



THE ICE PARENTAL INTERESTS 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.² This directive was replaced by the Trump Administration in 2017 with a policy that was less protective of parents facing immigration enforcement.³ In July 2022, the Biden Administration issued an updated policy called "Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults" (Parental Interests Directive, or PID).⁴ The general policy set forth in the Parental Interests Directive is to ensure that ICE's immigration enforcement activities do not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians.

The PID applies to noncitizen parents or legal guardians who are: (1) primary caretakers or have custody of a minor child(ren) or incapacitated adults⁵ in the United States, without regard to the dependent's citizenship or immigration status; and/or (2) those who have a direct interest in family or probate court, guardianship, or child welfare proceedings involving a minor child or incapacitated adult, without regard to the dependent's citizenship or immigration status.

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

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).

⁴ U.S. Immigration & Customs Enforcement, *11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults* (July 14, 2022), <https://www.ice.gov/detain/parental-interest>.

⁵ While this resource focuses on the application of the PID to minor children, it is worth noting that the inclusion of an "incapacitated adult" in the Parental Interests Directive is new. The PID defines 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." Parental Interests Directive, at 2.

I. Initial arrest of a parent:

- 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 action against them (for example, because they are undocumented or are subject to loss of their current immigration status);
- ICE should allow parents and guardians to make alternate care arrangements for minor children prior to their arrest or detention, 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 must contact the local child welfare authority or law enforcement to take custody of minor children.

Tips: Although the PID does not specifically address this, at the time of arrest, a parent, guardian, or their advocate should argue that ICE should not arrest and/or detain them, so as not to unnecessarily disrupt their parental 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. If ICE insists on arresting a parent or guardian, they should request that ICE wait to arrest or detain them until they have made alternate care arrangements for their children, 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, family court, child welfare, or guardianship proceedings are within the initial area of apprehension. ICE should do this unless it is “impracticable or doing so is dictated by exceptional circumstances or otherwise legally required.”⁶

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 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>.⁷

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 when the detained

⁶ Parental Interests Directive, at 6.

⁷ Note that this map may be outdated and may reflect, for example, facilities that have closed.

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;
- The family court or child welfare or guardianship proceedings are located within a reasonable driving distance of the detention facility;
- Transportation and escort of the detained parent or guardian does not negatively impact or hinder ICE's work; and
- Such transportation and/or escort does not present security and/or public safety concerns.

If that is impractical, 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.

ICE must also consider release of a parent or guardian (unless release is prohibited by law), taking into account whether the child welfare agency's goal is to reunify the children with the parent or guardian, and to the extent known or reasonably discoverable, whether the likelihood of reunification or maintenance of guardianship would change if the parent or guardian were released from custody.

Tip: Child welfare advocates should 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.

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 for the minor children to visit the detained parent 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, which may include contact visits. If in-person visitation is not possible or practicable, 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.

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. Parents' and legal guardian's access to participation in child welfare services and programs: In cases in which the court orders a parent or guardian to participate in services,

programs, or trainings to maintain or regain custody of minor children, ICE must work and communicate with the child welfare agency or other stakeholders to obtain documentation or information regarding service plan requirements and options, if any, for remote service completion. ICE must also coordinate the participation of a parent or guardian in any such services, if the parent or guardian wishes to do so.

VI. 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 make a decision regarding the care or travel of their minor children, as well as 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.

VII. Possibility of parole to return to the U.S. to participate in hearing regarding termination of parental rights or guardianship: ICE can parole a removed parent or legal guardian of a minor child into the United States to participate in a hearing or hearings regarding termination of their parental or guardianship rights. ICE will make the decision whether to grant parole on a case-by-case basis, considering all relevant factors including safety, security, whether the court will permit participation through alternative means, and whether such participation is feasible. If in-person participation is required by the court or child welfare agency, that will weigh strongly in favor of granting parole.

Tips: 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 U.S. 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 Parental Interests Directive as an Advocacy Tool with ICE

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

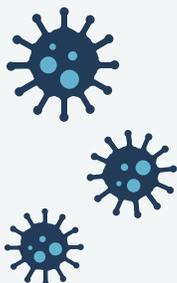
- Detain parents close to their children and child welfare proceedings;
- Arrange for detained and deported parents to attend court hearings;
- Facilitate regular visitation between detained parents and children; and
- If the parent is facing deportation, allow them to make arrangements for their children prior to deportation.

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. 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."



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. Close quarters promote the unnecessary spread of COVID-19 in these facilities, and when people do get sick, these facilities are ill equipped to respond. Medical neglect is documented and rampant. While people in detention as well as advocates continue to advocate for wide-scale release in light of COVID-19, the government has not done so to date. At various times during the pandemic, ICE has not allowed visitation in detention facilities, nor has ICE facilitated in-person transportation to hearings in child welfare proceedings. ***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 COVID-19. 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>.