



IMMIGRATION DETENTION, FAMILIES, AND CHILD WELFARE

A Summary of ICE's Directive on Detention and Removal of Parents or Guardians

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In April 2018, U.S. Immigration and Customs Enforcement (ICE) made public a directive, [Detention and Removal of Alien Parents or Legal Guardians](#), which supersedes the 2013 directive **Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities**.¹ Broadly, the Directive is intended to provide guidance about ICE policies relating to apprehension, detention, and removal of parents and legal guardians, including parents and legal guardians involved in child welfare proceedings.

While the new Directive makes some important revisions from the original Parental Interest Directive, below is a summary of what the Revised Directive requires and an explanation of how it's different from the 2013 Directive.

What the Revised Directive Requires

- **Each ICE Field Office Must Have a Designated Point of Contact (POC) at the Supervisory Level:** The Child Welfare POC receives special training and is responsible for addressing public inquiries relating to family ties of detained parents or guardians.
- **ICE Child Welfare Coordinator:** ICE's Child Welfare Coordinator is responsible for serving as a primary point of contact and subject matter expert concerning child welfare issues, with responsibility to provide guidance to field offices and coordinate within and outside ICE to address issues or complaints concerning child welfare issues of detained aliens.
- **Limitation on Taking Custody of Children:** ICE personnel should not take custody of or transport a minor child encountered in an enforcement action if the child is a U.S. citizen, lawful permanent resident (LPR), or not otherwise removable from the United States.

¹ The 2013 Directive is no longer available on the ICE website, but may be found at https://web.archive.org/web/20180314153717/https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.

- **Accommodating Alternative Arrangements for Children:** Absent indications of child abuse or neglect, ICE personnel should accommodate, to the extent practicable, a parent or guardian's efforts to make alternative care arrangement for his or her minor children during an enforcement action.
- **Referrals to Child Welfare:** ICE personnel should contact child welfare or law enforcement to take care of minor children if:
 - The parent or guardian cannot make an alternative care arrangement; or
 - There is an indication of abuse or neglect by a parent or other adult who may be asked to take custody of the child.
- **Placement of Detained Parent or Guardian:** If children are located in the ICE Area of Responsibility (AOR) where their parent or legal guardian was apprehended or there is a pending family court or child welfare proceeding within that AOR, the parent or guardian should not be placed in a detention center or transferred outside of that AOR unless deemed operationally necessary and otherwise consistent with applicable ICE policies.
- **In-Person Participation in Proceedings:** When practicable, ICE should arrange for a parent or guardian's in-person appearance at a family court or child welfare proceeding when such presence is required to maintain or regain custody of a child, and
 - the parent or guardian or his or her attorney or representative timely requests an opportunity to participate with reasonable notice;
 - the parent or guardian or his or her attorney or representative produces evidence of the proceeding;
 - the proceeding is within a reasonable driving distance of the facility where the parent or guardian is detained;
 - transportation and escort would not be unduly burdensome; and
 - such transportation and/or escort does not present security and/or public safety concerns.
- **Alternative to In-Person Participation in Proceedings:** if transportation to the proceeding is impracticable, ICE should accommodate participation through video or teleconferencing to the extent it is technologically feasible and approved by the court or child welfare authority.
- **Facilitating Visitation:** If a parent or guardian is detained, ICE will facilitate a means of regular visitation between parent and minor child(ren):
 - At facilities where there is no provision for visits by minors, ICE must arrange for visiting by children, on request, within the first 30 days. After that time, ICE must consider a request for transfer to a facility that will allow visitation, when practicable. On request, ICE must continue monthly visits if transfer is not approved or until an approved transfer can be effected.
- **Visitation Required by Court or Child Welfare Authority:** If a parent or guardian, family member, attorney, or other representative produces documentation that visitation is required by a family court or child welfare authority for a parent or guardian to maintain or regain custody, then:
 - ICE must facilitate, to the extent practicable, the required visitation.
 - Such visitation may include contact visitation, within the constraints of safety and security.

- Such special arrangements must not limit or otherwise adversely affect normal visitation rights or the safe and efficient operation of the detention facility.
- If in-person visitation is not practicable, ICE may permit visitation through video or teleconferencing to the extent it is technologically feasible and approved by the court or child welfare authority when the visitation is court-ordered.
- **Coordinating Care or Travel of Children Pending Removal:** When a detained parent or guardian is subject to a final order of removal and ICE is effectuating removal, ICE should accommodate, to the extent practicable, efforts for the parent or guardian to make arrangements for minor children, including attempts to arrange guardianship or to obtain travel documents for the child or children.
 - ICE must accommodate, to the extent practicable, access to counsel, consulates and consular officials, courts, and/or family members, in order to execute signed documents, purchase airline tickets, and make other necessary preparations prior to removal.
 - ICE may, subject to security considerations, provide sufficient notice of the removal itinerary to the detainee so that coordinated travel arrangements may be made for the detainee's child or children.

What's Changed from the 2013 Parental Interests Directive

Below is a listing of ways in which the current Directive differs from the 2013 one. While there are numerous changes, perhaps the most important aspects to keep in mind are that: a) the revised Directive eliminates references to using prosecutorial discretion, i.e., the decision as to whether bring or pursue a case, when a parent of a minor child is involved; however, this is not announcing a change in policy, as the restrictions reflects a change in the use of prosecutorial discretion by the Administration long before the revised Directive was published; b) apart from prosecutorial discretion, most of the other key provisions of the 2013 Directive remain in place, with some modifications.

Specific differences are:

- **The stated purpose has been narrowed.** The 2013 Directive began by stating that ICE was "committed to intelligent, effective, safe, and humane enforcement of the nation's immigration laws" and that "ICE seeks to enforce immigration laws fairly and with respect for a parent's rights and responsibilities." That language has been dropped. The revised language simply states the Directive provides guidance regarding the detention and removal of alien parents and legal guardians of a minor child or children.
- **The overall policy has been reworded and narrowed.** The 2013 version states that ICE personnel should ensure that enforcement activities do not unnecessarily disrupt the parental rights of alien parents or legal guardians of minor children. The 2017 language says instead that in pursuing enforcement activities, ICE personnel should remain cognizant of the impact enforcement activities may have on a lawful permanent resident or citizen minor child. Although this introductory policy statement refers to U.S.-citizen and lawful permanent resident children as does the paragraph on minor children encountered during enforcement actions, the rest of the Directive does not

make this distinction, and ICE has indicated the intent is to apply the policy to parents and legal guardians of any minor children regardless of the immigration status of those children.

- **No reference to parental rights.** The 2013 Directive included an express definition of parental rights: the fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law. That definition and any reference to parental rights has been deleted from the 2017 version.
- **Reduced access to information about local ICE POCs.** Under the 2013 Directive, each Field Office Director needed to designate a specially trained coordinator to serve as Field Point of Contact (POC) for Parental Rights. These POCs were charged with regularly communicating with the national Parental Rights Coordinator on progress, participating in trainings, receiving and addressing public inquiries, and having information readily available about how to reach them. Under the 2017 Directive, the positions are now referred to as Field Points of Contact; while the description of responsibilities is less detailed, responsibilities appear similar, but there is no longer a requirement to post and publicize information about how to reach the POC. However, inquiries on how to reach a field POC can be directed to the ICE Parental Interests inbox at parental.interests@ice.dhs.gov.
- **References to prosecutorial discretion have been eliminated.** In immigration, prosecutorial discretion is the term for deciding what charges to bring and how or whether to pursue a case. Under the 2013 Directive, Field Officers were expressly directed to give consideration to whether the alien was a parent or guardian of a U.S. citizen or lawful permanent resident minor or was a primary caretaker of a minor in determining whether to exercise prosecutorial discretion and in custody determinations. That language is eliminated from the 2017 Directive.
- **No requirement to re-evaluate custody determinations for parents.** Under the 2013 Directive, if ICE received information indicating that a person being apprehended or detained was a parent or primary caretaker, there was a requirement to re-evaluate any custody determination to the extent permitted by law and policy. This provision is eliminated in the 2017 version.
- **Broader discretion to place or transfer detainees with pending family court or child welfare proceedings.** Under the 2013 Directive, if children were located within an ICE Area of Responsibility (AOR) or there was a pending family court or child welfare proceeding in the ICE AOR of initial apprehension, ICE personnel were directed to not make an initial placement or transfer outside of this area unless for a specified set of reasons and to make the initial placement as close as practicable to children and location of any family court or child welfare proceedings. Under the 2017 Directive, there is no longer a requirement to make placements as close as possible to the children or family court/child welfare proceedings, and more distant placements or transfers can be made when "deemed operationally necessary."
- **Visitation to be facilitated.** The 2017 Directive states that if a parent or guardian is detained, ICE will facilitate a means for regular visitation with minor children. This was not specified in the 2013 Directive.

- **Provisions relating to facilitation of temporary return are eliminated.** The 2013 Directive had a set of provisions relating to processes for facilitating temporary returns for a parent seeking to participate in a termination of parental rights proceeding. Those provisions have been eliminated from the 2017 Directive. However, while the Facilitation of Return process is no longer part of the directive, this avenue is still available to parents and legal guardians under the regular humanitarian and significant public benefit parole process.

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