

Intersections of Law as Experienced by Unrepresented Litigants with Low Incomes



Panelists

- ▶ **Adam DiBuo**, Neighborhood Legal Services
- ▶ **Judge Dan Miller**, Allegheny Court of Common Pleas
- ▶ **Sarah Moran**, Women's Center and Shelter of Greater Pittsburgh
- ▶ **Liz Parker**, Neighborhood Legal Services
- ▶ **Samantha Tamburro**, Rogers Tamburro, PC

Hypothetical

- ▶ Plaintiff is in the US on a visa while her husband, Defendant, who is a US citizen, sponsors her in a Petition for Alien Relative so that she can become a LPR (Legal Permanent Resident). Plaintiff lives with Defendant in a house in Pittsburgh with their son, who is also a US citizen. They rent this home from a private landlord using a Section 8 Housing Choice Voucher from the Allegheny County Housing Authority.

Hypothetical

- ▶ Shortly after Plaintiff arrived in the US, Defendant became violent towards Plaintiff. The violence has steadily escalated, culminating recently in an incident where Defendant burned Plaintiff's arm multiple times with a lit cigarette. Plaintiff has been too scared to report the abuse to the police. Defendant has told her that if she calls the police the police will not believe her because she is not from this country.

Hypothetical

- ▶ Defendant has told Plaintiff that if she tries to leave, he will have her deported and she will never see their son again. Plaintiff is not a native English speaker. She can read some English, but she struggles with speaking English, especially when she gets emotional. Plaintiff does not know where to turn. She doesn't know many people in Pittsburgh aside from Defendant and his family. She knows that in her home country, where domestic violence is common, there are a few lawyers who will help women leave an abusive marriage. She knows there must be similar organizations in Pittsburgh, but isn't sure how to get to them.

Housing

- ▶ Plaintiff's neighbor calls the police after hearing Plaintiff screaming for help. The police respond to the call and Defendant tells the police that Plaintiff attacked and scratched him. Plaintiff, who has visible red marks on her arms where Defendant grabbed her and threw her against a wall, tries to tell the police this isn't true. She only scratched Defendant because she was trying to make him let go of her. However, because she is so upset it's difficult for her to explain in English. The police give them both a warning and leave. The next day, their landlord serves them both with an eviction notice for creating a disturbance.

Housing

What choices does Plaintiff have after receiving the eviction notice?

- A. Plaintiff should move. She doesn't have a defense to the eviction, and it's better to leave early than risk an eviction on her record.
- B. Plaintiff can go to the Housing Authority and apply for an emergency voucher to move to another rental unit as the victim of domestic violence, but it will take her months to find another landlord who will take a Section 8 voucher.
- C. Plaintiff will have to move because the Section 8 Voucher is in Defendant's name and because she's not a US Citizen, she can't qualify for subsidized housing.
- D. Plaintiff could stay in the unit if she goes to the Housing Authority and ask to have Defendant removed from the lease because of the domestic abuse.

Protection from Abuse Orders

What options does Plaintiff have if she wants to file a PFA?

- A. Plaintiff won't be able to file a PFA because she doesn't speak English.
- B. Plaintiff can file a PFA, but she won't be able to receive legal help from the Women's Shelter or NLS because she's not a US Citizen.
- C. Plaintiff can file a PFA and receive free legal representation for her PFA even though she's not a US citizen.
- D. Plaintiff can file a PFA, but because the police didn't arrest Defendant after the neighbor called about the disturbance, Plaintiff won't be able to get a PFA.

Custody

After Plaintiff files for a PFA, Defendant files a PFA claim against her. He also files a motion for sole legal and physical custody of their son. Which of the following statements is true?

- A. Defendant cannot mention Plaintiff's immigration status during the custody proceedings.
- B. Defendant can argue that because Plaintiff's has been accused of domestic violence, ICE could pick her up at any time, so the child is better off with Defendant.
- C. Defendant can bring up Plaintiff's immigration status in a custody proceeding according under Rule 413 by seeking permission from the court and explaining why immigration status is essential to the proceeding.

Criminal

Plaintiff learns that in addition to the PFA, she has a simple assault charge because after their neighbor called the police, Defendant claimed that she attacked him. Which of the following is the best representation of Plaintiff's situation?

- A. The pending criminal charges will have no effect on Plaintiff's immigration status.
- B. Plaintiff can be deported immediately because of the pending charges.
- C. Plaintiff should not plead guilty to the charges, because that would be grounds to deport her.
- D. ICE cannot pick up Plaintiff at the courthouse during her arraignment.

Immigration

Plaintiff finds out that Defendant, despite what he told her, never filed a Petition to allow her to stay in the US as his spouse. Her fiancée visa has expired and she doesn't have legal status. Which of the following statements apply to Plaintiff?

- A. Plaintiff has no legal status and no path to remaining in the US.
- B. If Plaintiff is picked up by ICE, she will remain in custody until there is a final adjudication in her case.
- C. Plaintiff could apply for a VAWA visa as the victim of domestic violence and receive a green card.
- D. Plaintiff might be able to apply for a VAWA visa, but she has no money and there are no places in Pittsburgh where she can get help.

Rule 413. Evidence of Immigration Status.

(a) *Criminal or Delinquency Matters; Evidence Generally Inadmissible.* In any criminal or delinquency matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the offense, to show motive, or to show bias or prejudice of a witness pursuant to Rule 607. This paragraph shall not be construed to exclude evidence that would result in the violation of a defendant's or a juvenile's constitutional rights.

(b) *Civil Matters; Evidence Generally Inadmissible.* In any civil matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the action, or to show bias or prejudice of a witness pursuant to Rule 607.

(c) *Procedure.* Unless a party did not know, and with due diligence could not have known, that evidence of immigration status would be necessary, the following procedure shall apply prior to any such proposed use of immigration status evidence:

(1) The proponent shall file under seal and serve a written pretrial motion containing an offer of proof of the relevancy of the proposed evidence supported by an affidavit.

(2) If the court finds that the offer of proof is sufficient, the court shall order an *in camera* hearing.

(3) The court may admit evidence of immigration status pursuant to paragraph (a) or paragraph (b) if it finds the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(d) *Voluntary Revelation.* This rule shall not prohibit a person, or the person's attorney, from voluntarily revealing his or her immigration status to the court.

Comment

Pa.R.E. 413 has no counterpart in the Federal Rules. This rule is modeled, in part, after Washington Rule of Evidence 413.

In practice, the introduction of immigration status has received heightened consideration in terms of relevancy and prejudice. *See, e.g., Commonwealth v. Sanchez*, 595 A.2d 617 (Pa. Super. 1991) (reference to defendant as an "illegal alien" was irrelevant and prejudicial). This consideration is warranted to avoid potential intimidation of witnesses for fear of deportation. *See, e.g.,* 8 U.S.C. § 1227 (Deportable Aliens). This rule is intended to limit the admissibility of evidence of immigration status for purposes other than those stated in the rule. *See, e.g., Commonwealth v. Philistin*, 53 A.3d 1 (Pa. 2012) (discussing admissibility of immigration status for purpose of proving motive). Paragraphs (a) and (b) may serve as a basis for limiting discovery about immigration status.

This rule requires the proponent to seek pretrial approval prior to the introduction of evidence of immigration status. If evidence is admissible, the trial court may consider a cautionary jury instruction to ameliorate its prejudicial effect. *See, e.g., Commonwealth v. Hairston*, 84 A.3d 657 (Pa. 2014).

Nothing in this rule prohibits a court from unsealing a motion.

The procedure set forth in paragraph (c) is unnecessary for immigration status voluntarily revealed pursuant to paragraph (d). However, all other Rules of Evidence remain applicable. *See, e.g.*, Pa.R.E. 402, 403.

Official Note

Adopted August 11, 2021, effective October 1, 2021.

Committee Explanatory Report:

Final Report explaining the August 11, 2021 adoption of Rule 413 published with the Court's Order at 51 Pa.B. 6140 (September 25, 2021).

Source

The provisions of this Rule 413 added August 11, 2021, effective October 1, 2021, 51 Pa.B. 6140.

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 11064.4: Detention and Removal of Alien Parents and Legal Guardians of Minor Children

Issue Date: July 2, 2025
Superseded: ICE Directive 11064.3, *Interests of Noncitizen Parents or Legal Guardians of Minor Children or Incapacitated Adults* (Jul. 14, 2022).

1. **Purpose/Background.** U.S. Immigration and Customs Enforcement (ICE) personnel are responsible for the prompt and faithful execution of U.S. immigration laws. In pursuing the enforcement of these laws against alien parents and legal guardians of a minor child(ren), including those who have a direct interest in family court or child welfare proceedings involving a minor child(ren) in the United States, ICE personnel should remain cognizant of the impact enforcement actions may have on a minor child(ren). This Directive provides guidance regarding the detention and removal of alien parents and legal guardians of a minor child(ren), to include those who have a direct interest in family court or child welfare proceedings in the United States.¹ This Directive complements the agency's detention standards and policies that govern intake, detention, and removal; however, it in no way limits the ability of ICE personnel to make enforcement decisions on a case-by-case basis.²
2. **Policy.** It is ICE policy to ensure that the agency's enforcement actions do not unnecessarily infringe upon the legal parental or guardianship rights and obligations of Covered Individuals. ICE will continue to take a consistent and unified approach to identify Covered Individuals; carry out necessary and appropriate enforcement actions involving Covered Individuals; facilitate required participation in family court, child welfare, or guardianship proceedings, and communication with child welfare services and programs, where feasible, by detained Covered Individuals; follow visitation procedures in detention facilities; and properly document all aspects of detention and removal of Covered Individuals.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
 - 3.1. **Covered Individual.** Alien parents or legal guardians who are: (1) primary caretakers of minor child(ren) in the United States; and/or (2) those who have a direct interest in family or probate court, guardianship, or child welfare proceedings involving a minor child.

¹ This Directive does not impact the requirements set forth for ICE under the Settlement Agreement for *Ms. L. v. ICE*, No. 18-428 (S.D. Cal. Dec. 11, 2023), ECF No. 721-1 (Settlement Agreement), 727 (Order Granting Final Approval of Settlement Agreement and Certifying the Settlement Classes).

² 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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- 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 Covered Individuals or minor child(ren) through determination or modification of service plans, child custody, visitation, guardianship or support, or the distribution of property or other legal obligations in the context of parental or legal guardian rights.
- 3.3. Field Responsible Official (FRO).** The highest-ranking official in any ICE field location. This includes Special Agents in Charge, Field Office Directors, ICE Attachés, Chief Counsel, 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. Headquarters Responsible Officials (HROs).** Executive Associate Directors (EADs) of Enforcement and Removal Operations, Homeland Security Investigations, and Management and Administration (M&A); the Principal Legal Advisor; the Associate Director of the Office of Professional Responsibility (OPR); and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.
- 3.6. Legal Guardian.** An individual who has been lawfully vested by a court of competent jurisdiction, whether foreign or domestic, with custody and the power and duty of caring for a child, including the child's protection, education, discipline, property, rights, and affairs.
- 3.7. Minor Child.** An individual under the age of 18 years old.
- 3.8. Parent.** A mother who gave birth or a father who contributed genetically to a child biologically; an individual who legally adopted a child or has been legally appointed as guardian.³
- 4. Responsibilities.**
- 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 Enforcement and Removal Operations (ERO) Executive Associate Director (EAD), or their designee, is responsible for:**
- 1) Ensuring overall compliance with this Directive within ERO;

³ This does not include individuals whose parental rights have been terminated by a court of competent jurisdiction.

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- 2) Designating a primary ERO Detained Parent Coordinator, to be organized as part of ERO Headquarters (HQ);
- 3) Ensuring that the training curriculum required by Section 5.8 of this Directive is developed and delivered; and
- 4) Ensuring that a system for the centralized tracking and monitoring of Covered Individuals in ICE custody is created and maintained.

4.3. The ERO Detained Parent 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, Field Office Directors (FODs), and Detained Parent Field Points of Contact (POCs) on an ongoing basis;
- 3) Providing guidance (consistent with current detention standards and this Directive) to FODs, Detained Parent Field POCs, ERO Field Operations, and other ERO HQ personnel on:
 - a) Participation in family court, child welfare, or guardianship proceedings for detained Covered Individuals;
 - b) Visitation protocols for detained Covered Individuals;
 - c) Facilitation of detained Covered Individuals' participation in child welfare services and programs;
 - d) Ensuring that detained Covered Individuals are provided the opportunity to consult with counsel, consular officials, and communicate with family courts and dependency courts, child welfare personnel, and family members or friends to arrange guardianship or care, or to obtain travel documents or make necessary travel arrangements, for their minor child(ren);
 - e) Status and permanency goals in child welfare proceedings;⁴

⁴ This refers to the desired outcome of the child welfare process, which may include reunification, kinship care, adoption, appointment of a permanent custodian, or another planned permanent living arrangement.

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- 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; and
- 5) Providing training and information on this Directive to Field POCs and state child welfare stakeholders.

4.4. FROs are responsible for:

- 1) Ensuring overall compliance with this Directive within their Area of Responsibility (AOR); and
- 2) Designating a manager and as many supervisors as necessary, based on caseload, at each Field Office whose collateral duties include serving as a Detained Parent Field POC within their AOR.

4.5. Detained Parent Field POCs are responsible for:

- 1) Serving as FRO-designated specially trained coordinators at the supervisory or managerial level regarding parental and guardianship interests for their AOR or facility;
- 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; and
- 5) Collaborating and communicating with the ERO Detained Parent Coordinator and the Office of the Principal Legal Advisor (OPLA) regarding the implementation of this Directive.

5. Procedures/Requirements.

- 5.1. Identifying Covered Individuals.** FROs must ensure procedures are in place that require ICE personnel to affirmatively inquire about parental or legal guardian status upon ICE's first encounter with an alien. ICE personnel should generally inquire about parental or legal guardian status during all encounters as such status may be readily subject to change (e.g., birth of a new child, child reaching the age of majority). If ICE determines an encountered alien 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 personnel must also notify the FRO through the chain of command of the identification of any Covered Individual.

5.2. Enforcement Actions Involving Covered Individuals.

- 1) Absent indications of abuse or neglect,⁵ ICE personnel should accommodate a Covered Individual's efforts to make alternative care arrangements for their minor child(ren) prior to 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 Detained Parent Field POC(s).
- 3) Unless ICE is effectuating an enforcement action against the minor child(ren), ICE personnel should not, under any circumstances, take custody of or transport the minor child(ren).⁶ 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 was or is determined to be an Unaccompanied Alien Child, ICE personnel must contact the local Department of Health and Human Services (HHS) office to advise them of the transfer.⁷

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

- 1) If the Covered Individual's minor child(ren), or family court or child welfare or guardianship proceedings are within the AOR of initial apprehension or detention placement, the Detained Parent Field POCs must refrain from subsequently

⁵ ICE personnel should be aware of and ensure compliance with mandatory reporting requirements for suspected child abuse. See 34 U.S.C. § 20341.

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

⁷ See 6 U.S.C. 279(g)(2).

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transferring the alien outside of the AOR, unless maintaining custody within the AOR is not operationally feasible, or doing so is dictated by exceptional circumstances or otherwise legally required.

- 2) If the AOR of initial apprehension or detention placement is not the closest location to the Covered Individual's minor child(ren), the alien's family court or child welfare or guardianship proceedings, or the alien's immigration proceedings, the Detained Parent Field POCs may consider transfers, where operationally feasible, to an AOR or to a facility that is closer to the location of the minor child(ren) or applicable proceedings.⁸

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

- 1) Where practicable, the Detained Parent Field POCs must arrange for a detained Covered Individual's in-person, video, or teleconference appearance or participation in 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), and:
 - a) The detained Covered Individual, their attorney (or other representative), or the child welfare agency or court has submitted to ICE a timely notification that the Covered Individual must participate in such hearings to maintain or regain custody or guardianship of their minor child(ren);
 - b) The detained Covered Individual, their attorney (or other representative), or the child welfare agency or court has timely 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; and
 - c) If in-person appearance is specifically required, such transportation and/or escort of the detained Covered Individual to participate in-person in family court or child welfare or guardianship proceedings does not negatively impact or hinder mission needs, or otherwise present security and/or public safety concerns, as determined by ICE.
- 2) To facilitate remote court appearances in instances in which it is not operationally feasible to transport the detained Covered Individual to participate in-person at a family court or child welfare or guardianship proceeding (e.g., due to distance, safety, security, or health concerns), and if the relevant court allows remote attendance via

⁸ ICE reserves its right to make detention placement determinations on a case-by-case basis informed by the totality of the circumstances. In cases where a Covered Individual is subject to immigration proceedings in one AOR and family court, child welfare, or guardianship proceedings in a different AOR, ICE may consult with the Covered Individual, or their legal representative, to determine which AOR is most appropriate or operationally feasible for the Covered Individual's detention and compliance with such proceedings.

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video or teleconference, the Detained Parent Field POCs 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 and operationally feasible and approved by the relevant court or child welfare authority, the field office must facilitate the detained Covered Individual's participation via means such as video teleconferencing, standard teleconferencing, or other virtual options (e.g., MS-Teams, Zoom, or WebEx) from the detention facility or the field office.

- 3) 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.
- 4) 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 alien documenting the decision (with assistance, if required) for inclusion in the A-file.

5.5. Visitation.

- 1) In the event a Covered Individual is detained, ICE will facilitate a means of regular visitation with the minor child(ren).
 - a) At facilities where there is no provision for contact visits by minors, Detained Parent Field POCs must arrange, upon written request, for a contact visit by a minor child within the first 30 days of detention. After that time, upon written request, ICE personnel must consider a request for transfer, when operationally feasible, to a facility that would allow such visitation. Upon written request, Detained Parent Field POCs must continue to coordinate monthly visits if a transfer is not approved, or until an approved transfer can be completed.⁹
 - b) In some cases, parent-child (or legal guardian-child) visitation may be required by a family court or child welfare authority for a detained Covered Individual 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, Detained Parent Field POCs must accommodate the required visitation between the Covered Individual and their minor child(ren).

⁹ See generally U.S. Immigration and Customs Enforcement, National Detention Standards for Non-Dedicated Facilities §5.5.II.F.1 (NDS 2019); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 § 5.7.V.I.2 (PBNDS 2011, rev. 2016); U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2008 § 5.32.V.I.2 (PBNDS 2008); U.S. Immigration and Customs Enforcement, 2000 National Detention Standards, Visitation § III.H.2.d (NDS 2000), or as updated.

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- c) In the event physical visitation at the detention facility in which a Covered Individual is housed is not operationally feasible, Detained Parent Field POCs must coordinate 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 requires visitation but allows for video or teleconferencing in lieu of in-person visitation, special efforts shall be made to facilitate such visitation(s) at no cost to the Covered Individual.
- d) 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.

5.6. Coordinating Care or Travel of Minor Child(ren) 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, Detained Parent Field POCs should, to the extent operationally feasible, facilitate the detained Covered Individual's efforts to make arrangements for their minor child(ren).¹⁰ These provisions may include the Covered Individual's attempt to arrange temporary guardianship for their minor child(ren) if they will be remaining in the United States or, where the Covered Individual requests reunification and removal with their minor child(ren) prior to removal, to ensure travel documents have been obtained, if necessary, for the minor child(ren) to accompany them to the Covered Individual's country of removal.
- 2) Detained Parent Field POCs should, to the extent practicable, afford detained Covered Individuals a reasonable opportunity to consult with their legal representative 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.
- 3) In addition, the Detained Parent Field POCs may, subject to security considerations, provide sufficient notice of the removal itinerary to the detained Covered Individual or to their legal representative so that coordinated travel arrangements may be made for the Covered Individual's minor child(ren).
- 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:

¹⁰ This provision does not apply to situations in which the minor child(ren) 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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- a) State child welfare involvement, or the presence of custody orders or protection orders;
 - b) Whether the other parent or legal guardian(s) is present in the United States and, if so and applicable, whether they consent to the minor child(ren) returning to the country of removal with the alien parent or legal guardian;¹¹
 - c) Whether a minor child(ren) who has or is currently pursuing lawful immigration status or U.S. citizenship consents to returning to the country of removal with the alien parent or legal guardian;
 - d) The schedule of ongoing court proceedings relating to the guardianship; and/or
 - e) The scope of any current guardianship order and the authorities it conveys to the legal guardian;
- 5) Detained Parent Field POCs must consult with OPLA and 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.

5.7. Removal of a Covered Individual Without Their Minor Child(ren).

- 1) ICE reserves its right to make case-by-case removal decisions, including the removal of a Covered Individual.
- 2) Covered Individuals who decide to leave their minor child(ren) in the United States must provide ICE with a written statement indicating their decision. If the alien parent or legal guardian declines to provide a written statement, ICE personnel should obtain a sworn statement.
- 3) Where a Covered Individual is a party to any ongoing family court or child welfare or guardianship proceeding, Detained Parent Field POCs or their appropriate designee must review the status of the family court or child welfare or guardianship proceedings prior to removal. Detained Parent Field POCs must consider whether the Covered Individual needs 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.

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

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- 5.8. Training.** Detained Parent Coordinator, in coordination with OPLA, must develop training materials to assist Detained Parent Field POCs and other relevant ICE personnel with the implementation of this Directive.
- 5.9. 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.** 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. Court documentation, visitation orders, and family law case files will be maintained as part of the A-File.¹²
- 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, or as updated).
- 7.5.** U.S. Immigration and Customs Enforcement, Detention Standards.¹³
- 8. Attachments.**
- 8.1.** ICE Form 71-076, *Pre-Removal Parental Election*.
- 8.2.** ICE Form 71-078, *Caregiver Designation at Arrest*.

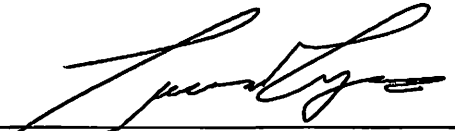
¹² Court documentation, visitation orders, and family law case files will be maintained as part of the A-File. A-Files will be retained permanently and transferred to the National Archives after 100 years after the individual's date of birth, in accordance with the U.S. Citizenship and Immigration Services A-File records schedule (N1-566-08-011). 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.

¹³ This encompasses all current detention standards. ICE personnel should consult with ERO and OPLA to ensure compliance with the latest version of national, performance-based, or other detention standards.

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8.3. ICE Form 71-080, *Pre-Removal Review*.

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Todd M. Lyons
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7/2/25

DATE

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