FIRST FOCUS
MAKING CHILDREN & FAMILIES THE PRIORITY

PARENTAL INTEREST DIRECTIVE

September 2013

On August 23, 2013, U.S. Immigration and Customs Enforcement (ICE) issued a directive on Facilitating Parental Interests in the Course of Immigration Enforcement Activities, or the Parental Interest Directive. The Directive is a response to the growing number of U.S. citizen children with immigrant parents or guardians who have been detained or deported, and is intended to ensure that parents and guardians undergoing immigration proceedings can maintain a relationship with their children and make decisions in their best interest.

WHY DO WE NEED THIS DIRECTIVE?

Currently 5.5 million children in the U.S., the vast majority of who are U.S. citizens, live in mixed legal status families with one or more undocumented parent.[1] Between July 1, 2010 and September 31, 2012, the Department of Homeland Security (DHS) issued a total of 204,810 removal orders for parents of U.S. citizen children, accounting for approximately 23 percent of all removals during that time period.[2] Children may be left in precarious situations when a parent is unable to make childcare arrangements upon entering detention or at the time of removal. Furthermore, research consistently shows that separation from a parent due to immigration enforcement measures can have a detrimental effect on a child's mental and physical health, economic security, and academic performance.[3] These children are also at increased risk of entering the child welfare system, at great cost to states, and face the threat of being permanently separated from their family. Since it is so difficult for parents to participate in the family court proceedings or complete court orders that child welfare involvement necessitates, parental rights may be terminated and some children may even be put up for adoption. In 2011, the Applied Research Center estimated that at least 5,100 children with a detained or deported parent were living in foster care, and that 15,000 more children may be at risk of entering the child welfare system over the next five years if policies are not implemented to reverse this trend.[4]

WHAT DOES THE PARENTAL INTEREST DIRECTIVE DO?

The Directive is intended to promote family unity by ensuring that parents and legal guardians of U.S. citizen or Lawful Permanent Resident (LPR) children who are placed in immigration detention and/or removal proceedings are able to make decisions regarding their child's care, maintain contact with their children, and participate in family court proceedings impacting upon their parental rights. The Directive requires particular attention to cases of parents or legal guardians who are primary caretakers, parents or legal guardians who are involved in family court or child welfare proceedings, and parents or legal guardians whose minor children are physically present in the United States and are U.S. citizens or LPRs.

The Directive reaffirms ICE's current obligation to determine whether prosecutorial discretion is applicable in a given case, including whether an individual is a parent or guardian of a U.S. citizen or permanent resident child, or the primary caretaker of a child, but it does not expand ICE's prosecutorial discretion policy. Mandatory detention laws still apply, meaning that if a parent, guardian, or primary caretaker is subject to mandatory detention he or she must be detained.

Specifically, the Directive requires that ICE:

- Establish a national Parental Rights Coordinator and designate a Field Point of Contact (POC) in each field office to serve as the POC on all issues related to parental rights in that given area;
- 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 whenever possible;
- Facilitate detained parent's ability to participate in family court and child welfare proceedings that 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, including the option of participation in court proceedings via video or teleconferencing when in-person participation is not possible;
- Facilitate visits between detained parents and their children when a parent can demonstrate that such visits are required by the court;

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- Accommodate, to the extent practicable, the efforts of parents with final orders of removal to make arrangements for their children, such as obtaining 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 guardians, 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' access to attorneys, consulates, courts, and family members in the weeks prior to deportation, if the parent wishes to establish 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 through humanitarian parole to participate in a hearing related to termination of their parental rights. In such cases, the parents must demonstrate that physical presence is required by the family court and the parent must assume all costs. In addition, parents must immediately depart the country at the conclusion of the hearings, and may not apply for any immigration benefits or forms of relief while in the U.S.;
- Coordinate between relevant DHS entities and the Department of Health and Human Services to develop methods for improving communication and cooperation between the immigration enforcement, family or dependency courts, and child welfare systems; and
- Develop training materials to assist Field Operation Directors (FODs), Field POCs, and other relevant ICE personnel on the implementation of the Directive.

THE PARENTAL INTEREST DIRECTIVE PROTECTS CHILDREN AND FAMILIES

ICE's Parental Interest Directive is an important policy which has the potential to significantly minimize the harm to children impacted by immigration enforcement actions. While it is not a permanent fix to an immigration system that is in urgent need of reform and does not put a stop to immigration enforcement policies that tear families apart, it does establish protections to prevent a child's unnecessary involvement in the child welfare system and increases the likelihood that children can be reunited with their parents. It is both responsible enforcement practice and smart economic policy that embodies our American values of keeping families together and protecting the best interests of our nation's children.

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[1] Passel, J. & Cohn, D. *Unauthorized Immigrant Population: National and State Trends, 2010.* (Washington, DC: Pew Hispanic Center, February 2011).

[2] ColorLines, *Deportations of Parents of U.S.-Born Citizens*, http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html (December 17, 2012).

[3] Satinksy, S., Hu, A., Heller, J., Farhang, L. *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families.* (Oakland, CA: Human Impact Partners, June 2013).

[4] Wessler, S. *Shattered Families: The Perilous Intersection between Immigration Enforcement and the Child Welfare System* (New York, NY: Applied Research Center, November 2011).