



Parental Rights and Interests during Immigration Enforcement Activities

On August 23, 2013, U.S. Immigration and Customs Enforcement (ICE) issued a directive on *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities*.¹ The purpose of the directive is to establish policy and procedure to ensure that ICE personnel and the agency's enforcement activities do not disrupt the parental rights of immigrant parents and legal guardians. ICE is mainly concerned with immigrant parents and legal guardians that: 1) are primary caretakers of children (regardless of the child's immigration status), 2) have direct interests in family court or child welfare proceedings, and 3) have minor U.S. citizen (USC) or lawful permanent resident (LPR) children in the United States. Specifically, the directive provides ICE personnel to:

- Continue to consider whether an exercise of prosecutorial discretion is merited and to consider all relevant factors in that determination; including whether the immigrant is a parent or legal guardian of a USC or LPR minor or primary caretaker of a minor. This should happen as early in the case as possible. This means that primary caretakers of a minor and parents or legal guardians of a U.S. citizen or lawful permanent resident child should ask, for example, to have an immigration detainer dropped, not to have deportation proceedings initiated against them, or to have an immigration case terminated or administratively closed.
- ICE should reevaluate any detention decision where the person is a parent or legal guardian of a U.S. citizen or lawful permanent resident minor or is a primary caretaker of a minor regardless of the child's citizenship status and avoid detaining such persons. Even where such a parent or guardian is detained, ICE should make efforts to keep the person detained as close as possible to the child or children and/or family court or child welfare proceedings and not transfer them to another region, unless deemed necessary.
- Allow and arrange for detained parents or legal guardians to attend family court or child welfare proceedings in person, if practicable. If not, then ICE should facilitate participation by other means such as video or standard teleconferencing.
- Facilitate visitation between the detained parent or legal guardian and his or her children if documentation is produced that shows visitation is required by the family court or welfare authority in order to maintain or regain custody of a minor child. Such visitation may occur through video or standard teleconferencing.

¹ http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf

- Accommodate a parent or legal guardian's efforts to coordinate the care or travel of minor children pending their removal. For example, parents or guardians should be accommodated in making arrangements to allow a child to stay in the U.S. or to obtain travel documents so the child can accompany the individual to the country of removal.
- Facilitate the return of a deported parent or legal guardian to the United States, who is a party to family court or child court proceedings, by a grant of parole, on a case-by-case basis, for the sole purpose of participating in the proceedings at his or her own expense. ICE will consider "compelling humanitarian cases," as well as security and public safety concerns.
- Coordinate with the Department of Homeland Security and Department of Health and Human Services' Administration for Children and Families to work with representatives of family and dependency courts and child welfare authorities to improve communication and cooperation.
- Develop training materials to assist personnel in the implementation of this directive that at a minimum cover the means to safeguard parental rights of the immigrants they encounter.

Advocates should be aware that these are just guidelines and ICE is not bound to follow them. The person is more likely to be accommodated and not subject to detention or other enforcement actions if there is minimal prior immigration violations (no prior order of removal) or criminal history. Where a more serious prior immigration or criminal history is involved, the client will need to show compelling factors and even so, such requests may likely be denied. You can help your client; however, document such factors in a letter.

Each ICE Field Office will have a designated specially trained coordinator to serve as a point of contact for parental rights that you, your client, or family members can contact to help ICE identify the client as a parent or legal guardian, to ask them to exercise prosecutorial discretion based on their status as a parent or legal guardian, and for other related inquiries and requests. The contact information for these points of contact will be posted and publicized in detention facilities as well as on the ICE website at www.ice.gov.