

CHECKLIST FOR THE 2025 ICE DIRECTIVE

(Detention and Removal of Alien Parents and Legal Guardians of Minor Children)

US Immigration and Customs Enforcement (ICE) has guidance that governs the responsibilities of ICE staff when engaging with parents or legal guardians who are detained, pursuant to immigration enforcement. Often referred to as a “parental interest policy,” this guidance governs ICE’s obligations and responsibilities regarding parents’ ability to make decisions about their children’s care and custody.

ICE issued its first parental interest policy in 2013. The 2013 Parental Interests Directive provided guidance to ICE officers who encountered noncitizen parents of minor children on whether or when to detain such parents, facilitating parents’ decisions about care and custody of their children, enabling participation in any child welfare proceedings, and preserving family unity in the event of deportation. In 2017, the first Trump administration replaced the 2013 directive. In 2022, the Biden administration rescinded the 2017 guidance and issued a Parental Interest Directive that largely mirrored, but also expanded, the original 2013 protections. **On July 2, ICE rescinded the 2022 Parental Interest Directive and issued a new version of the policy, known as the Detained Parents Directive; officially named ICE Directive 11064.4, Detention and Removal of Alien Parents and Legal Guardians of Minor Children (2025 Directive).**

The 2025 Directive weakens protections for noncitizen parents and dramatically reduces ICE’s obligations to facilitate family unity. However, it does provide some areas that detained parents/legal guardians can ask for consideration or accommodations for, like issues of visitation and attendance at child welfare or family court proceedings.

Child welfare agencies are important arbiters of detained parents’ parental rights, and they play a crucial role in facilitating relationships between detained parents and their children. Child welfare agencies are also uniquely positioned to monitor ICE’s compliance with their obligations towards detained parents, legal guardians, and their minor children. This guide provides child welfare workers with some practical tools to guide their interactions with detained parents, legal guardians, and their children. It contains a checklist of questions that that lawyers, legal advocates, child welfare workers, and detained parents and guardians themselves can ask of ICE regarding their compliance with the 2025 Directive.

This guide is not comprehensive, in that it does not cover the full range of protections a parent or child may be eligible for. Unless otherwise stated, the obligations listed here are also not binding on ICE, and (except with respect to some provisions) ICE may not be required to comply. Rather, this guide is intended to provide child welfare workers with a list of the nonbinding obligations that are stated in the policy, and around which they can request compliance. It also allows child welfare providers to help track ICE’s compliance (or noncompliance) with its parental interest policies.

Your input and experience are vital to documenting ICE’s compliance. Information about ICE’s compliance with the policy is critical to helping child welfare workers better serve the families they encounter. It can also be used to advocate for family unity. As you use this checklist, please consider documenting your responses with the Women’s Refugee Commission, who will use them to advocate for better treatment and care.

Please find the checklist on the following page.

Checklist for Child Welfare Workers Who Encounter Detained Parents and/or their Minor Child(ren)

*****Please note, unless specified, these obligations are not binding.***

Questions Governing ICE's Obligations When a Parent is Detained

ICE's obligation to ask about a parent or legal guardian's status: ICE is **required** to affirmatively inquire about a parent/legal guardian's status at the point of encounter (Section 5.1 of the 2025 Directive).

Question 1: Did ICE affirmatively inquire about parental or legal guardian status of you/your client upon apprehension of the now detained parent/legal guardian? Yes: _____ No: _____

Parents' ability to stay in the area they were apprehended in so that they can attend pre-scheduled hearings: If the detained parent/legal guardian had a family court/child welfare guardianship proceeding scheduled close to the date of the apprehension and in the same location as the apprehension, they should be allowed to stay in the area/in a local facility to ensure participation in that proceeding (Section 5.3 of the 2025 Directive).

Question 2: If the detained parent/legal guardian had a prescheduled child welfare or guardianship proceeding, were they transferred to a new facility in a different part of the country before they could participate in the hearing? Yes: _____ No: _____

- a. If yes, how many days after the time of apprehension was the hearing? _____
- b. If yes, how many days after apprehension were they transferred? _____
- c. If yes, where were they transferred? _____

Parents' ability to participate in video, in-person, or teleconference custody hearings: When practicable, the detained parent or legal guardian must be allowed to participate in an in-person, video, or teleconference of any family court, child welfare, or guardianship proceeding when their appearance is required for them to maintain or regain custody/guardianship (Section 5.4 of the 2025 Directive).

In order to effectuate participation, the parent or guardian must take several steps:

- a. Submit a timely notification to ICE about the need to participate in the hearing in order to maintain or regain custody/guardianship of their minor child(ren).
- b. The detained parent/guardian, their attorney/other representative, **or the child welfare agency or court** must produce timely evidence of a family court, child welfare, or guardianship proceeding. This evidence may include, but is not limited to, a notice of hearing, scheduling letter, court order, or other such documentation.

Question 3: Does the detained parent or legal guardian have a family court, child welfare, or guardianship proceeding that they need to attend in order to maintain or regain custody or guardianship?
Yes: _____ No: _____

- a. If yes, have they notified ICE about the need to participate in the hearing? Yes: _____ No: _____
- b. If yes, have they, their attorney, the court, or your agency submitted timely evidence to ICE about the proceeding? Yes: _____ No: _____

Checklist continues on next page.

Question 4: If a detained parent or legal guardian had such a hearing, were they able to participate?

Yes: _____ No: _____

a. If no, were the required procedures established above followed? Yes: _____ No: _____

Questions Governing ICE's Obligations to Facilitate Visitation Between Detained Parents/Legal Guardians and Minor Child(ren)

Establishing visitation: Detained parents have a right to contact visitation with their children. If the detained parent or legal guardian is detained at a facility that does not have an established procedure for contact visits by minors, ICE must arrange for a contact visit of a minor child within 30 days of detention, pursuant to a written request for such visitation. If the facility has visitation instructions, they constitute the official policy or procedure governing visitation at that facility (Section 5.5).

Question 5: If the detention facility does not have established visitation procedures, did the detained parent or guardian request a contact visit immediately? Yes: _____ No: _____

Question 6: If the detained parent did request a contact visit immediately upon being detained:

a. Did the detained parent or legal guardian receive visitation? Yes: _____ No: _____

b. If yes, how many days was it from the request to the grant of visitation? _____

c. If yes, how many days was it from the grant of visitation to the date of visitation? _____

Transferring parents to facilities that facilitate visitation: If a parent has not been able to establish a contact visit after 30 days, ICE personnel must consider a written request for transfer, when operationally feasible, to a facility that would allow such visitation. Attorneys and other representatives, **including child welfare providers**, can submit written requests on behalf of detained parents. If the transfer is not approved, the Detained Parent Field POC must (upon written request) continue to coordinate monthly visits until an approved transfer can be completed.

Question 7: If visitation at the initial facility was not effected within 30 days, pursuant to proper procedures, did the detained parent/legal guardian, their attorney, or a child welfare provider/other representative submit a written request for transfer to a facility that would permit visitation? Yes: _____ No: _____

Question 8: If visitation at the initial facility was not effected within 30 days, pursuant to proper procedures, did the detained parent or legal guardian successfully receive a transfer to a facility that does facilitate visitation? Yes: _____ No: _____

Ensuring visitation if that visitation is required by a family court or child welfare agency: In some cases, parent-child (or legal guardian-child) visitation may be required by a family court of child welfare authority for a detained parent/legal guardian to maintain or regain custody of their minor child(ren). ICE must accommodate the required visitation, if written documentation (e.g., a service plan, scheduling letter, or court order) of such a requirement is provided to them.

Question 9: If the detained parent or legal guardian is subject to such a requirement, have you or your representative given ICE documentation indicating this? Yes: _____ No: _____

a. If provided, did ICE accommodate the required visitation? Yes: _____ No: _____

Checklist continues on next page.

Questions Governing ICE's Obligations to Facilitate Reunification in the Event of Removal

ICE's obligation to facilitate parents' ability to reunify or make alternative care arrangements for their minor child(ren): When a detained parent or legal guardian is subject to a final order of removal, and ICE is effectuating their removal, ICE is obligated (to the greatest extent operationally feasible) to facilitate the detained parent's or legal guardian's efforts to make arrangements for their minor child(ren). These arrangements can include facilitating their ability to secure temporary guardianship for minor child(ren) who remain in the United States, and ensuring that any necessary travel documents have been obtained for minor child(ren) who will accompany the parent upon removal.

Question 10: If the detained parent was ordered removed, did ICE help facilitate their efforts to make custody or travel arrangements for their children? Yes: _____ No: _____

Facilitating a parent's reasonable opportunity to consult with a legal representative regarding children who will accompany the parent upon removal: ICE should, to the greatest extent practicable, afford detained parents/legal guardians a reasonable opportunity to consult with their legal representative. They should also afford, to the greatest extent practicable, a means to communicate with consulates and consular officials, notaries, courts, guardians ad litem, and/or family members, to execute travel documents, purchase airline tickets, and make other necessary preparations.

Question 11: If the detained parent was ordered removed, did ICE help facilitate their opportunity to speak with legal counsel, or other necessary parties, to work up repatriation documents and preparation? Yes: _____ No: _____

Requirements for the removal of a detained parent/legal guardian without their minor child(ren): Detained parents or legal guardians who decide to leave their minor child(ren) in the United States must provide a written statement to ICE indicating the decision. If the parent or legal guardian declines to provide a written statement, ICE personnel should obtain a sworn statement.

Question 12: If a detained parent or legal guardian was removed and the minor child(ren) was not removed with them, are you aware of whether ICE obtained a written statement from the parent/legal guardian, or if a sworn statement was given to ICE staff? Yes: _____ No: _____

For more information, contact Zain Lakhani, director, Migrant Rights and Justice, Women's Refugee Commission, at ZainL@wrcommission.org.

Women's Refugee Commission

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