

MEANINGFUL TIES

A TOOLKIT FOR TRANSNATIONAL FAMILIES FOR JUDGES,
ATTORNEYS, AND CHILD WELFARE PERSONNEL



SOUTHERN ARIZONA TRANSNATIONAL
TASK FORCE

Revised 2025

The detained parent can initiate a request for parenting time by submitting the minor's name, the accompanying adult's name, and DOB and Social Security number for each. ICE will permit a minor child to visit their parent even without the minor possessing a Social Security number. (*Caveat outside of Arizona: a child will most likely be required to possess a social security number.) A visitation form i.e., a request for parenting time, may also be submitted by DCS on behalf of the minor child. See the ICE Parental Interests Directive at the end of the Toolkit for more specifics about visitation protocols.

Once a visitor's name and background are vetted and approved, they are added to a list of approved visitors maintained by the ICE facility.

Contact the Detention Facility for hours of visitation and protocols to arrange for visitation.

A minimum of 48 hours advanced notice may be required to allow proper notification to the facilities and for arrangements to be made. Special visits outside of normal visiting hours should be the exception, not the rule. Use of designated visitation hours should be the first option.

IV. ARRANGING PHONE CALLS BETWEEN A PARENT AND A MINOR

Similar to visitation arrangements, as outlined in Section III above, phone calls between a child in DCS out of home care and the parent/s are pre-scheduled and arranged by either the Court or the DCS Specialist, in accordance with the child's best interests.

Phone calls free of charge are permitted by prearrangement as outlined below, to immigration attorneys, dependency attorneys, and DCS Specialists for appropriate business related to the child welfare case. If the detainee is told otherwise, or the problem recurs after being corrected, contact Parental.Interests@ice.dhs.gov – Parental Interests Inquiries or Detention.LegalAccess@ice.dhs.gov – Legal Access General Inquiries

Once the arrangements have been made for the phone call, the assigned DCS Specialist will work with ICE to arrange for the telephonic appearance of the detained immigrant parent using the following procedures:

- DCS to fax or scan/email an official document or a court order, (on letterhead but not required) to the detained parent's Deportation Officer (DO);
- When the document/order is approved by the Deportation Officer (DO), facility personnel will assist the detained immigrant parent by allowing access to a telephone in a private area at the time of a scheduled meeting or hearing;

- A minimum of 48 hours advanced notice should be given to allow proper notification to ICE–Eloy and for arrangements to be made.

Detainees are permitted to use facility telephones. Check with the detention facility to confirm hours when a parent can use the facility phones for visits and/or legal calls. If a detained parent is having difficulty with the connection or any other complications, the parent can ask for assistance from the CoreCivic officers within the pod, the ICE compliance officers, or their Deportation Officers. The parent can make calls to anyone they wish using the purchased phone cards issued to them by CoreCivic.

CoreCivic has noted that if the parent chooses not to make or receive a phone call, detention personnel cannot compel the parent to comply with a request or an order for an outside phone call.

Attorneys for the detained parent should be aware of the nature of the process whereby their clients make and receive phone calls within the detention facility. Please note that, since telephone calls require the purchase of a phone card, many parents do not have sufficient funds to make phone calls from detention outside of the permitted personnel listed above as able to receive phone calls free of charge.

V. MAIL TO DETAINED PARENTS

Mail being sent from a detained parent’s child must go through the normal facility mail service. This type of mail will be handled the same as any other mail being received from a detained immigrant parent’s family or friends. It will be inspected for contraband before being delivered to the detained parent.

Mail to a detained parent, from either their DCS Specialist or the Juvenile Court system should be marked as “legal mail”. Legal mail will also be opened and inspected, but it will be done in the presence of the detained immigrant parent, and then given to them. This type of mail **MUST** be in official agency envelopes **AND** clearly marked “legal mail” to be treated as such.

Due to the nature of the facility, delivery confirmation is not practical or possible. Delivery confirmation can be requested through the U.S. Postal Service, for a fee, but be aware that the USPS delivery confirmation will only confirm delivery to the facility mail room, not actual physical delivery of the mail to the detained immigrant parent.

Attorneys wishing to send materials by mail such as a minute entry to detained clients may do so. Translation of the documents can be accomplished by the attorneys requesting this service.

VI. HOW FAMILY MEMBERS CAN HELP

Family members or other individuals involved with an ICE detainee who has a minor child involved with DCS can share information regarding the whereabouts of the detainee, by contacting the DCS Hotline, (888) 767-2445, with this information, with no consequence to themselves regarding immigration status. Providing the Alien Registration number (“A” number, “numero de pulsera”), the date of birth, and/or the full name of the detainee as well as information regarding the child is crucial information and will greatly assist DCS in engaging the parent in the dependency process as early as possible. The Hotline operator may not be able to immediately assist the caller; however, if there is an open DCS report, the Hotline operator can contact the minor’s DCS case manager and relay the crucial information. Email hotline submission is available for mandated reporters, but a mandate reporter must be registered through the website first.

This link to the Fact Sheet for Child Welfare and Guardianship Stakeholders: ICE Policies and Standards Related to Detained Parents and Legal Guardians may provide families additional information: [Fact Sheet for Child Welfare Stakeholders - Oct 2022 \(ice.gov\)](#)

GUIDELINE ON REQUIRED DOCUMENTATION FOR US-BORN CHILD REUNIFYING WITH A PARENT/S IN MEXICO

The government of Mexico requires that US-born a child coming to reside in Mexico with their parents possess certain documents to facilitate receiving basic benefits and services such as schooling and medical care. The list below identifies the official documents required by the Mexican government for a child to be able to live permanently in Mexico. Having these documents in hand prior to entry will assure a smoother reintegration, as the documents can be difficult and very time-consuming to obtain once inside the country. Transition periods can be a challenging time for families. Parents, judges, attorneys, caseworkers, and persons helping reunify families in Mexico are therefore advised to plan ahead. When it is known that a child who is a non- Mexican citizen is going to live in Mexico, it is best to obtain the documents immediately.

MUST HAVE DOCUMENTATION

- 1) US birth certificate.
 - a. Include 3 copies
 - b. Affix an apostille*
- 2) Vaccination records for the child.
- 3) School records which must include transcripts translated by the Mexican Consulate and any diploma(s).
- 4) Social Security Card.
- 5) Medical Records.

Why?

The birth certificate helps the child and his/her family to attain Mexican nationality (see Mexican Nationality annex). It is necessary to be able to affix an Apostille to the birth certificate (see Apostille annex) as this will help prevent hindrances and delays in the child's transition to Mexico. The school records must be translated by the Consulate to conform to Mexico's educational standards so the child will be placed in the correct grade level with the correct academic achievement records according to educational standards. A social security card is necessary because once in Mexico it can be difficult to obtain and if the child returns to the US it will be necessary.

- 6) The juvenile court order must designate custody with a parent or parents residing in Mexico. The order must include language that the Mexican Consulate has permission to transport the child to the Arizona border because it is the Mexican Consulate that transports the child to the border, not DCS. DCS must affix an Apostille to the juvenile court's order.

Why?

Rulings and determination by US judges are not automatically recognized in Mexico, there must be a domestication hearing before Mexican Tribunals.

Rulings dictated in the United States legal practice (Common law system) must be validated upon entering the Mexican legal framework (Civil law system).

- 7) US Passport

Why?

A child with US nationality may want or need to return to the US at some future time. The US passport confirms identity and nationality. It is best to obtain the US passport while the child is still domiciled in the US.

IMPORTANT INFORMATION

- A. Requesting a U passport may take at least 3 months.
- B. DCS is required to apply for and pay for the passport as the child is in their legal custody.
- C. Presenting a passport is mandatory for international air travel.
- D. The passport is also the document required for International Boundary Crossing, such as the boundary between Mexico and the United States. US citizens are required to have either a valid passport or a valid crossing card to be able to re- enter the US at the Mexico border.

MEXICAN NATIONALITY

Mexico allows Mexican-born citizens to acquire a different nationality without giving up the Mexican one. Likewise, Mexico allows a US-born child to obtain Mexican nationality if at least one parent is a Mexican citizen. This is called "dual nationality."

1. There will be no loss of Mexican citizenship upon receiving citizenship in another country.
2. Mexican citizenship is conferred upon first generation children born abroad. Only Mexicans born in Mexico or naturalized Mexicans may pass citizenship on to their children born abroad.
3. It is best for a child of Mexican nationality to enter Mexico on their Mexican passport. Entering on a US passport will give them a tourist visa, and if they remain in Mexico, they could incur large fines for overstaying this visa. To avoid fines, the child would have to present to the Mexican immigration office upon registering their Mexican nationality to modify their entry, but this is a complicated process.

Since March 20, 1998, Mexican nationals who choose to hold citizenship in a second country will be able to maintain their rights in Mexico and will not be treated as foreigners upon return to Mexico. They are treated as citizens wherever they reside and may own property in areas restricted to foreigners. Overall, they will enjoy the same rights on their national territory as other Mexicans.

WHAT IS AN APOSTILLE?

Foreign documents from one country to another are not automatically seen as valid upon entering the second country. To be made valid in another country, the said document must be authenticated or “apostilled”.

An "apostille" is a form of certification affixed to documents for use in countries that participate in the Hague Convention of 1961. Both Mexico and the US have signed and ratified the Convention.

Apostilles may be obtained and affixed at the State of Arizona offices, address below:

Filing by Mail:	Personal Filing - Tucson Office
Secretary of State Attn: Apostille Dept. 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007-2808	Arizona State Complex Building 400 West Congress First Floor, Suite 141 Tucson, AZ 85701

IMPORTANT TIPS:

- A. If unsure how to proceed, ask an immigration attorney or the Consulate for guidance.
- B. If child is not a US citizen, consult with an immigration attorney or the Consulate.
- C. Start obtaining documents once the possibility for transition is a realistic possibility.

For more information and assistance on any of the above requirements, contact:

<p>Consulate of Mexico in Tucson (Pima and Pinal Counties) 3915 E. Broadway Blvd. Tucson, AZ, 85711 USA (520) 882-5595 contucmx@sre.gob.mx civiltuc@sre.gob.mx</p>	<p>Consulate General of Mexico in Nogales (Santa Cruz County) 135 W. Cardwell St., Nogales, AZ, 85621 USA (520) 287-2521, ext. 415 connogales@sre.gob.mx</p>
<p>Consulate General of Mexico in Phoenix (Maricopa and all northern counties) 320 E. McDowell Rd. #105 Phoenix, AZ, 85004 USA (602) 242-7398/ 242-3649 conphoenix@sre.gob.mx</p>	<p>Consulate of Mexico in Douglas (Cochise, Graham, and Greenlee Counties) 1324 G Ave. Douglas, AZ, 85607 USA (520) 364 -3107 / 3142 douglas@sre.gob.mx</p>
<p>Consulate of Mexico in Yuma (Yuma County) 298 S. Main St. Yuma, AZ, 85364 (928) 343-0066 conyuma@sre.gob.mx</p>	<p>Centro de información y Asistencia a Mexicanos (CIAM) Call: 24 / 7 Call: 001-520-623-7874 (from outside the US or inside the US) callcenteraz@sre.gob.mx</p>

FAMILY AND COMMUNITY RESOURCES

A. IMMIGRATION LEGAL SERVICES

1. [Fact Sheet for Child Welfare Stakeholders - April 2023 \(ice.gov\)](#)

2. **FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT**

Non-profit agency provides free legal and social services to adults and children detained in ICE facilities. The social services department is staffed by MSWs and

LMSWs. Childrens' services division serves minors in ICEcontracted detention facilities, as well as Special Immigrant Juvenile Status (SIJ) petitions, and young adults 18 and over placed with family contacts or in adult detention facilities. Partnered with Kino Border Initiative (KBI) in Nogales, Sonora.

Address: Florence Project Administrative Headquarters, P.O. Box 86299,
Tucson, Arizona 85754-6299
Phone:(520) 777-5600 (Tucson)
(602) 307-1008 (Phoenix)
Languages spoken: English, Spanish
Other languages: Interpretation available

Family Reunification Support: Yes, focused on detained immigrant parents, detained immigrant children, including children in child welfare custody. Fees: Services are free

E-mail: firrp@firrp.org

Website: <https://firrp.org>

3. **ARIZONA LEGAL WOMEN AND YOUTH SERVICES (ALWAYS)**

ALWAYS is a non-profit agency serving Arizonans under 25 years old who have been impacted by crime, homelessness, or foster care, as well as sex and labor trafficking survivors of all ages. They offer immigration consultations and representation for those who qualify for their services.

24 W. Camelback Rd.
Box A335
Phoenix, AZ 85013
Phone: (602) 248-7055
Fax: (602) 926-8222
Email: info@alwaysaz.org
Website: www.alwaysaz.org

4. **KINO BORDER INITIATIVE (KBI) Nogales, Mexico, and Nogales Arizona**

Kino Border Initiative (KBI) is a transnational border service ministry providing emergency shelter, hot meals, first aid, legal guidance and social service support to migrants awaiting entry or having been deported from the United States.

Address: (US) P.O. Box 159, Nogales, AZ 85628-0159

Address: (Mexico): Boulevard Luis Donaldo Colosio #384, Interior A
Colonia FOVISSSTE II, Nogales, Sonora, C.P. 84020

Phone (US) 520-287-2370, (Mexico) 011-52(631) 316-2086

Languages spoken: English, Spanish

Other languages: Interpretation available
Family Reunification Support: Yes
Fees: Services are free
Website: www.kinoborderinitiative.org

5. RAICES TEXAS

Non-profit pro-bono legal services organization for immigrants in Texas, with offices in San Antonio (main office), Austin, Dallas, Houston, rural including Laredo. Services include low-cost residency and citizenship services, pro bono representation for families and children in detention, with service offerings for residency and citizenship services, asylum seekers, removal defense, DACA, Special Immigrant Juvenile Status, legal representation for families and children.

Main Address: 1305 N. Flores Street, San Antonio TX 78212 (See website for locations: www.raicestexas.org) Phone (Detained persons): 1-800-409-2893
Phone (Karnes Detention ProBono Project) 1-855-672-4237 OR 832-699-6942
Languages spoken: English, Spanish
Other languages: Interpretation available Family
Reunification Support: Yes
Fees: Some services free, others pro-bono
Website: www.raicestexas.org

6. ARIZONA JUSTICE FOR OUR NEIGHBORS

Arizona Justice for Our Neighbors provides low-cost immigration legal services to low-income immigrants, focused on family-based immigration and humanitarian-based immigration. Monthly and bimonthly legal clinics offer information on legal questions; referrals are then made to the staff attorney or other resources are offered. Exceptional cases can be accepted based on staff availability.

Address: 1130 East Bilby Road (Iglesia de San Juan Bautista)
Tucson, Arizona 85706
Mailing Address: PO Box 11181, Tucson AZ 85734
Phone: [520-488-3201](tel:520-488-3201)
Languages spoken: English, Spanish
Other languages: Unknown
Family Reunification Support: Unknown
Fees: Services are free
Email: info@AZJFON.org
Website: <https://www.azjfon.org>

7. KEEP TUCSON TOGETHER/MANTENGA TUCSON UNIDA

Keep Tucson Together (KTT) is a free legal services program for immigrants. Services include: DACA applications, citizenship, political asylum applications and representation, cancellation of removal, bond support when available for people in ICE custody, family petitions and general information on immigration matters. Free legal clinic Thursdays at Pueblo High School, no appointment needed. Bring all relevant paperwork.

Address: 730 S. Osborne, Tucson, AZ 85701

Phone: 520-623-4084

Languages Spoken: English, Spanish

Fees: Services are free

Website: None

8. Immigration Advocates

Link for Arizona:

<https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=AZ>

Outside Arizona: [Immigration Advocates Network](#)

B. SOCIAL SERVICES

CHICANOS POR LA CAUSA

Chicanos por la Causa, is a service organization with offices in Tucson, Phoenix, Yuma as well as Colorado, Nevada, California, and Texas. Services offered: Family immigration legal services; housing assistance (rent, utilities, mortgage, etc.); economic development including benefits information; education support including scholarships; advocacy; physical and mental health, youth programs, and other services. Services vary by location and are by walk-in or appointment.

Area served: Tucson, Phoenix, Mesa, Yuma, Somerton, San Luis Rio

Colorado, Nogales, Eloy, Willcox

Address: 1525 N Oracle Rd, Tucson, AZ 85705

Phone: [\(520\) 882-0018](tel:5208820018)

Languages spoken: Spanish, English

Fees: Services are free

Family Reunification Support: May make referrals.

Website: <https://cplc.org>

C. HOUSING

CATHOLIC COMMUNITY SERVICES PIO DECIMO CENTER

Pio Decimo Center is a non—denominational program offering housing assistance to homeless families in the Tucson area. The Center is an HUDapproved housing counselling program. Services include foreclosure prevention, predatory lending prevention, home-buying education, down payment assistance, and services to help people prevent homelessness. Other social services –youth programs, childcare, clothing and food bank, financial management – also available.

Area served: Greater Tucson

Address: 848 S Seventh Avenue, Tucson, AZ 85701

Phone: 520-622-2801

Languages spoken: English, Spanish

Fees: Services are free

Website: <https://www.ccs-soaz.org/agencies-ministries/detail/pio-decimo-center>

D. HEALTH

1. EL RIO COMMUNITY HEALTH CENTER

El Rio Community Health Centers serve all people in the Tucson region, regardless of status or insurance. Services provided: Medical services; dental services; physical therapy; behavioral health; pharmacy services; financial wellness; services for LGBTQ; pediatrics; midwifery. Mobile units travel to underserved areas. Multiple locations across Tucson, not all services offered at all locations. Call for information and appointment, no walk-ins.

Area served: Greater Tucson

Main location: 839 W. Congress St., Tucson, Arizona 85745

Phone: 520-670-3909

Hours: Monday through Friday 7 a.m. – 8 p.m. Saturday 8 a.m. – 4 p.m.

Same day appointments: Open until 8 p.m. Languages spoken: English, Spanish

Other languages: Interpretation available

Fees: Most insurances accepted. Financial and benefits counselling available.

Sliding scale fees based on most recent 30 days' income for non-insured. Website:

<https://www.elrio.org>

2. DIAPER BANK OF SOUTHERN ARIZONA

The Diaper Bank of Southern Arizona provides free baby diapers, diapers for adults with incontinence, and menstrual period products to eligible persons through a variety of agencies and public events in southern Arizona. Research has shown that about 25% of people are unable to access these critical supplies in times of need.

Area served: Southern Arizona through agency partnerships.

Address: 1050 S. Plumer Avenue, Tucson, AZ 85719

Phone: 520- 325-1400

Diaper Pickup Times: M, W, F from 9 a.m. – 3 p.m.

How to Apply: Applicant needs a form of parent ID, child's birth certificate or another form with child's DOB and parent/guardian (incl. ARS Title 14), and any document showing financial need (bills, Medicaid, SNAP) Website:

<https://www.diaperbank.org>

E. FOOD AND CLOTHING

1. COMMUNITY FOOD BANK OF SOUTHERN ARIZONA

Community Food Bank of Southern Arizona has locations across the southern AZ region: Tucson, Marana, Amado, Nogales, Willcox, and Green Valley. All locations offer free food pantries, some offer community garden space, nutrition classes, assistance with DES and SNAP applications for food stamps. Garden markets at some locations. Curbside pickup available.

Area Served: Pima and Santa Cruz Counties

Tucson location: 3003 S Country Club Rd, Tucson, AZ 85713

Phone: 520-622-0525

Languages spoken: English. Spanish at some locations.

Fees: Free food boxes and low-cost food and household supplies; call for information.

Website: <https://www.communityfoodbank.org> (English/Spanish)

2. IMPACT OF SOUTHERN ARIZONA

IMPACT is a free food distribution and clothing distribution center for immigrants, rural homeless, low-income persons, with referrals available for a wide range of other services. Run a large thrift shop in Catalina, Arizona. To access services, an in-person interview is required (phone number below)

Area served: Residents north of River Rd in Tucson up to the northern edge of Pima County.

Does not include City of Tucson.

Area Served: Far north Tucson and Catalina, north to Pima county line

Address: 3535 E. Hawser St., Catalina, AZ 85739

Phone: 520-825-0009

Languages spoken: English, Spanish is available.

Fees: Food and clothing are free

Website: www.impactsoaz.org

F. LITERACY

1. LITERACY CONNECTS

Literacy Connects is an English language learning program offering a variety of programs for adults and children. Services include: Adult basic literacy; English language acquisition for adults; reading and storytelling programs for adults and children.

Area served: Pima County

Address: 200 E. Yavapai Rd., Tucson, AZ 85705

Hours: M – F, 9:00 a.m. – 5:00 p.m. Phone: 520-882-8006

Languages spoken: English, Spanish

Fees: Services are free

Email: hello@literacyconnects.org

Website: To register for classes: <https://literacyconnects.org>

2. EL PUEBLO LIBERTY ADULT LEARNING CENTER

El Pueblo Liberty Adult Learning Center offers beginning and advanced literacy and language education for persons aged 16 and over. Services include English as a Second Language (ESL), GED acquisition, and citizenship classes. Most classes are taught in English, some citizenship classes are taught in Spanish. Evidence of lawful residence in the United States is required to register for these classes.

Area served: Greater Tucson

Main office: 101 W. Irvington Rd., Tucson, AZ 85706 (inside El Pueblo Neighborhood Center)

Phone: 520-206-3737

Hours: M-Thur., 8:00 a.m. – 8:45 p.m. F, 10:00 a.m. – 5:00 p.m.

Languages spoken: English, Spanish

Fees: Services are free to legal residents

Website: <https://www.pima.edu/about-pima/locations/adult-learningcenters/>

G. ADVOCACY MISSING PERSONS

These services assist families searching for persons who may have become lost or abandoned on their immigrant journey. The services operate in collaboration with the Pima County Coroner's office, and in cooperation with area consulates.

1. COLIBRI CENTER FOR HUMAN RIGHTS

Colibrí's Missing Migrant Project helps families find loved ones who have disappeared while crossing the U.S.-Mexico border. Offices in Arizona, New Mexico, and Texas. Colibrí collects detailed missing persons reports and DNA samples from family members and works in close partnership with medical examiners to identify remains found in the Arizona desert. Once someone is identified, Colibrí compassionately notifies the family. Counselling also available.

Website: <https://colibricenter.org/>

Phone: 520-724-8644

2. HUMANE BORDERS

Humane Borders provides lifesaving supplies of water to remote locations where migrants may be journeying on foot through the desert and mountain areas of southern Arizona. Volunteers are also available to search for missing migrants, and work in collaboration with the Pima County Coroner's office.

Area served: All callers are served.

Address: House of Neighborly Services, Building #4, 243 W. 33rd St.
Tucson, AZ 85713

Phone: (520) 398-5053

Email: info@HumaneBorders.org

Website: <https://info@humaneborders.org>

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
CONSULATE GENERAL OF THE UNITED MEXICAN STATES IN
PHOENIX, THE CONSULATE GENERAL OF THE UNITED MEXICAN
STATES IN NOGALES, THE CONSULATE OF THE UNITED
MEXICAN STATES IN TUCSON, THE CONSULATE OF THE UNITED
MEXICAN STATES IN DOUGLAS AND THE CONSULATE OF THE
UNITED MEXICAN STATES IN YUMA AND THE ARIZONA
DEPARTMENT OF CHILD SAFETY OF THE UNITED STATES OF
AMERICA REGARDING CONSULAR FUNCTIONS IN CUSTODY
PROCEEDINGS INVOLVING MEXICAN MINORS**

The Consulate General of the United Mexican States in Phoenix, the Consulate General of the United Mexican States in Nogales, the Consulate of the United Mexican States in Tucson, the Consulate of the United Mexican States in Douglas and the Consulate of the United Mexican States in Yuma (hereinafter "the Consulates") and the Arizona Department of Child Safety of the United States of America (hereinafter "DCS") jointly referred to as "the Parties";

CONSIDERING their interest in assuring the fulfillment of the rights set forth in the Consular Convention between the United Mexican States and the United States of America, 57 Stat. 800; Treaty Series 985 (hereinafter "Bilateral Convention"), and the Vienna Convention on Consular Relations, 21 U.S.T 77, T.I.A.S. No. 6820 (hereinafter "Vienna Convention");

BEARING IN MIND that both the Bilateral Convention and the Vienna Convention provide for consular notification and access in those cases where foreign nationals are involved in legal proceedings;

CONSCIOUS of the need to join efforts to treat, with special care, the high number of custody cases involving Mexican minors located in U.S. territory, through the development of a bilateral mechanism that facilitates the early identification of said

minors, and assures the exercise of the consular function referred to in the Vienna Convention and the Bilateral Convention; Have agreed as follows:

I. PURPOSE

The purpose of this Memorandum of Understanding ("MOU") is to establish the bases of coordination between the Parties to assure the exercise of the consular function set forth in the Bilateral Convention and the Vienna Convention, during custody proceedings involving Mexican minors.

II. APPLICABLE TREATIES

DCS recognizes that the Government of Mexico has the right to carry out consular functions to protect the interests of its nationals abroad, including those of minors, in the terms set forth in Article 5, paragraphs (a) and (h) of the Vienna Convention.

DCS further recognizes its duty to communicate with the Consulates, without delay when relevant information is available, about any DCS custody proceeding involving Mexican minors, in accordance with Article 37 (b) of the Vienna Convention.

Likewise , DCS recognizes that the Consulates have the right to interview, to communicate with, to visit and to assist Mexican minors involved in DCS custody proceedings, in accordance with Article VI of the Bilateral Convention_v

III. DEFINITIONS

For the purposes of this MOU:

- A. Pursuant to Arizona Revised Statutes (A.R.S.) § 8-201(9), "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.
- B. "DCS custody proceeding" means an action taken by DCS resulting in DCS obtaining legal custody of a Mexican minor pursuant to A.R.S. Title 8, Chapter 4.
- C. "DIF" means the System for Integral Family Development. This is the agency Mexico responsible for child protection.
- D. "Mexican minor" means any unmarried individual who is under the age of eighteen and that:
 - a. Was born in Mexico; or
 - b. Possesses Mexican Nationality.

IV. PROVISIONS

To achieve the purpose of this MOU, the Parties agree to the following:

A. Ascertainment and Demonstration of the Minor's Nationality

DCS shall determine the nationality of the minor at the time of taking custody of the minor, or when available information allows DCS to determine the nationality of the minor in DCS custody.

The DCS specialist responsible for the custody case shall obtain a certified copy of the minor's U.S. birth certificate. When a minor is determined to meet the definition of a "Mexican

Minor," the Consulates shall assist DCS, whenever possible, in obtaining the corresponding certified copy of the minor's Mexican birth certificate or a copy of the document stating that nationality was conferred to the minor by Mexico, in accordance with its national legislation.

B. Notification to the Corresponding Consulate

Pursuant to the Bilateral Convention and the Vienna Convention, DCS has the duty to notify the corresponding Consulate in writing, when:

- (a) DCS assumes the custody of a Mexican minor;
- (b) The parent or custodian of a Mexican minor in DCS custody requests that DCS notify the corresponding consulate; or
- (c) DCS is aware that either parent of a minor in DCS custody resides in Mexico.

DCS shall notify the corresponding Consulate without delay when relevant information is available, if DCS has taken custody of a Mexican minor, or when the Mexican nationality of a minor in DCS custody is established. DCS shall use for this purpose the format attached in exhibit 1.

Likewise, DCS shall provide the parent or custodian of the Mexican minor with information on the consular services and assistance prescribed in the Vienna Convention and the Bilateral Convention, but only when the parent or custodian's contact information is available to DCS. Particularly, DCS shall provide the following:

- A. written information, in Spanish and English, about the custody proceeding before the Juvenile Court; and

B. the address and telephone number of the Mexican Consulate located in whichever district the jurisdiction of the DCS case comes under the following:

- i. The Consulate General of the United Mexican States in Phoenix services Maricopa, Apache, Coconino, Yavapai, Mohave, Gila, and Navajo Counties.
- ii. The Consulate General of the United Mexican States in Nogales services Santa Cruz County.
- iii. The Consulate of the United Mexican States in Tucson services Pima and Pinal Counties.
- iv. The Consulate of the United Mexican States in Douglas services Cochise, Graham and Greenlee Counties.
- v. The Mexican Consulate in Yuma services Yuma and La Paz Counties.

C. Initial Information to be Provided by DCS to the Consulates

For purposes of the notification referred to in paragraph (B), DCS shall provide the corresponding Consulate the following information, when available:

- (a) The full name of the Mexican minor (including both last names);
- (b) The date of birth of the Mexican minor;
- (c) The name of the parents or custodian(s) (including both last names); and
- (d) The name, phone number, and email address of the DCS specialist responsible for the custody case.

D. Confidentiality and Communication

The Parties shall abide by all state and federal laws regarding the confidentiality of DCS information, including the requirements of A.R.S. § 8-807.

The Parties may contact each other at any time, to obtain additional specific information regarding custody proceedings involving Mexican minors.

To achieve the objectives of this MOU, each Party shall designate a coordinator for providing information when it is not available through established channels, to ensure compliance with the provisions agreed upon by the Parties to this MOU. Coordinators may assemble whenever they consider it appropriate, to discuss any aspect of the cases addressed by this MOU.

E. Interview of a Mexican Minor

The consular officers, upon providing identification that verifies the officer's affiliation with the corresponding Consulate, shall have the right to interview the Mexican minor under DCS custody. To such effect, the DCS specialist responsible for the custody case, or the DCS specialist's designee, shall give consent for the interview to take place.

In order to arrange for an interview with a Mexican minor, the Consulates shall contact the DCS specialist in charge of the custody case.

F. Special Immigrant Juvenile Status

When a Mexican minor is under the custody of the State of Arizona and DCS determines:

1. That the minor is eligible to obtain the Special Immigrant Juvenile Status (SIJS), pursuant to INA, sec, 101 (a)(27)U(ii), 8

U.S.C. sec 1101 (a)(27)(J)(ii);

2. That applying for SIJS is in the minor's best interest; and

3. That DCS is the appropriate entity to assist or identify a volunteer organization to assist the minor with applying for SIJS;

The Consulates shall assist with the application process by obtaining and providing to DCS the necessary documentation from Mexico to complete the SIJS application.

G. Assistance Provided by DIF

Upon DCS notification to the corresponding Consulate regarding the custody of a Mexican minor, the Consulate shall contact DIF in order to procure the appropriate socio-economic home studies of families in Mexico who may be eligible to assume custody of a Mexican minor under custody of DCS. Upon receipt of the studies, the Consulates shall immediately transmit the information to the DCS specialist responsible for the custody case.

When custody of a Mexican minor is granted to a Mexican family, the Consulates shall take the necessary measures to coordinate with DIF, in order to carry out the repatriation of the minor to Mexico, procuring the minor's welfare, and providing the minor with all necessary services.

Once the minor is in Mexico, the Consulates shall coordinate with DIF to ensure that DIF (i) turns the Mexican minor over to the family assuming custody, and (ii) takes the necessary measures to assure the minor's welfare.

H. Witnesses

The Consulates and DCS shall work jointly to locate those people residing in Mexico who are required to appear before a Court in Arizona in connection with a custody proceeding involving a Mexican minor, in order to notify them, in a timely manner, of their required appearances.

I. Follow-up Mechanism

Consular Officers, the DCS coordinator, and any staff the coordinator deems necessary shall meet three (3) times a year in order to review issues arising from the application of this MOU. The Consuls and the DCS Director shall meet once (1) a year, and as necessary and requested, in order to evaluate the progress and development of this MOU.

Both Parties confirm their commitment to participate in joint meetings and to develop other information efforts. Both Parties shall participate in intervention and prevention activities without regard to the nationality of the families and children involved. In addition, the Consulates and DCS shall make every necessary effort to exchange, in a timely manner, ideas and opinions about high profile cases involving Mexican nationals that may come to the attention of the media.

Notwithstanding the provisions set forth in this MOU, the Parties acknowledge that the Consulates may contact, the DCS designated coordinator at any time. In addition, DCS shall endeavor to facilitate conversations DCS legal representation at the Office of the Attorney General upon request of the Consulates.

J. Procedures

DCS agrees to adopt the necessary procedures to comply with this MOU.


K. Final Provisions

This MOU shall come into force on the date it is signed by the Parties and shall remain in force for a period of twelve (12) months, automatically renewable for equal periods, unless either Party gives written notice to the Others of its intention to not renew it, at least sixty (60) days prior to the expiration of the current effective period.

Either Party may terminate this MOU at any time, by providing a ninety (90) days written notice to the others Parties.

Signed in duplicate, in the Spanish and English languages, being both texts equally authentic.

**FOR THE MINISTRY OF FOREIGN
AFFAIRS OF THE
UNITED MEXICAN STATES**



**Sergio Alcocer Martinez de Castro
Undersecretary for North America**

Governor

**FOR THE GOVERNMENT
OF THE STATE OF
ARIZONA OF THE UNITED**



STATES OF AMERICA

Douglas A. Ducey

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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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,

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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.

¹ 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).

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Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults 3 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,

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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.

²

- 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;

² 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.

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Ensuring that information regarding how to contact the Parental Interests Field POCs is posted in all detention facilities within the AOR;

³ 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,

⁴ 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).

³ 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.

⁴ 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).

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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).

⁵ 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.

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.

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

⁵ This includes placing the minor child(ren) in an ICE vehicle while awaiting the arrival of a third party. ⁶ 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.

⁷ 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.

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Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults 8 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.

⁸ The ability of a parent or legal guardian to make such requests must be set out in ICE's National Detainee Handbook.

⁸ 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.VI.2 (2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 5.32.VI.2 (2008); U.S. Immigration and Customs Enforcement, 2000 National Detention Standards, Visitation § III.H.2.d (2000).

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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.

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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.

⁹ 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.

⁹ 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.

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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.

¹⁰

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.

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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.

¹⁰ This Directive does not authorize ICE personnel to adjudicate disputed rights between parents.

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

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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 Afile 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
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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.

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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.

¹² 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.

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Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults 14 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). FOR
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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 NonDedicated 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.

Acting Director

U.S. Immigration and Customs Enforcement

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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

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,¹ 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 courtordered 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.

¹ 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.²
- 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;

² 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,³ 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, ⁴ 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).

³ 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.

⁴ 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). ⁵ 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. ⁶
- 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. ⁷

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

⁵ This includes placing the minor child(ren) in an ICE vehicle while awaiting the arrival of a third party. ⁶ 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.

⁷ 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.

- 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 8 monthly visits if a transfer is not approved, or until an approved transfer can be completed. The ability of a parent or legal guardian to make such requests must be set out in ICE's National Detainee Handbook.

⁸ See generally U.S. Immigration and Customs Enforcement, National Detention Standards for NonDedicated Facilities §5.5.II.F.1 (2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 § 5.7.VI.2 (2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 5.32.VI.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 make⁹ arrangements for their minor child(ren) or incapacitated adults for whom they serve as legal guardian. . . 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.

⁹ 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.¹⁰

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.¹¹

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.

¹⁰ This Directive does not authorize ICE personnel to adjudicate disputed rights between parents.

¹¹ 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. . . 12
- 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.

¹² 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 AFile 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 (DAA0563-2013-001) 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 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, enforcement 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



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