

ICE

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Parental Interests Directive Overview



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Parental Interests Directive Overview

On August 23, 2013, ICE issued a Directive entitled, *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities*.

- Establishes ICE policy and procedures to address the placement, monitoring, accommodation, and removal of certain alien parents, legal guardians, and primary caretakers of minors in the United States while safeguarding their parental rights*.



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*Parental Rights are the fundamental rights of parents to make decisions concerning care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law. The rights of legal guardians of minor children to make decisions concerning those children as provided for and limited by applicable law.

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Applicable Individuals: The Directive is particularly concerned with the following categories of individuals:

- Parents or legal guardians who are primary caretakers
- Parents or legal guardians who have a direct interest in family court or child welfare proceedings*
- Parents or legal guardians whose minor children (under 18) are physically present in the USA and are USC's or LPRs

*Family Court or Child Welfare Proceedings are proceedings in which a family or dependency court or child welfare agency adjudicate or enforce the rights of parents or minor children 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.



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Prosecutorial Discretion (PD): ICE will consider the exercising of PD, especially when the alien is a parent or legal guardian of a USC or LPR minor, or is a primary caretaker of a minor. It is generally preferable that PD be exercised as early in the case or proceedings as possible.

- The Memorandum on Civil Immigration Enforcement Priorities states that *“[a]bsent extraordinary circumstances or the requirements of mandatory detention, Field Office Directors should not expend detention resources on aliens who ... demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.”*

Useful References:

- [Civil Immigration Enforcement Memo](#) (March 2, 2011)
- [Prosecutorial Discretion Memo](#) (June 17, 2011)



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Identification: ICE may receive information that identifies an alien as a parent or legal guardian of a USC or LPR minor, or as a primary caretaker of a minor at any time during the alien's:

- arrest
- processing
- detention

If credible, the custody determination for the alien should be reevaluated to the extent permitted by law and in accordance with existing ICE policy.



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Initial Placements and Transfers: ICE shall keep the detained alien parent in the area of responsibility (AOR) of apprehension, if the alien's children or family court or child welfare proceedings are within that AOR.

➤ The requirement applies to placements and transfers and is subject to the exceptions listed in the Transfer Directive (e.g., safety and security considerations, individual risk factors, facility overcrowding, etc.).

Proximity to Legal Proceedings: ICE shall initially place the detained alien parent into a facility as close as practicable to the alien's child(ren) and/or to the location of the alien's family court or child welfare proceedings.

Useful Reference

[Detainee Transfer Directive](#) (January 4, 2012)



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Participation in Family Court: ICE shall arrange for a detained alien parent's appearance at family court or child welfare proceedings in the following circumstances:

- ✓ **Notice:** The detained alien or attorney requests participation with reasonable notice.
- ✓ **Evidence:** The detained alien or attorney produces reliable evidence verifying the proceeding.
- ✓ **Reasonable:** The proceeding is located within a reasonable driving distance from the detention facility.
- ✓ **Not Unduly Burdensome** (*this will be on a case-by-case basis*): Transportation and escort of the detained alien would not unduly burden the Field Office operations.
- ✓ **Safety and Security:** Transportation and escort of the detained alien does not present security and/or public safety concerns.



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Participation in Family Court (cont'd): If appearing in-person is not necessary or practicable, ICE shall work with both the detained alien and the family court or child welfare authority to facilitate alternative means of participation, including:

- Video teleconferencing
- Standard teleconferencing

What if the detained alien does not wish to attend?
ICE will not interfere with this decision.

Useful Reference:

[PBNDS 2011. 5.2 Trips for Non-medical Emergencies](#)



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Visitation: ICE shall facilitate, to the extent practicable, any court-ordered parent-child visitation, which may include:

- Contact visitation
- Accompaniment by a court-appointed monitor

*ICE remains committed to allowing visitation with family members that is not court-ordered as well. Detention standards require visitation hours on weekends, and many facilities offer more extensive visiting schedules.

Alternative Means of Visitation: If feasible and approved by the family court or child welfare authority, ICE may permit parent-child visitation through video or standard teleconferencing from the detention facility.



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Coordinating Care or Travel: If a detained alien parent or legal guardian is subject to a final order of removal, ICE should accommodate, to the extent practicable, the detained parent's efforts to:

- Arrange guardianship for their child(ren)
- Obtain travel documents for their child(ren)
- Access legal counsel, consulates and consulate officials, courts and/or family members to execute signed legal documents
- Purchase airline tickets
- Make other necessary preparations prior to removal



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Facilitation of Return: If a lawfully removed alien needs to participate in a family court or child welfare hearing in the United States, ICE may facilitate the return of the alien to the United States by grant of parole, on a case-by-case basis.

- Parole determinations will be made by ICE Headquarters
- The sole purpose of the return must be to participate in a termination of parental rights proceeding (not child custody hearings, child support hearings, divorce proceedings, etc.).
- Volume of cases expected to be very limited



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Q: Does the Parental Interests Directive provide the same benefits for unlawfully present parents as Deferred Action for Childhood Arrivals (DACA) does for certain undocumented youth?

A: No. The Parental Interests Directive is completely distinct from DACA. This Directive reiterates existing prosecutorial discretion guidance regarding parents, legal guardians, and primary caretakers.

Q: Will ICE help a person who has been lawfully removed from the country pay for travel back into the United States to participate in a pending parental right termination hearing?

A: ICE will not assist with any costs associated with returning to, or departing from, the United States in this situation.



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QUESTIONS?

- Parental Rights Coordinator:
Andrew Lorenzen-Strait, ERO Deputy Assistant Director
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- Assistant Parental Rights Coordinator:
Nathan Berkeley, Policy and Communications Advisor
Nathan.Berkeley@ice.dhs.gov, 202-732-4066
- Case Inquiries – Email:
ERO Community Outreach at ICE Headquarters:
ERO.Outreach@ice.dhs.gov.
- Case Inquiries – Phone:
ICE Community and Detainee Helpline at
1-888-351-4024
8 a.m. to 8 p.m. EST, Monday through Friday.



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