

Advisory Memorandum #6

To: Chief Administrative Judge Lawrence Marks

From: Advisory Council on Immigration Issues in Family Court

Re: Guidance on Participation in Family Court Proceedings by Respondents Detained by Immigration and Customs Enforcement

Date: December 29, 2020

Federal immigration agents have increased arrests of parents and legal guardians across New York state. These changes in federal immigration policy have the potential to destabilize thousands of New York families. While there are many implications for New York’s Family Courts, this advisory is designed to specifically address what happens when Immigration and Customs Enforcement (ICE) arrests and detains a parent or legal guardian of a minor. When this happens, an ICE policy known as the “Detention and Removal of Alien Parents or Legal Guardians” (Directive), which replaced the 2013 policy, “Parental Interests Directive” (PID), is an underutilized tool that can be helpful to the legal system, the parents, and most importantly, the child(ren), when a parent or legal guardian is forcibly removed from the home as a result of immigration enforcement. The Family Courts’ role in carrying out the (unfunded) mandate of the PID strikes at the heart of the parent-child relationship: ensuring that no child is permanently and legally separated from a loving, suitable parent, solely by virtue of the fact that the parent is unable to appear in Court due to immigration enforcement, or what the New York State Legislature recently coined as, “administrative separation.”¹

This advisory will detail ICE’s current policy on detaining parents and legal guardians with minor children. It will address how detained parents and legal guardians can continue to participate in family court proceedings, maintain a relationship with their children, and make plans for their children in the event of deportation. It also contains suggested practices for jurists and attorneys in situations when a parent or legal guardian is in ICE custody and outlines a number of best practices and recommendations that have developed in the wake of the family separation crisis.

I. A Brief Overview of Immigration Detention in New York

The Immigration and Nationality Act (“INA”) permits the U.S. Department of Homeland Security, Immigration and Customs Enforcement (“ICE”) to detain *any* non-citizen it alleges to be removable² from the U.S. Further, there are some categories of non-citizens that are subject to “mandatory detention” under the INA.

Typically, when ICE detains New York residents, they are detained in a local jail that contracts bed-space with ICE, or an immigration-only detention facility (usually run by contractors such as CoreCivic) in New York or New Jersey. If the person does not have a prior removal order, they are

¹ N.Y. Surr. Ct. Proc. Act §1726.

² The term “removal” refers to the administrative and physical deportation of an individual. For the purposes of this memo, the terms “removable” and “removal” will be used interchangeably with the terms “deportable” and “deportation.”

served with a Notice to Appear (“NTA”) (the charging document in immigration proceedings). The NTA is filed with the immigration court and removal proceedings are initiated under INA § 240.³ For individuals who are removable because of a previous removal order, however, no immigration court proceeding is necessary, and the execution of the order can sometimes take only a few days.

A detained individual’s location may be determined using [ICE’s Online Detainee Locator System](#) by entering their Alien Registration Number (“A-Number”) and country of birth, or other biographical information. Nonetheless, ICE may detain the person anywhere else in the country if bed space is not available, if the person has a prior removal order, or if ICE has another motive to detain the individual elsewhere.

Each Field Office has a Point of Contact for Parental Interests. Further, all detained individuals are assigned a Deportation Officer (“DO”) responsible for their custody, including ensuring appropriate medical attention, arranging secure travel between facilities, securing travel documentation for deportation, and managing other matters related to the person’s detention. A DO may also make recommendations to the Field Office Director for a person’s release under bond or parole. In order to determine who a person’s deportation officer is, contact the Parental Interests Point of Contact, or call the Field Office to inquire. ICE has two Field Offices in New York State – their areas of responsibility and contact information is in the table below:

Field Office*	Area	Address	Phone Number	E-mail
Buffalo	Upstate New York	130 Delaware Ave. Buffalo, NY 14202	716-843-7600*	Buffalo.Outreach@ice.dhs.gov
	Point of Contact: ⁴			
New York	New York City (five boroughs) and Dutchess, Nassau, Putnam, Suffolk, Sullivan, Orange, Rockland, Ulster, and Westchester counties	26 Federal Plaza 9 th Floor Suite 9-110 New York, NY 10278	212-264-4213*	NewYork.Outreach@ice.dhs.gov
	Point of Contact: Supervisory Detention and Deportation Officer (SDDO) Linda Hyde at Linda.Hyde@ice.dhs.gov			

***If you cannot resolve your concerns or request at the field level**, you may send an email to Parental.Interests@ice.dhs.gov, or ERO at ICE Headquarters at ERO.INFO@ice.dhs.gov and enter "Parental Interests Inquiry" into the subject line of the email. You may also contact ICE Headquarters by calling the **ICE Detention Reporting**

³ If an individual has a prior removal order or is in expedited removal proceedings under INA § 235, they may not be served a Notice to Appear.

⁴ Note: the contact information, including names and phone numbers of ICE offices and personnel are current only as of the date of this memo, and may not be permanent.

and Information Line at 1-888-351-4024 during regular business hours, 8 a.m. to 8 p.m. EST, Monday through Friday. **Note:** State that your request is a "Parental Interests Inquiry." Bilingual (English/Spanish) operators are available.

II. The Parental Interests Directive

Although family separation as a result of immigration enforcement received national attention in the summer of 2018, particularly relating to events at the border, it is not an issue that is new to the court system. Courts have long had to navigate the intersection of administrative separation where immigration law and family law intersect.

A. The 2013 Directive

In 2013, ICE enacted Policy 11064.1, which was commonly referred to as the “ICE Parental Interests Directive.” Key provisions of the 2013 Parental Interests Directive included:

- Allowing and facilitating the participation of detained parents in family and child welfare proceedings;
- Facilitating visitation of detained parents with their children in person or via or teleconferencing;
- Accommodating parents’/guardians’ efforts to make travel arrangements for their children (if the children will be traveling with them) prior to deportation;
- Facilitating the return of deported parents for the limited purpose of participating in hearings regarding the termination of parental rights.

Little is known about the impact of the 2013 directive and whether families were able to take advantage of the program. However, there were efforts to provide legal information about the directive to detained parents, especially those detained in New York, to raise awareness and encourage eligible parents to invoke its provisions.

B. The 2017 Directive

On August 29, 2017, ICE issued Policy Number 11064.2 on the “Detention and Removal of Alien Parents and Legal Guardians” (henceforth “Directive”), attached as Attachment B. Although the Directive applies broadly to *any* detained parent or legal guardian with minor children, the policy mostly concerns parents or legal guardians with an interest in an ongoing Family Court proceeding. It addresses what happens when a parent or legal guardian is apprehended, detained, and what may happen when that individual is deported.⁵ The Directive is binding on all ICE agents and officers; however, because the policy is not codified in the federal immigration code, it can be changed or modified by the agency.

The 2017 Directive rescinded the 2013 measure and changed key aspects of ICE’s policy. Changes include:

⁵ The Directive does *not* address ICE’s policy of separating families at the border, nor does it address detention standards for minor children.

- Eliminating the discretion that ICE agents once had in deciding whether to arrest and detain primary caregivers for minor children;
- Removing special provisions for deported parents to reenter the United States for termination of parental rights hearings; and
- Removing training requirements on parental interest issues for ICE personnel.

Despite these changes, the 2017 Directive keeps many provisions of the earlier ICE policy intact, and continues to provide specific procedures that may be used to protect the long-term stability of immigrant families, namely:

- Designating a specific point of contact within each field office for matters involving detained parents;
- Promoting complete entry of relevant case information into ICE's data and tracking systems;
- Developing processes to regularly identify and review cases involving parents and legal guardians of minor child(ren);
- Determining initial detention placement and transfer decisions;
- Facilitating participation in family court or child welfare proceedings;
- Facilitating regular parent-child visitation and communication; and
- Coordinating care or travel of minor child(ren) pending removal of a parent or legal guardian.

The 2017 Directive states explicitly that the policy does not create a private right of action, so there is very little that detained parents can do if they are denied any relief at the discretion of ICE. However, if a Family Court intervenes to compel compliance with the Directive, ICE will be more likely to use the policy to facilitate the parents' participation in family court proceedings.

III. Strategies for Promoting ICE-Detained Respondents' Participation in Family Court Proceedings

As is widely recognized by the Family Court and by ICE, parties' participation in family court proceedings is essential to due process. The ICE Directive may be invoked by the requests of detained parents *pro se*; the requests of counsel for represented individuals; and/or family courts requesting ICE action under the Directive. Because the Directive explicitly does not create any substantive right, enforcement options are limited.⁶ However, the family courts may invoke the New York State Constitution and their obligations under state law to order ICE to act under the Directive. Whenever contacting ICE, Family Court personnel and advocates should be aware that providing any substantive information about the underlying legal matter to ICE, even casually, could have adverse consequences to the respondent's immigration matter.⁷

A. Facilitating Court Appearances for Detained Parents

⁶ In order to reduce the risk of an ICE officer using the discretion afforded in the Directive to override a court order, it is important to narrowly tailor court orders meant to draw on the provisions in the Directive.

⁷ For a detailed description of adverse consequences that can arise from Family Court matters, see Advisory Council Memorandum #3: Adverse Consequences to Family Court Dispositions, available at <https://www.nycourts.gov/IP/Immigration-in-FamilyCourt/publications&materials.shtml>.

In-Person Appearance. A family court judge or a child welfare agent may issue an order that a litigant be produced to appear in person during a family court or child welfare proceeding. If due to distance, transportation unavailability, or any other burdensome impracticability on ICE, the in-person appearance cannot be accommodated, then the ICE point of contact should accommodate the appearance through video or teleconferencing participation. The burden is on the detained parent or legal guardian to obtain approval from the family court judge or child welfare agent to appear via video or teleconferencing. Any order would need to be served by an advocate or by the Court on the ICE office having control of the respondent's custody. Advocates or court personnel should reach out to the local field office's Point of Contact for Parental Interests to work out the details, as logistics of travel coordination will vary across locations and jurisdictions.

Practice pointer: The more advance notice given to ICE, the more likely it is that ICE will be able to comply with a court's order to produce. Additionally, ICE may not agree to bring the individual directly to the court in question due to the practicability of such request, but they may agree to turn the individual over to state law enforcement (such as the Sheriff's office) at a secure location (such as a Field Office or detention facility) under an agreement/doctrine frequently referred to as the "borrowed prisoner" doctrine.⁸ Attorneys and/or court staff should discuss the options with the Point of Contact.

Appearance via Video Teleconference or Telephone. Another possibility is for an individual to be produced in court via teleconference; many of the ICE detention facilities are already equipped with teleconference technology. Both in-person and video telephone conference appearances should be coordinated between the litigant's attorney (or the litigant if *pro se*), the assigned Deportation Officer and their superiors, and court personnel (if video conference, the detention facility must be consulted as well). Because of the limitations of teleconferencing, when possible, a request should be made to ICE to produce the detained parent(s) in person.

Practice Pointer: While many facilities are equipped with some virtual technology, care should be taken to ensure compatibility and availability of such technology at the applicable time in order to avoid delay of proceedings.

B. Visitation Between Detained Parents and Children

If advocates or *pro se* litigants produce documentation (such as a reunification plan, scheduling letter, court order, or other official document) to the ICE point of contact regarding visitation orders, the ICE point of contact must arrange the visitation. If it is impracticable to arrange visitation, the ICE point of contact must arrange a visitation through video or teleconference. At minimum, ICE must arrange for a visit within 30 days of a parents' detention, and it must consider a parents' transfer request to a facility that allows contact or other visitation between parents and children. Courts can provide crucial assistance in arranging visitation between children and detained parents by issuing clear orders that visitation is a required component of a service plan.

⁸ The underlying concept is that ICE "lends" the individual to the custody of the state for them to participate in state-based proceedings, such as criminal or family court proceedings. See *Detention Management*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/detention-management> (last updated Jul. 16, 2020).

Practice Pointer: The Directive’s mention of frequency of visits (monthly) is a floor, not a ceiling. In child welfare proceedings or any type of case where the Court can order visitation, there may be additional leverage given the various federal, state and local requirements of the U.S. Children’s Bureau, the New York State Office of Children and Family Services, the New York City Administration for Children’s Services, and county Departments of Social Services to act in accordance with parenting plans and/or other due process concerns, particularly in cases involving the potential termination of the parent-child relationship. If the court determines that it is in the best interest of the child to have more regular visitation with the subject children, advocates or litigants should ascertain the visitation restrictions and policies of the facility where the parents are detained and provide that information to the court. Court orders designed to fit within the visitation protocols of the detention facility are more likely to be honored than those that do not.

C. Coordination of Care and/or Travel for Minor Children

The duration of removal proceedings varies widely. At the conclusion of removal proceedings, a parent may be granted “relief” from removal, permitted to remain in the U.S., and likely released from ICE custody.

If, however, a detained parent or legal guardian receives a final order of deportation, families must decide whether children will remain in the United States or return to the parent/guardian’s country of origin.

If a child remains, parents/guardians must arrange for their long-term care. Section 5.5 of the Directive addresses some of these concerns. The policy specifically instructs ICE agents to “accommodate” a parent/guardian’s “efforts” to make arrangements for their children, such as obtaining travel documents and arranging for guardianship. This includes allowing access to counsel, consulates and consular officials, courts and family members in order to execute documents such as powers of attorney and appointments of guardians, to buy airline tickets, and to “make other necessary arrangements.”

If a family decides that minor children will travel back to the parent/guardian’s country of origin, the family will have to make independent travel arrangements for the children. The Directive suggests that parents/guardians will be given “sufficient notice” of their itinerary to facilitate coordination of a child’s travel plans, but this is subject to “security considerations.”

Practice Pointer: ICE does not typically share the itinerary information for individuals whom they are deporting, so parties should make an interim plan for care of the child until details are shared and action can be taken to facilitate travel arrangements.

Practice Pointer: Children who fly internationally require passports and are subject to protection under the Hague Convention. If a child is a U.S. citizen and does not already have a passport, both parents are required to appear in person with the child to submit the application. When one parent is detained but the other is not, the detained parent can fill out a form ([DS-3053](#)) that must be signed and notarized authorizing the other parent to submit the application. A single parent can also obtain a passport for a child. However, a single parent will have to show that the other parent is dead, fill out a form ([DS-5525](#)) showing

that the other parent cannot be located, or present a court order that grants the parent sole custody or that specifically authorizes the parent to apply for the passport.

IV. Beyond the Directive: Additional Resources

A. Assignment of Counsel for Parental Representation

If it is suspected (or known) that a respondent is in ICE custody, assignment of counsel under FCA 262 is critical, especially in cases in which parents are facing possible removal or detention. It is mandatory under the categories listed in FCA 262, including, among other categories, child welfare, family offense, child support violation, paternity, voluntary foster care, permanency, termination of parental rights and family offense proceedings. Counsel may also be assigned where the court determines and states in its order that assignment of counsel is mandated by the State or federal constitution.

Given the New York State Court System's increased attention to parental representation in Family Court and the various situations that warrant such an appointment, including matters involving immigration issues, there may be additional resources to do so depending on the jurisdiction. Pursuant to New York Consolidated Laws, Family Court Act ("FCA") § 262, individuals who cannot afford counsel have the right to be appointed a counsel in family court proceedings. As provided by FCA § 1022-A, either parent will be provided by counsel when appearing for allegations under FCA § 1022. Building on these rights, the New York State Commission on Parental Legal Representation recommended implementing a presumption of eligibility for representation in child welfare proceedings. Therefore, in situations where the parent or the legal guardian is detained while there are proceedings in the family court, there should be a presumption of eligibility for representation and the judge should appoint counsel for the absent parent or legal guardian.

B. New York's Standby Guardianship/Kinship Law

In 2018, Governor Cuomo signed a bill that amends New York's standby guardianship law so that immigrants at risk of being separated from their children can appoint a standby guardian.⁹ The law, which was previously limited to children of terminally ill parents, now allows parents to designate someone to be a standby guardian if they are subject to "administrative separation," which includes arrest, detention, deportation, or even the receipt of notice of intent to deport a parent. The person appointed stays on "standby" until the "administrative separation" occurs and does not become a guardian until proof of the arrest, detention or deportation is submitted to the court.

In addition to expanding standby guardianship, Governor Cuomo approved an amendment to a law that permits individuals to designate a person in "parental relationship" for up to one year.¹⁰ The designation is made by filling out a notarized agreement and allows the parent to grant the designee limited power to make educational and medical decisions for the child. Like standby guardianship, the designation can also be set up so that it only goes into effect when a specified event, such as deportation, occurs. Although the designation is limited to a maximum of one year, it can be renewed indefinitely. These new laws give families and responsible parties time to make more

⁹ Surr. Ct. Proc. Act § 1726.

¹⁰ General Obligations Law - GOB § 5-1551.

permanent arrangements, such filing for custody or guardianship, or allowing a child to finish out a school year before reunifying with a parent in their country of origin.

V. Summary and Best Practices for Courts and Advocates

- Determine whether the respondent is detained by using the ICE Detainee Locator at www.locator.ice.gov
- If detained, advocates or court personnel should contact the governing ICE Field Office Director's Point of Contact for Parental Interests to facilitate the respondent's participation in family court proceedings and ensure visitation ordered by the court occurs.
- When contacting ICE, Family Court personnel and practitioners should be aware that providing any substantive information about the underlying legal matter to ICE, even casually, could have adverse consequences to the respondent's immigration matter.
- Training is critically important for court personnel, panel attorneys and AFCs re: immigration issues, including: best practices for screening to determine whether a child's parent is in a detention setting; benefits and pitfalls of the Directive; and the latest developments under New York state law aimed at keeping families together, preserving family unity and avoiding permanent family separation.
- Courts should consider assigning counsel to unrepresented parents who are detained in order to ensure that they can participate as fully as possible in the family court proceedings
- All parties and the Court should exercise extreme discretion in discussing sensitive immigration matters on the record or in open court.
- Reach out to local Regional Immigration Assistance Center when questions arise re: immigration consequences in child abuse/neglect proceedings.

Resources

[ICE Policy Number 11064.2 \(dated August 29, 2017\)](#) (current policy; attached as Attachment B).

ICE Policy Number 11064.1 (dated August 23, 2013) (prior policy).

Parental Interests Directive Fact Sheet - <https://www.ice.gov/doclib/detention-reform/pdf/factSheetDetainedParents.pdf> (English); <https://www.ice.gov/doclib/detention-reform/pdf/factSheetDetainedParentsSP.pdf> (Spanish)

ICE/E.R.O. Policies and Procedures Involving Detained Parents and Legal Guardians (March 2018)
Detainee Locator - <https://locator.ice.gov/>

List of ICE Detention Facilities - <https://www.ice.gov/detention-facilities>

List of ICE Field Offices - <https://www.ice.gov/contact/ero#wcm-survey-target-id>

Women's Refugee Commission Parental Rights Toolkit - <https://www.womensrefugeecommission.org/research-resources/detained-or-deported-parental-toolkit-english-interactive/>

International Social Service, USA – iss-usa.org The U.S. member of a global child protection and social service network. ISS-USA connects vulnerable children, adults, and families, separated by an international border, to the services and support they need. ISS-USA conducts home studies, finds relatives in other countries, obtains documents such as birth certificates and adoption paperwork, provides post-placement monitoring, and acts as advocates for children reuniting with families all over the globe.

Justice in Motion - <https://www.justiceinmotion.org/>

Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore - http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf

Information for parents designating a person for parental relationships or a standby guardian - <https://ocfs.ny.gov/main/publications/Pub5080.pdf>

Attachment A:
Advisory Council Members and Consultants

Advisory Council on Immigration Issues in Family Court¹

Co-Chair: Professor Theo Liebmann, Clinical Professor of Law and Director of Clinical Programs, Hofstra Univ. School of Law

Co-Chair: Hon. Mildred Negron, Judge, Family Court, Queens County

Counsel to the Advisory Council: Janet Fink, Esq., Deputy Counsel, NYS Unified Court System

Co-chair Emeritus: Hon. Edwina Mendelson, Deputy Chief Administrative Judge for Justice Initiatives

MEMBERS:

1. Hon. Lisa Bloch-Rodwin, Judge of the Family Court, Erie County (Retired)
2. Margaret Burt, Esq., Attorney, Pittsford, NY
3. Ryan Darshan, Esq., Asst. Deputy Chief Clerk, Family Court, Kings County
4. Myra Elgabry, Esq., Director, Immigrant Rights Project, Lawyers for Children, New York, NY
5. Hon. Alison Hamanjian, Judge of the Family Court, Kings County
6. Terry Lawson, Esq., Executive Director, Unlocal, New York, NY
7. Tracy Lawson, Supervising Attorney in the Immigration Unit of Brooklyn Defender Services*
8. Beth Lyon, Cornell Law School, Ithaca, NY
9. Andrea Panjwani, Esq., Legal Director, Center for Safety and Change, New City, NY
10. Professor Carmen Rey, Esq., Brooklyn Law School*
11. Professor Sara Rogerson, Esq., Director, Immigration Law Clinic, Albany Law School*
12. Cristina Romero, Esq., Legal Aid Society Immigration Law Unit
13. Maureen Schad, Esq., Pro Bono Counsel, Norton Rose Fulbright, L.L.P.
14. Eve Stotland, Esq., NY Community Trust, New York, NY

* Member of Detained Parents Directive Subcommittee.

CONSULTANTS:

1. Jane Schreiber, Esq, Director, Office of Attorneys for Children, App. Div., 1st Dept.
2. Harriet Weinberger, Esq., Director, Office of Attorneys for Children, App. Div., 2nd Dept.
3. Betsy Ruslander, Esq., Director, Office of Attorneys for Children, App. Div., 3rd Dept.
4. Linda Kostin, Esq., Director, Office of Attorneys for Children, App. Div., 4th Dept.
5. Denise Kronstadt, Esq., Deputy Executive Director, Fund for Modern Courts
6. Prof. Lenni Benson, Esq., New York Law School
7. Hon. Conrad D. Singer, Family Court, Nassau County
8. Hon. Carol R. Sherman, Chief Magistrate, NYC Family Court

¹ Affiliations are listed for identification purposes only.

Attachment B:
U.S. Immigration and Customs Enforcement
Policy No. 11064.2
Detention and Removal of Alien Parents or Legal
Guardians

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number 11064.2: Detention and Removal of Alien Parents or Legal Guardians

Issue Date: August 29, 2017
Effective Date: August 29, 2017
Superseded: ICE Policy 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities (Aug. 23, 2013) and ICE Policy 11031.1: Juveniles Encountered During Fugitive Operations (Aug. 24, 2007).
Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive provides guidance regarding the detention and removal of alien parents and legal guardians of a minor child(ren), to include those who have a direct interest in family court or child welfare proceedings in the United States. It is intended to complement the detention standards and policies that govern the intake, detention, and removal of alien parents or legal guardians.
2. **Policy.** U.S. Immigration and Customs Enforcement (ICE) personnel are responsible for the prompt and faithful execution of U.S. immigration laws. In pursuing the enforcement of these laws against alien parents and legal guardians of a minor child(ren), or who have a direct interest in family court or child welfare proceedings involving a minor child(ren) in the United States, ICE personnel should remain cognizant of the impact enforcement actions may have on a lawful permanent resident (LPR) or U.S. citizen (USC) minor child(ren). This Directive in no way limits the ability of ICE personnel to make individual enforcement decisions on a case-by-case basis. The security and safety of any ICE employee, detainee, ICE detention staff, or member of the public will be paramount in the exercise of the procedures and requirements of this Directive.
3. **Definitions.** The following definitions apply for the purposes of this Directive only.
 - 3.1. **Family Court or Child Welfare Proceeding.** A proceeding in which a family or dependency court or child welfare agency adjudicates or enforces the rights of parents or minor child(ren) through determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or other legal obligations in the context of parental rights.
4. **Responsibilities.**
 - 4.1. **The Enforcement and Removal Operations (ERO) Executive Associate Director is responsible for:**
 - 1) Ensuring ERO employees comply with this Directive; and

2). Designating a Child Welfare Coordinator.

4.2. Field Office Directors (FOD) are responsible for designating a coordinator at the supervisory level in his or her Field Office to serve as the Field Point of Contact (POC) for the provisions listed in this Directive for his/her area of responsibility (AOR).

4.3. The Child Welfare Coordinator is responsible for:

- 1) Serving as the primary point of contact and subject matter expert for all ICE personnel regarding child welfare issues related to detained aliens;
- 2) With the assistance of ERO divisions responsible for data collection and analysis, evaluating, on an ongoing basis, information collected from ENFORCE, the Risk Classification Assessment, and other relevant ICE information technology systems regarding detained alien parents or legal guardians and sharing appropriate information with FODs and Field POCs on an ongoing basis; and
- 3) Providing guidance to FODs and Field POCs on:
 - a) Appropriate initial placement and transferred decisions for detained alien parents or legal guardians;
 - b) Appropriate provisions for escorted trips to family court or child welfare proceedings for detained alien parents or legal guardians;
 - c) Appropriate visitation within ICE facilities; and
 - d) Appropriate efforts, to the extent practicable, to allow a detained alien parent or legal guardian to make arrangements for their minor child(ren), including through increased access to counsel, consular officials, family and dependency courts, child welfare authorities' personnel, and/or family members or friends in order to arrange guardianship, or to obtain travel documents or otherwise make necessary travel arrangements, for his or her minor child(ren).
- 4) Coordinating as necessary with relevant ERO program offices, FODs, state or local family court or child welfare authority personnel, consular officials, and others to facilitate the timely response to issues or complaints received by ICE regarding the child welfare issues of detained aliens.

4.4. The ERO Field POCs are responsible for:

- 1) Addressing public inquiries related to the family ties of detained alien parents or legal guardians of a minor child(ren); and
- 2) Communicating with the Child Welfare Coordinator and completing all relevant training.

5. Procedures/Requirements.

5.1. Minor Child(ren) Encountered During Enforcement Actions.

- 1) ICE personnel should not take custody of or transport a minor child(ren) they encounter during an enforcement action who is either a USC or LPR, or who is otherwise not removable from the United States.
- 2) Absent indications of child abuse or neglect, ICE personnel should accommodate, to the extent practicable, an alien parent or legal guardian's efforts to make alternative care arrangements for his or her minor child(ren). ICE personnel should document the alien parent or legal guardian's request for transfer of custody of a USC or LPR minor child(ren) to a verifiable third party.
- 3) If the alien parent or legal guardian cannot make an alternative care arrangement for the minor child(ren), or if there is an indication that the minor child(ren) has been subject to abuse or neglect by a parent or other adult who may be asked to take custody of the minor child(ren), ICE personnel should contact the local child welfare authority or law enforcement agency to take custody of the minor child(ren).
- 4) Once a detained alien has been determined to be a parent or legal guardian of a USC or LPR minor child(ren), ICE personnel should enter this information in ENFORCE Alien Removal Module (EARM), or its successor system.

5.2. Initial Detention Placement and Subsequent Transfers of Detained Alien Parents or Legal Guardians.

- 1) If the alien's minor child(ren) or family court or child welfare proceedings are within the AOR of initial apprehension, the FOD must refrain from making an initial placement or from subsequently transferring the alien outside of the AOR of apprehension, unless deemed operationally necessary and otherwise consistent with applicable ICE policies.

5.3. Participation in Family Court or Child Welfare Proceedings by Detained Alien Parents or Legal Guardians.

- 1) Where practicable, the FOD must arrange for a detained alien parent or legal guardian's in-person appearance at a family court or child welfare proceeding when the detained alien parent or legal guardian's presence is required in order for him or her to maintain or regain custody of his or her minor child(ren) and:
 - a) The detained alien parent or legal guardian, or his or her attorney or other representative, timely requests with reasonable notice an opportunity to participate in such hearings;

- b) The detained alien parent or legal guardian, or his or her attorney or other representative, has produced evidence of a family court or child welfare proceeding, including but not limited to, a notice of hearing, scheduling letter, court order, or other such documentation;
 - c) The family court or child welfare proceedings are located within a reasonable driving distance of the detention facility where the detained alien parent or legal guardian is housed;
 - d) Transportation and escort of the detained alien parent or legal guardian would not be unduly burdensome on Field Office operations; and
 - e) Such transportation and/or escort of the detained alien parent or legal guardian to participate in family court or child welfare proceedings does not present security and/or public safety concerns.
- 2) If it is impracticable to transport the detained alien parent or legal guardian to appear in-person in a family court or child welfare proceeding, the FOD should accommodate the detained alien parent or legal guardian's appearance or participation through video or standard teleconferencing from the detention facility or the Field Office to the extent that it is technologically feasible and approved by the family court or child welfare authority. The detained alien parent shall have the responsibility for obtaining approval from the family court or child welfare agency.
- 3) All actions taken pertaining to a detainee's participation in family court or child welfare proceedings should be documented in EARM, or its successor system.
- 4) In all cases, if the detained alien parent or legal guardian does not wish to attend and/or participate in a family court or child welfare proceeding, ICE will not interfere with the detained alien parent or legal guardian's decision, which shall be documented in the detainee's Alien-File (A-File).

5.4. Visitation.

- 1) In the event an alien parent or legal guardian is detained, ICE will facilitate a means of regular visitation between the parent and minor child(ren).
- 2) Pursuant to ICE detention standards, at facilities where there is no provision for visits by minors, upon request, FODs must arrange for a visit by minor child(ren), step-child(ren), child(ren) under legal guardianship, and/or foster child(ren) within the first 30 days. After that time, upon request, ICE must consider a request for transfer, when practicable, to a facility that will allow such visitation. Upon request, FODs must continue monthly visits, if transfer is not approved, or until an approved transfer can be effected.¹

¹ See National Detention Standards 2000 (Section H.2.d); Performance-Based National Detention Standards

- 3) In some cases, parent-child visitation may be required by the family court or child welfare authority in order for a detained alien parent or legal guardian to maintain or regain custody of his or her minor child(ren). If a detained alien parent or legal guardian, or his or her family member, attorney, or other representative produces documentation (e.g., a reunification plan, scheduling letter, court order, or other such documentation) of such a requirement, FODs must facilitate, to the extent practicable, the required visitation between the detained alien parent or legal guardian and his or her minor child(ren).
 - a) Such special visitation may include contact visitation, within the constraints of safety and security for both facility staff and detainees.
 - b) These special arrangements must not limit or otherwise adversely affect the detained alien parent or legal guardian's normal visitation rights under the relevant detention standards, or the safe and efficient operation of the detention facility.
- 4) If in-person visitation is not practicable, FODs may permit parent-child visitation through video or standard teleconferencing from the detention facility or the Field Office to the extent it is technologically feasible and approved by the family court or child welfare authority when visitation is court-ordered.
- 5) All actions documenting parent-child visitation should be recorded in EARM or its successor system. Copies of visitation orders will be placed in the A-File.

5.5. Coordinating Care or Travel of Minor Child(ren) Pending Removal of a Parent or Legal Guardian.

- 1) Where detained alien parents or legal guardians who maintain their parental rights are subject to a final order of removal and ICE is effectuating their removal, FODs or their appropriate designees should accommodate, to the extent practicable, the detained parent or legal guardian's individual efforts to make arrangements for their minor child(ren). Such provisions may include the parent or legal guardian's attempt to arrange guardianship for his or her minor child(ren) to remain in the United States, or to obtain travel documents for the minor child(ren) to accompany them to their country of removal.
- 2) FODs must coordinate, to the extent practicable, within their local detention facilities and within the Field Office to afford detained alien parents or legal guardians access to counsel, consulates and consular officials, courts and/or family members in the weeks preceding removal in order to execute signed documents (e.g., powers of attorney, passport applications, appointments of guardians, or other permissions), purchase airline tickets, and make other necessary preparations prior to removal.

2008 (Section H.2.d); Performance-Based National Detention Standards 2011 (Section 1.2.b).

- 3) In addition, the FOD may, subject to security considerations, provide sufficient notice of the removal itinerary to the detainee or through the detained alien's attorney or other representative so that coordinated travel arrangements may be made for the alien's minor child(ren).

6. Recordkeeping.

- 6.1. Court documentation, visitation orders, and family law case files will be maintained as part of the A-File. A-Files will be retained permanently and transferred to the National Archives after 100 years in accordance with the U.S. Citizenship and Immigration Services A-File records schedule (N1-566-08-011).
- 6.2. Information related to minor child(ren) encountered during enforcement actions and family court or child welfare proceedings will be stored in the Enforcement Integrated Database and retained for 75 years in accordance with DHS records schedule Biometric with Limited Biographical Data (DAA-0563-2013-001) item 6, Law Enforcement.

7. Authorities/References.

- 7.1. Executive Order 13,768, "Enhancing Public Safety in the Interior of the United States," 82 Fed. Reg. 8799 (Jan. 30, 2017).
- 7.2. Memorandum from DHS Secretary John Kelly, "Enforcement of the Immigration Laws to Serve the National Interest" (Feb. 20, 2017).
- 7.3. 2011 Performance-Based National Detention Standards.
- 7.4. 2008 Performance-Based National Detention Standards.
- 7.5. 2000 National Detention Standards.

8. Attachments. None.

9. **No Private Right Statement.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement