



Noncitizen Parents & Legal Guardians: Overview of ICE Policies & Detention Standards for ERO

Parental Interests Directive

ICE Directive 11064.3, entitled *Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults (July 14 2022)*: This Directive (hereinafter "Parental Interests Directive" or "PID") establishes ICE policy and procedures regarding the preservation of parental and/or guardianship rights of noncitizen parents and legal guardians (hereafter, "**guardians**") with respect to minor children and/or incapacitated adults (hereafter, "**dependents**") without regard to the dependents' citizenship or immigration status.

Identifying Covered Individuals under the Parental Interests Directive

Covered Individuals under the Directive are noncitizen parents or legal guardians who are:

- 1) Primary caretakers or have custody of a minor child(ren) or incapacitated adults in the United States; and/or
- 2) Those who have a direct interest in family or probate court, guardianship, or child welfare proceeding involving a minor child(ren) or incapacitated adult.

— See PID Section 3.1

ICE personnel have a responsibility at first encounter to **affirmatively inquire** about noncitizens' parent and legal guardianship status and should generally inquire about the noncitizen's parental/guardianship status during all encounters. Noncitizens determined to be Covered Individuals must be documented in EARM and notice elevated through the chain of command.

— See PID Section 5.1

Enforcement Actions Involving Covered Individuals (Parents/Legal Guardians)

At arrest, ICE personnel should accommodate a guardian's efforts to make alternative care arrangements for their dependents and document their decision in the A file and relevant data systems. If a noncitizen cannot make alternative care arrangements, or if there is indication the dependent may have been subject to abuse or neglect, ICE personnel should contact the local child welfare authority, local adult protective services agency, or local law enforcement to take custody of the dependent(s).

— See PID Section 5.2

Child Welfare, Family or Guardianship Proceedings

Custody Review: Upon notification of child welfare or guardianship proceedings involving a noncitizen the

FOD must perform and document a **custody review**. (Factors to consider are outlined in the PID Section 5.4(1)).

Court & Service Plan Participation: Where practicable, the Field Office must also arrange for the in-person appearance of a noncitizen in family court, child welfare, or guardianship proceedings. (Factors to consider for in-person participation are outlined in 5.4(2)). Where transport for in-person participation is impracticable, reasonable steps should be made to ensure alternative means of participation.

— See PID Section 5.4

Visitation with Dependents

Minor Visitors: Where permitted, ICE should facilitate as soon as possible and establish means of regular visitation for guardians and their minor child(ren). Generous time allotments for visitation with minors are recommended.

— See PID Section 5.4(1)(2), NDS 2019 Section 5.5 (II)(F)(1), PBNDS 2008 Section 32 (V)(I)(2.c), PBNDS 2011 Section 5.7 (V)(I)(2.a-b)

Contact Visits with Minors: The PID and all standards permit contact visits. The PID requires contact visitation be arranged within 30 days, upon request, at facilities with no existing provision for contact visits with minors.

— See PID Section 5.5(2), NDS 2019 Section 5.5 (II)(F)(1), PBNDS 2008 Section 32(V)(I)(4), PBNDS 2011 Section 5.7(V)(I)(4)

Special Visitation: Parent-child visitation must be facilitated if required by the family/dependency court or child welfare authority absent safety or security concerns ("special visitation"). If in-person visitation is impossible or impracticable, special efforts shall be made to facilitate video-teleconferencing at **no cost** to the guardian. Similarly, special visitation must be accommodated between legal guardians and incapacitated adults where the noncitizen provides documentation of the need as it relates to the noncitizen's guardianship responsibilities.

— See PID Section 5.5



Placement/Transfer of Detained Covered Individuals

If the guardian's dependent resides within the AOR of initial apprehension, or there is a family court or child welfare proceeding, initial placement must remain within that AOR, unless deemed operationally necessary. If the AOR or the detention facility is not the closest location to the dependent(s) or the child welfare/family court proceedings, FODs must consider transfers outside the AOR of initial apprehension or to a facility within the AOR that is closer (where operationally feasible and consistent with the noncitizen's express wishes).

— See PID Section 5.3 (3)

Coordinating Care or Travel of Dependent

Noncitizen Access to External Stakeholders: ICE personnel must accommodate a guardian's efforts to make arrangements for their dependents, including arranging temporary guardianship if the dependent(s) will remain in the U.S. or obtaining travel documents so dependent(s) can accompany them to home country. Access to attorneys, consulates, and family members in the weeks preceding their removal must be facilitated so guardians can arrange care, sign documents, or make other necessary preparations. Guardians must also be afforded a reasonable opportunity to consult attorneys and other stakeholders when deciding about their dependent's care or travel.

— See PID Section 5.7

Pre-Removal Reviews

Parental Election: The FOD must review the guardian's case to assess they had the opportunity to request reunification before removal, make alternative care arrangements, or whether ongoing family court or child welfare or guardianship proceedings may be adversely impacted by the noncitizen's removal. Where a guardian elects to have their dependent remain in the U.S., ICE should attempt to secure a written statement.

— See PID Section 5.8

Removal Review: If there is a child welfare, family court, or guardianship proceeding, the FOD must consider under the totality of the circumstances whether continuing with removal is appropriate, and whether the guardian may need to communicate with the child welfare agency, court, any guardian ad litem, or their legal representative prior to removal. Factors are outlined in PID Section 5.8(2).

— See PID Section 5.8

Notice of Removal Itinerary: Subject to security considerations, the FOD may provide sufficient notice of the noncitizen's removal itinerary to the noncitizen's attorney or representative to facilitate coordinated travel.

— See PID Section 5.7 (3)

Phone Access

Calls with Family: Detained noncitizens are permitted to make direct and/or free phone calls to **immediate family members** or others in personal or family emergencies, or when the noncitizen can otherwise demonstrate a compelling need—**to be interpreted liberally**.

— See NDS 2019 Section 5.4 (II)(E), PBNS 2008 Section 31 (V)(E), PBNS 2011 Section 5.6 (V)(E)

Immediate Family Members: parents, stepparents, foster parents, siblings, spouses and common-law spouses, biological or adopted children.

— See NDS 2019 Section 5.4(II)(H), PBNS 2008 Section 32 (V)(I)(2)(a), PBNS 2011 Section 5.7 (V)(I)(2)

Calls with Attorneys: Each facility shall permit legal calls as soon as possible after the request and the noncitizen will always be granted access within 24 hours. This includes dependency and family law attorneys, representing the parent or their child/dependent.

— See NDS 2019 Section 5.4 (III)(E), (J) & (K), PBNS 2008 Section 31 (V)(E)(F.1-2), PBNS 2011 Section 5.6 (V)(E.2), (F.1-2)

Additional Information on InSight



ERO Parental Interests Resource Center: Broadcasts, resources, required postings, trainings, and contact information for HQ or Field POCs.

ICE Field Offices may choose to utilize contract **ERO Custody and Resource Coordinators (CRCs)**, where available, to assist with parental interest cases, such as assisting with obtaining information from a child welfare agency or court. ICE Field Offices may also reach out to the **ERO Parental Interests Coordinator** for assistance or with any questions.



ERO HQ Parental Interests Team: (b)(7)(E) @ice.dhs.gov