

Applying the ICE Parental Interests Directive to Child Welfare Cases

In 2013, U.S. Immigration and Customs Enforcement (ICE) issued a Parental Interests Directive to provide federal guidelines regarding immigration enforcement against parents and legal guardians. The Directive emphasizes that ICE should respect an immigrant parent's rights and responsibilities, and seeks to ensure that "immigration enforcement activities do not unnecessarily disrupt" parental rights.¹

The Directive applies to all parents and guardians involved with ICE, with particular attention to:

- Primary caretakers of minor children of any immigration status;
- Parents or legal guardians who have a direct interest in a family court proceeding involving a minor or child welfare proceedings;
 - This includes both dependency and private custody cases; and
- Parents, both custodial and non-custodial, and legal guardians of U.S. citizen or lawful permanent resident (LPR) minor children.

The Directive contains important provisions relevant to child welfare agencies and child welfare attorneys, including:

- **ICE Decision-Making** – While ICE offices have discretion in how to handle cases, the Directive provides guidance to try to minimize the negative impact of immigration actions on families. This includes guidance that ICE should:
 - Consider whether it should prosecute parents for immigration violations.²
 - Consider refraining from detaining parents initially.
 - Attempt to place parents in detention as close as practical to their child or their child's court case.³

Tips: Locate a detained parent through <https://locator.ice.gov/odls/homePage.do>. Contact the relevant field office and inform ICE of the existing child welfare case. Workers can provide case documentation or court orders, and can encourage ICE to detain the parent in a nearby detention facility or to not detain at all. Balance what information in documentation or orders would facilitate parental participation through ICE with what information is confidential or not in the parent's interest to share.

- **Participation in Family & Child Welfare Proceedings**
 - When possible, ICE should arrange for transportation to family court or child welfare proceedings for detained parents/guardians.⁴
 - If transporting the parent is impractical, ICE should allow other participation, such as by phone or video.⁵

¹ U.S. Immigration & Customs Enforcement, 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities, 1, (2013); available at http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.

² *Id.* at 5.2(1).

³ *Id.* at 5.3.

⁴ *Id.* at 5.4(1).

⁵ *Id.* at 5.4(2).



Tips: Request that the court order the detained parent to attend the proceedings. Provide that order as part of a request to ICE to transport the parent to court or facilitate his or her appearance by video or phone. Agency documentation may be provided to ICE to request the parent’s involvement in meetings and other events outside court that are still important “proceedings” affecting the parent-child relationship.

- **Parent-Child Visitation** – ICE will facilitate visitation if indicated by court order, case plan, or other documentation to the extent practical between detained parents/guardians and children, including:
 - Face-to-face visits in ICE detention facilities, safety and security permitting.
 - Visitation through video or teleconferencing from the detention facility or the field office if face-to-face visitation is not possible, if approved by the court or child welfare agency.⁶

Tips: Request that the court order encourage in-person visits between the detained parent and child. Provide that order to ICE when requesting facilitation of those visits.

- **Coordinating Care or Travel of Children**
 - When a detained parent/guardian is subject to a final order of deportation from the U.S., to the extent possible, ICE should accommodate parents’/guardians’ efforts to make provisions for their children before deportation. This may include:
 - Arranging guardianship for the children to remain in the U.S.; or
 - Obtaining travel documents for the children to accompany their parents to the foreign country.⁷

Tips: Talk to the parent about relatives and other possible caregivers and secure their contact information. Reach out to possible caregivers to help make arrangements, since the parent may have a limited ability to do so before deportation. Identify who has documents the child would need to travel outside the U.S. or to return to the U.S. if an American citizen – the child? a non-detained parent? other relatives or friends? – and gather those materials. (Materials could include a birth certificate, social security card, passport, other identification card, etc.) Coordinate the child’s travel with ICE.

- **Return for Termination of Parental Rights Hearings** – On a case-by-case basis, ICE may facilitate the return of a parent to the U.S. who has been removed to attend termination hearings where in-person participation in court is required.⁸

Tips: Request a court order directing the parent to participate in court hearings or critical agency meetings in person. Provide this order to ICE, requesting the parent’s return to the U.S. for these proceedings.

For questions about implementation of the Directive in your area, see directions for contacting ICE Field Offices’ “Points of Contact”: <http://www.ice.gov/about/offices/enforcement-removal-operations/parental-directive.htm>.

⁶ *Id.* at 5.5.

⁷ *Id.* at 5.6.

⁸ *Id.* at 5.7 Although the Directive specifically refers to proceedings “related to his or her termination of parental...rights,” (emphasis added) decisions made at every dependency hearing and at important agency case conferences/meetings can potentially form the basis for later TPR petitions under the Adoption and Safe Families Act, depending on the case goal and parent’s circumstances.