

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

**ICE Directive 11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults**

**Issue Date:** July 14, 2022.

**Superseded:** ICE Directive 11064.2, Detention and Removal of Alien Parents or Legal Guardians (Aug. 29, 2017).

1. **Purpose/Background.** U.S. Immigration and Customs Enforcement (ICE) is committed to the safe, effective, and humane enforcement of the nation's immigration laws. As part of this commitment, ICE will take actions aimed at ensuring the fundamental interests of parents, legal guardians, and their minor children or incapacitated adults for whom they serve as legal guardians impacted by civil enforcement activities. This Directive establishes ICE policy and procedures regarding the preservation of the parental and/or guardianship rights of noncitizen parents and legal guardians.
2. **Policy.** It is the policy of ICE to ensure that the agency's civil immigration enforcement activities do not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children or incapacitated adults, consistent with all legal obligations and applicable court orders.

The specific individuals to whom the policies and procedures contained in this Directive apply are noncitizen parents or legal guardians who are: 1) primary caretakers or have custody of minor child(ren) or incapacitated adults in the United States, without regard to the dependent's citizenship or immigration status; and/or 2) those who have a direct interest in family or probate court, guardianship, or child welfare proceedings involving a minor or incapacitated adult, without regard to the dependent's citizenship or immigration status (herein referred to as "Covered Individuals").

3. **Definitions.** The following definitions apply for the purposes of this Directive only.

**3.1. Covered Individual.** 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, without regard to the dependent's citizenship or immigration status; and/or
- 2) Those who have a direct interest in family or probate court, guardianship, or child welfare proceedings involving a minor child or incapacitated adult, without regard to the dependent's citizenship or immigration status.

**3.2. Family Court or Child Welfare or Guardianship Proceeding.** A proceeding in which a family court or dependency court (or other court of relevant jurisdiction) adjudicates or enforces the rights of parents or minor child(ren) through determination or modification of

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service plans, child custody, visitation, or support, or the distribution of property or other legal obligations in the context of parental or legal guardian rights, or, with respect to an incapacitated adult, a legal proceeding to appoint a legal guardian to exercise some or all of the legal rights of the incapacitated adult.

- 3.3. Field Responsible Official (FRO).** The highest-ranking official in any ICE field location. This includes Special Agents in Charge, Field Office Directors (FODs), Chief Counsel,<sup>1</sup> and any other officials who have been designated in writing by the Director.
- 3.4. ICE Personnel.** All ICE employees and contractors, designated immigration officers, and warrant service officers.
- 3.5. Incapacitated Adult.** An individual eighteen years of age or older whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian.
- 3.6. Headquarters Responsible Official (HRO).** Executive Associate Directors (EADs) of Enforcement and Removal Operations (ERO), Homeland Security Investigations, and Management and Administration; the Associate Director of the Office of Professional Responsibility; the Principal Legal Advisor; and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.
- 3.7. Legal Guardian.** An individual who has been lawfully vested with the power, and charged with the duty of caring for, including managing the property, rights, and affairs of, a child or incapacitated adult by a court of competent jurisdiction, whether foreign or domestic.
- 3.8. Minor Child.** A individual under the age of eighteen years.
- 3.9. Noncitizen.** For purposes of this Directive, “noncitizen” carries the same meaning as the term “alien,” as defined by section 101(a)(3) of the Immigration and Nationality Act (INA).
- 3.10. Parent.** An individual who is related to a child either biologically or by legal adoption.
- 3.11. Unaccompanied Child.** For the purposes of this Directive, “unaccompanied child” carries the same meaning as the term “unaccompanied alien child,” as defined by 6 U.S.C. § 279(g).

## **4. Responsibilities.**

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<sup>1</sup> This Directive applies to the Office of the Principal Legal Advisor (OPLA) to the extent it is not inconsistent with directives, policies, or formal guidance issued by the General Counsel of the Department of Homeland Security (DHS). DHS Delegation No. 0400.2, Delegation to the General Counsel (Sept. 14, 2004).

**4.1. HROs**, or their designees, are responsible for ensuring overall compliance with this Directive within their respective Directorate or Program Office.

**4.2. The ERO Executive Associate Director (EAD)**, or their designee, is responsible for:

- 1) Ensuring overall compliance with this Directive within ERO;
- 2) Designating a primary ERO Parental Interests Coordinator, to be organized as part of ERO Headquarters (HQ);
- 3) Conducting outreach, as required by Section 5.10 of this Directive;
- 4) Ensuring that the training curriculum required by Section 5.11 of this Directive is developed and delivered; and
- 5) Ensuring that a system for the centralized tracking and monitoring of Covered Individuals in ICE custody is created and maintained.

**4.3. The ERO Parental Interests Coordinator** is responsible for:

- 1) Serving as the primary point of contact and subject-matter expert for all ICE ERO personnel regarding state child welfare or guardianship issues related to detained Covered Individuals;
- 2) Conducting data collection and analysis, including evaluating, on an ongoing basis, information collected from the ENFORCE Alien Removal Module (EARM) or any successor system of records; the Risk Classification Assessment; and other ICE information technology systems regarding detained Covered Individuals, as well as sharing appropriate information with the ERO EAD, FODs, and Parental Interests Field Points of Contact (POCs) on an ongoing basis;
- 3) Providing guidance (consistent with current Performance-Based National Detention Standards) to FODs, Parental Interests Field POCs, ERO Field Operations, and other ERO HQ personnel on:
  - a) Initial placement and transfer decisions for Covered Individuals;
  - b) Participation in family court, child welfare, or guardianship proceedings for detained Covered Individuals;
  - c) Visitation protocols for detained Covered Individuals;
  - d) Facilitation of detained Covered Individuals' participation in child welfare services and programs;
  - e) Ensuring that detained Covered Individuals are provided the opportunity to consult with counsel, consular officials, family courts and dependency courts,

child welfare personnel, and family members or friends in order to arrange guardianship or care, or to obtain travel documents or make necessary travel arrangements, for their minor child(ren) or incapacitated adults for whom they serve as legal guardians; and

- f) Status and permanency goals in child welfare proceedings.<sup>2</sup>
- 4) Coordinating with relevant ERO offices, FODs, state or local court or child welfare personnel, and/or consular officials to facilitate the timely response to issues or complaints received by ICE regarding the parental or guardianship interests of detained Covered Individuals;
- 5) On a quarterly basis, reporting to the Detention Monitoring Council, the Office of Regulatory Affairs and Policy (ORAP), and others as directed by the ERO EAD, on information trends and areas of concern related to implementation of this Directive; and
- 6) Providing outreach to child welfare stakeholders and training to Parental Interests Field POCs and ERO offices, consistent with Sections 5.10 and 5.11 of this Directive.

**4.4. FROs are responsible for:**

- 1) Ensuring overall compliance with this Directive within their Area of Responsibility (AOR); and
- 2) In the case of FODs, designating a manager and as many supervisors as necessary, based on caseload, at each office whose collateral duties include serving as a Parental Interests Field POC within their AOR.

**4.5. Parental Interests Field POCs are responsible for:**

- 1) Serving as specially trained coordinators at the supervisory or managerial level regarding parental and guardianship interests for their AOR or facility (as determined by the FOD);
- 2) Serving as the ICE point of contact, where necessary, with state child welfare agencies or relevant courts;
- 3) Participating in all relevant training required by ERO HQ on matters relevant to this Directive;
- 4) Facilitating detained Covered Individuals' participation in programs or training ordered or required by a state child welfare agency or relevant court, such as parenting or anger management classes, where feasible;

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<sup>2</sup> This refers to the desired outcome of the child welfare process, which may include reintegration, adoption, appointment of a permanent custodian, or another planned permanent living arrangement.

- 5) Ensuring that information regarding how to contact the Parental Interests Field POCs is posted in all detention facilities within the AOR;<sup>3</sup> and
- 6) Collaborating and communicating with the ERO Parental Interests Coordinator regarding the implementation of this Directive.

## **5. Procedures/Requirements.**

**5.1. Identifying Parents and Legal Guardians.** FROs must ensure procedures are in place that require ICE personnel, upon ICE's first encounter with a noncitizen, to affirmatively inquire about parental or legal guardian status. As such status may be readily subject to change (e.g., birth of a new child, child reaching the age of majority), ICE personnel should generally inquire about parental or legal guardian status during all encounters. If ICE determines a detained noncitizen is a Covered Individual, ICE personnel should enter this information into the appropriate system of record (e.g., EARM or any successor system of record).

ICE officers and agents must notify the FRO, through the chain of command, of the identification of any noncitizen encountered who is a Covered Individual.

## **5.2. Enforcement Actions Involving Covered Individuals.**

- 1) Absent indications of abuse or neglect,<sup>4</sup> ICE personnel should accommodate a Covered Individual's efforts to make alternative care arrangements for their minor child(ren) or incapacitated adult(s) for whom they serve as legal guardian prior to their arrest or detention. ICE personnel must document the Covered Individual's decision to transfer physical custody of minor child(ren) to an identified third party in the A-file and the relevant data system (e.g., EARM or any successor system of record).
- 2) If the Covered Individual cannot make an alternative care arrangement for the minor child(ren) at the time of arrest, or if there is an indication 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 must contact the local child welfare authority or law enforcement agency to take custody of the minor child(ren). Details regarding ICE's contacting the local child welfare authority or law enforcement agency and its assumption of physical custody of the minor child(ren) must be documented in the A-file and the relevant data system (e.g., EARM or any successor system of record) and reported to the applicable Parental Interests Field POC(s).

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<sup>3</sup> This information should be available in print in multiple languages, to the extent practicable. If printed information is not available in a language an individual reads and understands, Parental Interests Field POCs must ensure that the information is made available to the individual via an appropriate translation or interpretation.

<sup>4</sup> ICE personnel should be aware of and ensure compliance with mandatory reporting requirements for suspected child abuse. *See generally* 34 U.S.C. § 20341 (2020).

- 3) Unless ICE is effectuating an enforcement action against the minor child(ren), ICE personnel should under no circumstances take custody of or transport the minor child(ren).<sup>5</sup> ICE should remain on the scene with the Covered Individual until the designated third party, or the local child welfare authority or law enforcement agency assumes physical custody of the minor child(ren).
- 4) Where a minor child whose physical custody is being transferred to a third party by the Covered Individual is known by ICE to be an Unaccompanied Child, ICE personnel must contact the local HHS office to advise them of the transfer.

### **5.3. Initial Detention Placement and Subsequent Transfers of Covered Individuals.**

- 1) If the Covered Individual's minor child(ren) or incapacitated adult for whom they serve as legal guardian, or family court or child welfare or guardianship proceedings are within the AOR of initial apprehension, the FOD must refrain from making an initial placement or subsequently transferring the noncitizen outside of the AOR of apprehension, unless maintaining custody within the AOR is impracticable or doing so is dictated by exceptional circumstances or otherwise legally required.
- 2) In the limited circumstances in which detention is appropriate, the FODs must place the Covered Individual as close as practicable to the noncitizen's minor child(ren) or incapacitated adult for whom they serve as legal guardian and/or to the location of the noncitizen's family court or child welfare or guardianship proceedings (if any), subject to any legal limitations on transfer.<sup>6</sup>
- 3) If the AOR of initial apprehension or the detention facility is not the closest location to the Covered Individual's minor child(ren) or incapacitated adult for whom they serve as legal guardian, and/or to the location of the noncitizen's family court or child welfare or guardianship proceedings, the FODs must consider transfers outside the AOR of initial apprehension or to a facility within the AOR that is closer to the location of the minor child(ren) or incapacitated adult for whom they serve as legal guardian, or to the proceedings (where operationally feasible), unless doing so is otherwise inconsistent with the express wishes of the detained Covered Individual.<sup>7</sup>

### **5.4. Participation in Family Court or Child Welfare or Guardianship Proceedings by Detained Covered Individuals.**

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<sup>5</sup> This includes placing the minor child(ren) in an ICE vehicle while awaiting the arrival of a third party.

<sup>6</sup> In cases in which the Covered Individual's minor children are located in a different geographic region from any family court or child welfare or guardianship proceedings, ICE should, to the greatest extent possible, honor the wishes of the detained Covered Individual as to whether they prefer to be detained closer to their minor child(ren) or incapacitated adult(s) for whom they serve as legal guardian, or to the ongoing proceedings.

<sup>7</sup> Where applicable and appropriate, FODs should follow the procedure outlines in footnote 6, above, when transferring a Covered Individual under this subsection where the individual's minor child(ren) or incapacitated adult for whom they serve as legal guardian is/are located in a different geographic region from any relevant court or child welfare or guardianship proceedings.

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- 1) Upon notification of child welfare or guardianship proceedings involving a detained Covered Individual, unless release is prohibited by law, the FOD must perform a custody review that considers the following:
  - a) Whether the child welfare agency goal is to reunify the child(ren) with the Covered Individual or to terminate custody, parental rights, and/or their guardianship status;
  - b) To the extent known or reasonably discoverable, whether the likelihood of reunification or maintenance of guardianship status would change if the detained Covered Individual were released from custody; and
  - c) Any documentation from a child welfare court or child welfare stakeholder making a recommendation that the custody and care of the minor child(ren) be returned to or maintained by the detained Covered Individual, or, in the case of an incapacitated adult, any documentation from a relevant court or stakeholder (e.g., a guardian ad litem) making a recommendation that guardianship of the incapacitated adult be returned to or maintained by the detained legal guardian.
- 2) Where practicable, the FOD must arrange for a detained Covered Individual's in-person appearance at a family court or child welfare or guardianship proceeding when their appearance is required for them to maintain or regain custody or guardianship of their minor child(ren) or any incapacitated adults for whom they serve as legal guardian, and:
  - a) The detained Covered Individual, their attorney (or other representative), or the child welfare agency or court has submitted to ICE a request that the Covered Individual participate in such hearings;
  - b) The detained Covered Individual, their attorney (or other representative), or the child welfare agency or court has produced evidence of a family court or child welfare or guardianship 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 or guardianship proceedings are located within a reasonable driving distance of the detention facility where the detained Covered Individual is housed;
  - d) Where the in-person, non-virtual appearance of the Covered Individual is required and transportation and escort of the detained Covered Individual does not negatively impact or hinder mission needs; and
  - e) Such transportation and/or escort of the detained Covered Individual to participate in family court or child welfare or guardianship proceedings does not present security and/or public safety concerns.

- 3) To facilitate court appearances in instances in which it is impracticable to transport the detained Covered Individual to participate in-person at a family court or child welfare or guardianship proceeding (due to distance, safety, security, or health concerns), and if the relevant court is operating via video or standard teleconference, the FOD should take reasonable steps to ensure alternative means for the Covered Individual to participate in the proceeding are made available. For instance, if it is technologically feasible and approved by the relevant court or child welfare authority, the field office must, unless impossible or impracticable, facilitate the detained Covered Individual's participation via means such as video teleconferencing, standard teleconferencing, or other virtual options (e.g., MS-Teams or Skype) from the detention facility or the field office.
- 4) All actions taken pertaining to a Covered Individual's participation in family court or child welfare or guardianship proceedings must be documented in EARM or any successor system of record and the A-file.
- 5) In all cases, if the detained Covered Individual does not wish to attend and/or participate in a family court or child welfare or guardianship proceeding, or if they desire to attend virtually as opposed to in person, ICE personnel must not interfere with the detained Covered Individual's decision. ICE personnel must document these decisions in EARM or any successor system of record and should attempt to secure a written statement from the noncitizen documenting the decision (with assistance, if required) for inclusion in the A-file.

## **5.5. Visitation.**

- 1) ICE personnel must accommodate regular visitation between the Covered Individual and their minor child(ren). ICE personnel must also accommodate regular visitation between a detained legal guardian and any incapacitated adult for whom they serve as legal guardian if in furtherance of the detained legal guardian's guardianship responsibilities.
- 2) Pursuant to ICE detention standards, at facilities where there is no provision for contact visits by minors, FODs must arrange, upon request, for a contact visit by minor child(ren) within the first 30 days of detention. After that time, upon request and consistent with Section 5.3, ICE personnel must consider a request for transfer, when practicable, to a facility that would allow such visitation. Upon request, FODs must continue to allow monthly visits if a transfer is not approved, or until an approved transfer can be completed.<sup>8</sup> The ability of a parent or legal guardian to make such requests must be set out in ICE's National Detainee Handbook.

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<sup>8</sup> See generally U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities §5.5.II.F.1 (2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 § 5.7.V.I.2 (2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 5.32.V.I.2 (2008); U.S. Immigration and Customs Enforcement, 2000 National Detention Standards, Visitation § III.H.2.d (2000).



- 3) In some cases, parent-child (or legal guardian-child) visitation may be required by a family court or child welfare authority in order for a detained noncitizen parent or legal guardian to maintain or regain custody of their minor child(ren). If documentation (e.g., a service plan, scheduling letter, court order) of such a requirement is provided to ICE, Parental Interests Field POCs must accommodate the required visitation between the detained noncitizen parent or legal guardian and their minor child(ren).
  - a) Such special visitation may include contact visitation, subject to safety and security considerations.
  - b) These special arrangements must not limit or otherwise adversely affect the detained noncitizen parent or legal guardian's normal visitation under the relevant detention standards or this Directive, or the safe and efficient operation of the detention facility.
- 4) In the event physical visitation at the detention facility in which a detained noncitizen parent or legal guardian is housed is either impossible or impracticable, FODs shall permit visitation through video or standard teleconferencing from the detention facility or the field office to the extent it is technologically feasible to do so. In instances in which a family court or child welfare authority orders or requires visitation, special efforts shall be made to facilitate video-teleconferencing at no cost to the noncitizen parent or legal guardian. The frequency and duration of video or standard teleconferencing may depend on the child's age and/or development.
- 5) All parent-child or legal guardian-child visitation must be documented in EARM or any successor system of record. Copies of visitation orders, service plans, or similar documentation, if applicable, must be placed in the A-File with comments included in EARM or any successor system of record.
- 6) Visitation between a detained legal guardian and the incapacitated adult for whom they serve as legal guardian may be necessary for the detained legal guardian to carry out guardianship responsibilities relating to the legal rights of the incapacitated person. Such visits may also necessitate the presence of additional individuals (e.g., attorneys, notaries, or guardians ad litem). If documentation of such a need is provided to ICE, the FOD must accommodate the visitation between the detained legal guardian, the incapacitated adult, and any other necessary parties.
  - a) Such special visitation may include contact visitation, subject to safety and security considerations.
  - b) These special arrangements must not limit or otherwise adversely affect the detained legal guardian's normal visitation under the relevant detention standards or this Directive, or the safe and efficient operation of the detention facility.

## **5.6. Parents and Legal Guardian's Access to Participation in Child Welfare Services and Programs.**

- 1) In certain instances, courts or state child welfare agencies may mandate that the detained Covered Individuals participate in services, programs, or trainings prior to being found fit to maintain or regain custody of their minor child(ren) or to continue to serve as a legal guardian of an incapacitated adult. ICE Parental Interests Field POCs must work and communicate with appropriate child welfare agencies or other stakeholders to the extent it is feasible to do so and legally permissible to obtain documentation or information regarding service plan requirements and options, if any, for remote service completion.
- 2) Parental Interests Field POCs shall coordinate the participation of Covered Individual in custody in their AORs who are required to participate in these programs. The detained Covered Individual is responsible for any fees associated with these programs or trainings. In all cases, if the detained Covered Individual does not wish to participate in a child welfare service plan, ICE will not interfere with the detained Covered Individual's decision. ICE personnel must document such decisions in the noncitizen's A-File and in EARM or any successor system of record.

**5.7. Coordinating Care or Travel of Minor Child(ren) or Incapacitated Adults Pending Removal of a Covered Individual.**

- 1) When a detained Covered Individual is subject to a final order of removal and ICE is effectuating their removal, FODs or their appropriate designees shall facilitate the detained Covered Individual's efforts to make arrangements for their minor child(ren) or incapacitated adults for whom they serve as legal guardian.<sup>9</sup> These provisions may include the Covered Individual's attempt to arrange temporary guardianship for their minor child(ren) or incapacitated adult for whom they serve as legal guardian if they will be remaining in the United States, or—where the Covered Individual requests reunification with their minor child(ren) or incapacitated adult for whom they serve as legal guardian prior to removal—to obtain travel documents for the minor child(ren) or incapacitated adult to accompany them to the Covered Individual's country of removal.
- 2) FODs must afford such detained Covered Individuals a reasonable opportunity to make a decision regarding the care or travel of their minor child(ren) or incapacitated adult for whom they serve as legal guardian, as well as to consult with counsel and a means by which to communicate with consulates and consular officials, notaries, courts, guardians ad litem, or family members in the appropriate time preceding removal in order to execute necessary documents (e.g., powers of attorney, passport applications, appointments of guardians, or other permissions), purchase airline tickets, and make necessary preparations prior to removal.

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<sup>9</sup> This provision does not apply to situations in which the minor child(ren) or incapacitated adult(s) is also subject to a final removal order which will be effectuated at the same time as the parent or legal guardian's final removal order.

- 3) In addition, the FOD may, subject to security considerations, provide sufficient notice of the removal itinerary to the detained Covered Individual or to their legal counsel or representative so that coordinated travel arrangements may be made for the Covered Individual's minor child(ren) or incapacitated adult(s) for whom they serve as legal guardian.
- 4) Factors to consider when facilitating reunification of a parent or legal guardian with their minor child(ren) prior to removal include, but are not limited to:
  - a) State child welfare involvement, or the presence of custody orders or protection orders; and
  - b) Whether the other parent is in the United States or if the other parent has given permission for the minor child(ren) to return to the country of removal with the noncitizen parent or legal guardian.<sup>10</sup>

Whenever feasible, FODs should obtain written documentation of any of these factors to include in the A-file and document such information in EARM or any successor system of record.

- 5) Factors to consider when facilitating reunification of a parent or legal guardian with an incapacitated adult for whom they serve as legal guardian prior to removal include, but are not limited to:
  - a) The presence of ongoing court proceedings relating to the guardianship;
  - b) The scope of any current guardianship order and the authorities it conveys in the legal guardian;
  - c) To the extent they possess capacity, whether the incapacitated adult consents to the reunification and travelling with the legal guardian to the country of removal; and
  - d) Whether the incapacitated adult has other legal guardians present in the United States and, if so and applicable, whether they consent to the incapacitated adult returning to the country of removal with the noncitizen legal guardian.<sup>11</sup>

Whenever feasible, FODs should obtain written documentation of any of these factors to include in the A-file and document such information in EARM or any successor system of record.

#### **5.8. Removal of a Covered Individual Without Their Minor Child(ren) or Any Incapacitated Adult for Whom They Serve as Legal Guardian.**

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<sup>10</sup> This Directive does not authorize ICE personnel to adjudicate disputed rights between parents.

<sup>11</sup> This Directive does not authorize ICE personnel to adjudicate disputed rights between legal guardians.

- 1) Prior to the removal of a Covered Individual, the FOD must review the Covered Individual's case to assess whether the Covered Individual has had the opportunity to request reunification before removal, make alternative care arrangements for their minor child(ren) or any incapacitated adult for whom they serve as legal guardian, or if there are ongoing family court or child welfare or guardianship proceedings that may be adversely impacted by the Covered Individual's removal. In the case of a Covered Individual who decides that their minor child(ren) or any incapacitated adult for whom they serve as legal guardian will remain in the United States, ICE personnel should attempt to secure a written statement from the noncitizen documenting this decision (with assistance, if necessary). If the noncitizen parent or legal guardian declines to provide a written statement, ICE personnel should obtain a sworn statement documenting the same. The FOD should review any written statement or sworn statement in conducting their case assessment under this Section.
- 2) Where a Covered Individual is a party to any ongoing family court or child welfare or guardianship proceeding, the FOD (or designee not below the Deputy FOD (DFOD) level) must review the status of the family court or child welfare or guardianship proceedings prior to removal. FODs (or DFOD designee) must consider under the totality of the circumstances whether continuing with removal is appropriate, and whether the Covered Individual may need to communicate with the child welfare agency, court, any guardian ad litem, or their legal representative prior to removal. When reviewing the totality of the circumstances, relevant factors may include, but are not limited to, the criminal history of the Covered Individual, reunification before removal options, and any changes in guardianship status or permanency goals (e.g., termination of parental rights) of the court or child welfare agency.
- 3) Prior to removal, all actions and communications pertaining to removing a Covered Individual without their minor child(ren) or incapacitated adult(s) for whom they serve as legal guardian must be documented in EARM or any successor system of record. Documentation or information indicating that parental rights or guardianship have already been terminated, other relevant child welfare documentation, or the noncitizen's requests to be removed without their minor child(ren) or any incapacitated adult for whom they serve as legal guardian must be included in the A-file and documented in EARM or any successor system of record.

## **5.9. Facilitation of Return.**

- 1) If a lawfully removed noncitizen parent or legal guardian (or their attorney, family member, consular official or other representative) provides verifiable evidence indicating that a hearing or hearings related to the termination of their parental rights or guardianship is or are pending or ongoing in the United States, ICE may facilitate the reentry of the noncitizen to the United States by a grant of parole for the noncitizen to participate in the hearing or hearings. The decision of whether to grant parole must be made by the applicable FOD on a case-by-case basis, taking into account all relevant factors, including safety, security, whether the family court or relevant child welfare authority will permit the removed noncitizen to participate through alternative means (e.g., through video or standard teleconferencing), and

whether such participation is feasible. A factor strongly weighing in favor of a grant of parole is that in-person participation is required by the family court or relevant child welfare agency.

- 2) The noncitizen will be responsible for incurring all costs associated with returning to the United States to participate in the hearing(s) related to the termination of parental rights or guardianship; the noncitizen will also incur all costs for departing the United States at the conclusion of the hearing(s).
- 3) Noncitizens who are allowed to return to the United States pursuant to this Section must confirm in writing, (1) that they are not traveling to the United States for the purpose of pursuing immigration benefits or to otherwise circumvent orderly visa and immigration processing, and (2) that they intend to promptly depart the United States following the conclusion of the hearing or hearings for which they are being paroled into the country to participate in.

#### **5.10. Outreach.**

- 1) With support from other relevant ICE Directorates and/or Program Offices and in coordination with DHS entities and the HHS Administration for Children and Families, the ERO EAD or their designee(s) must work with representatives of family and child welfare courts and child welfare agencies to develop methods for improving communication and cooperation between ICE and family and/or child welfare court systems.<sup>12</sup>
- 2) In cooperation with both governmental and non-governmental organization stakeholders, the ERO EAD or their designee must ensure the dissemination to all over-72-hour facility law libraries relevant resource guides, including materials prepared by non-governmental organizations and reviewed by ICE, regarding dependency proceedings and the intersection of these proceedings with immigration enforcement and detention.

#### **5.11. Training.**

- 1) The ERO Parental Interests Coordinator, in consultation with relevant ICE and DHS offices—to include other relevant ERO Program Offices, the ICE Office of Leadership and Career Development, the ICE Office of Immigration Program Evaluation, ORAP, and the DHS Office for Civil Rights and Civil Liberties—shall develop training materials to assist FODs, Parental Interests Field POCs, and other relevant ICE personnel in the implementation of this Directive.

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<sup>12</sup> In light of the regional variations of family and child welfare court systems, such coordination may be most appropriate and effective at the field office level by the FODs or Parental Interests Field POCs, in coordination with ERO HQ.

- 2) Training shall cover, at a minimum, the means by which ICE personnel will safeguard the parental or guardianship rights of the noncitizens they encounter while executing their duties.

**5.12. Centralized Tracking and Reporting.** ERO must collect and maintain relevant data and information related to Covered Individuals. ERO must develop a system for maintaining this information in a manner that permits continuous monitoring and tracking of such individuals to ensure compliance with the Directive, and such information should be maintained in a format where it may be made available for reporting to the Office of the Director.

## **6. Recordkeeping.**

- 1) All relevant documents produced or provided in accordance with this Directive must be maintained in accordance with a National Archives and Records Administration approved retention schedule. If the records are not subject to a records schedule they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.
- 2) 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 after the individual's date of birth, in accordance with the U.S. Citizenship and Immigration Services A-File records schedule (N1-566-08-011).
- 3) 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) disposition authority 6, Law Enforcement.

## **7. Authorities/References.**

- 7.1. 6 U.S.C. § 279(g) (2008).
- 7.2. 8 U.S.C. § 1182(d)(5) (2013).
- 7.3. 8 C.F.R. § 212.5 (2022).
- 7.4. ICE Policy No. 11022.1, Detainee Transfers (Jan. 4, 2012).
- 7.5. U.S. Immigration and Customs Enforcement, 2000 National Detention Standards (2000).
- 7.6. U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 (2008).

- 7.7. U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 (2011, rev. 2016).
- 7.8. U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities (2019).
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.



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