



## **ICE's Parental Interests Directive: Helping Families Caught Between the Immigration and Child Welfare Systems**

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I met Marta (not her real name) in a migrant shelter in Nogales, Mexico. She had been deported from the U.S. only days before, leaving behind her four children – three of them U.S. citizens – who were split between foster homes and facing permanent separation from their mother. Two years earlier, Marta had been apprehended in her home, while her children were present. She remembers her daughters crying, as she was taken away, “mommy, no; mommy no.” But Marta was not given an opportunity to arrange for a relative or friend to care for her children. Instead, they were placed into the child welfare system and she was taken first to a local jail and later to an Immigration and Customs Enforcement detention facility.

During the two years she was in immigration custody, Marta struggled to participate in the child welfare proceedings that would determine her ability to reunite with her children. She was not able to arrange for them to visit her, and she was only able to arrange for phone calls with them a handful of times. Marta struggled to navigate the complex child welfare system while in ICE detention, unable to meet in person with her own attorney, the child welfare case worker, or anyone involved in her custody case. Ultimately, Marta was deported without her children, while her child welfare case was still pending. Once in Mexico, she continued to struggle to meaningfully participate in the child welfare case, and eventually, her parental rights were terminated for all four of her children.

Last Friday, U.S. Immigration and Customs Enforcement released a long awaited directive on [“Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities.”](#) The Women’s Refugee Commission, immigrant rights, and child welfare groups across the country reacted with [cautious optimism](#) that the directive will provide some measure of comfort to the thousands of mothers like Marta, who could face permanent separation from their children because their family is caught between the immigration and children welfare systems.

At present, there are more than 5,000 children in the U.S. child welfare system because a parent has been detained or deported. As we wrote about in our 2010 report, [“Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention.”](#) the vast majority of these children have loving, committed, and capable parents who want nothing more than to be reunited with their children.

Yet gaps in the immigration and child welfare systems can result in children languishing in foster care – at great cost to taxpayers - because logistical impediments make it nearly impossible for parents to participate in the child welfare process from immigration detention and after they have been deported.

At its heart, ICE's Parental Interests Directive is about family values. It reflects the widely shared belief among all Americans that family is at the center of our lives, and that children need and deserve a relationship with their parents, regardless of where their parents came from or what language they speak.

This Directive's sole purpose is to ensure that detained and removed parents can maintain a relationship with their children and make decisions in their best interest. It will do nothing to address the root causes of family separations – our broken immigration system and laws that require the mandatory detention and deportation of hundreds of thousands of noncitizens. Even under this directive, families will continue to be torn apart, parents detained, and too many children forced to grow up without the regular presence of a loving parent.

Many people are surprised to hear that children can be placed into the child welfare system simply because a parent is in immigration detention or has been deported. This disbelief has been reflected in misunderstandings about the Directive's scope over the past few days. To be perfectly clear, the Directive's parameters are quite narrow, with significant carve outs for security, logistical and other impediments to implementation. Specifically:

**The Directive is intended only to keep children from entering the foster care system because a parent is detained or deported, and to ensure that detained and deported parents can participate in child welfare proceedings affecting their parental rights.** Thousands of children are in the child welfare system today because a parent is detained or deported. The [Applied Research Center](#) estimates that thousands more will enter foster care in the next few years given the current rate of immigration enforcement. The vast majority of these children – over 80% - are U.S. citizens. The Directive's objective is to keep these children out of the child welfare system whenever possible, and to ensure that detained parents whose children are placed into the child welfare system can participate in the proceedings that determine whether they will get their children back. This Directive does NOT apply to cases in which it is the children who are in immigration detention – only to cases where children are in the U.S. child welfare system and their parent is detained or has been deported.

**The Directive does not expand ICE's prosecutorial discretion.** The Directive simply reminds ICE personnel of the existing obligation to weigh whether discretion might be warranted given a host of relevant factors, including whether an individual is a parent or guardian of a US citizen or permanent resident child, or the primary caretaker of a child. Mandatory detention laws still trump humanitarian considerations, meaning that if a parent, guardian, or primary caretaker is subject to mandatory detention, or poses a risk to safety and security, he or she must be detained.

**The Directive does not limit, narrow or in any way change ICE's ability to enforce immigration laws.** The Directive simply requires that ICE:

- Whenever possible, hold parents in detention facilities that are reasonably close to where their children are living and, when necessary, to the location of family court or child welfare proceedings
- Facilitate detained parent's ability to participate in state court proceedings that will affect their parental rights, if a parent provides evidence of a hearing, and facilitation of their participation does not pose an undue logistical burden to ICE or raise safety or security concerns
- Facilitate visits between detained parents and their children when a parent can demonstrate that such visits are required by the child welfare system as a precondition for family reunification
- Accommodate, to the extent practicable, the efforts of parents with final orders of removal to make arrangements for their children, including to obtain travel documents so that their children may join them in the parent's home country or to arrange for a guardian so their children may remain in the U.S. Provide detained parents or their representatives with sufficient notice of deportation, when such notice does not raise a security concern, so that coordinated travel arrangements may be made for the parent's children, if desired
- Coordinate, to the extent practicable, detained parents' need to access attorneys, consulates, courts, and family members in the weeks prior to deportation, if the parent wishes to execute a guardianship agreement for their child, complete a passport application for their child, or purchase airline tickets or make other travel arrangements so that children can join them in their home country
- Consider, on a case-by-case basis, facilitating the temporary return of a parent to participate in a hearing related to termination of their parental rights. In such cases, the family court must determine that the parent's physical presence is required and the parent must assume all costs. In addition, parents must immediately depart the country at the conclusion of the termination hearings, and may not apply for any immigration benefits or forms of relief while here.

**The principles in the Directive have broad, bipartisan support.** The core tenants of the Directive are enshrined in a piece of legislation called the [“Humane Enforcement and Legal Protections for Separated Children Act”](#). This legislation has enjoyed bipartisan support in the Senate. Members on both sides of the aisle support the legislation because they understand that allowing detained parents to maintain a relationship with their children and reunify with them at the conclusion of their immigration case is both smart enforcement policy and smart economic policy. What's more, it's central to our national character.

ICE's Parental Interests Directive is not a fix to our broken immigration system. It will not reduce the massive immigration enforcement system that is tearing families apart and it will not repair the damage that has been done to hundreds of thousands of U.S. citizen children who have had a parent deported. But what it is, quite simply, is commonsense, humane, smart, and noncontroversial best practice that reflects our national values and recognizes the paramount importance of the family in the life of a child.