE to Ensure 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 guardians.¹ In 2013, ICE issued its first directive regarding parental interests directing ICE personnel to ensure that the agency's immigration enforcement activities did not unnecessarily disrupt parental rights and the rights of legal guardians.² This directive was replaced by President Trump's Administration in 2017 with a policy that is less protective of parents facing immigration enforcement, entitled "Detention and Removal of Alien Parents or Legal Guardians" (the Detained Parents Directive).³ Nevertheless, the Detained Parents Directive is an important advocacy resource that can be used to ensure that parents who are in ICE detention or have been deported are able to participate in child welfare proceedings and comply with reunification services, all with the goal of maintaining family unity.

This resource summarizes the main protections ICE directs its personnel to offer and discusses the heightened need for advocacy during COVID-19.

THE DETAINED PARENTS DIRECTIVE PROVIDES THE FOLLOWING GUIDANCE TO ICE:

Initial arrest of a parent or guardian

- If minor children are encountered during ICE enforcement actions, ICE should not take custody of children unless they are deportable (either because they are undocumented or are subject to loss of their current immigration status);
- ICE should allow parents/guardians to make alternate care arrangements for minor children, unless there are indications of child abuse or neglect; and if alternate care arrangements cannot be made or if there are indications of abuse or neglect, ICE should contact the local child welfare authority or law enforcement to take custody of minor children.

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, *11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* (Aug. 23, 2013).

³ U.S. Immigration & Customs Enforcement, *11064.2: Detention and Removal of Alien Parents or Legal Guardians* (Aug. 29, 2017), <https://www.ice.gov/doclib/detention-reform/pdf/directiveDetainedParents.pdf>.

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, family court proceedings, or child welfare proceedings are within the initial area of apprehension. ICE should do this unless it is deemed “operationally necessary and otherwise consistent with applicable ICE policies” to detain the parent or guardian elsewhere. *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 assertively 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 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>.⁴

Participation in child welfare proceedings: When detained parents have active family court or child welfare proceedings, ICE should facilitate parents’ participation. ICE must, if practicable, arrange for detained parents and guardians to appear in-person at family court or child welfare proceedings when the detained parent or guardian’s presence is required to maintain or regain custody of minor children, and:

- The parent, legal guardian, attorney, or other representative timely requests with reasonable notice an opportunity to participate in such hearings;
- The parent, guardian, attorney, or other representative has produced evidence of family court or child welfare proceedings, e.g., notice of hearing, scheduling letter, court order, or other such documentation;
- The family court or child welfare proceedings are located within a reasonable driving distance from the detention facility;
- Transportation and escort of the detained parent or guardian would not be unduly burdensome on ICE Field Office operations; and
- Such transportation and/or escort does not present security and/or public safety concerns.

If that is impractical, ICE should accommodate the detained parent or guardian’s appearance or participation through video or teleconference from the detention facility or field office to the extent it is technologically feasible and approved by the family court or child welfare authority.

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. Even if the ICE facility where a parent is detained does not allow visits by minors, ICE must arrange for the minor children to visit the detained parent within the first 30 days of detention. This includes step-children, foster children, and children by virtue of a guardianship. 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-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 facilitate visitation (to the extent practicable), which may include contact visits. If in-person visitation is not practicable, video or standard teleconferencing may be used if approved by the court.

Deportation of a parent or guardian: If a parent or guardian is actually being deported, ICE should accommodate the parent’s 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 the parent or guardian to their country of removal. To do so, ICE must (to the extent practicable) afford

⁴ Note that this map may be outdated and may reflect, for example, facilities that have closed.

parents and guardians access to legal counsel, consulates, courts, and/or family members in the weeks preceding their removal so that parents may execute any necessary documents, purchase airline tickets, and make other necessary preparations prior to removal.

Using the Detained Parents Directive as an Advocacy Tool with ICE

Social workers, parents' attorneys, and other advocates can use the Detained Parents Directive to advocate that ICE should:

- Detain parents close to their children and child welfare proceedings;
- Arrange for detained parents to attend court hearings; and
- Facilitate regular visitation between detained parents and children.

How to Contact ICE to Advocate on Behalf of a Family with a Detained Parent or 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. We recommend contacting both ICE headquarters and the field points of contact for ICE. The field points of contact in California are:

Steve Hottya; Stephen.L.Hottya@ice.dhs.gov; (213) 830-5918; Area of Responsibility: Los Angeles Metropolitan Area, Central Coast

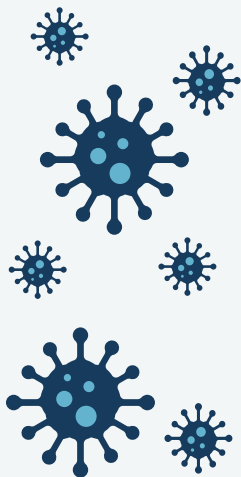
Gabriela Pacheco; Gabriela.B.Pacheco@ice.dhs.gov; (760) 768-6307; Area of Responsibility: San Diego and Imperial County

April Jacques; April.Jacques@ice.dhs.gov; (415) 844-5542; Area of Responsibility: Northern California, Hawaii, and Guam

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.

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."

The impact of the COVID-19 pandemic on immigration arrests and detention.



Amidst the COVID-19 pandemic, ICE continues to arrest and detain people. Now more than ever, immigration detention facilities pose grave harm to the people held in them. Thousands of medical professionals have already stated that it is not a matter of if, but when, COVID-19 impacts detained people en masse. Close quarters promote the unnecessary spread of COVID-19 in these facilities, and when people do get sick, these facilities are ill equipped to handle a pandemic. Medical neglect is documented and rampant. While people in detention as well as advocates are demanding wide-scale release in light of COVID-19, the government has not done so to date. At this time, ICE is not allowing visitation in detention facilities, so video or phone visitation may be the only option for families. It is also unlikely that ICE would facilitate transportation to a hearing in child welfare proceedings in this time. ***These realities provide yet another reason to advocate that ICE simply release people so they can meaningfully participate in child welfare proceedings, maintain a relationship with their child(ren), and be spared from the highly contagious and life-threatening COVID-19 virus. We encourage you to boldly make this request to ICE!***

For up to date information about ICE's policies during COVID-19, see <https://www.ice.gov/coronavirus>