

**COMMUNITY EXPLAINER****U.S. CITIZEN KIDS AND ICE  
CHECK-INS: HOW TO PREPARE<sup>1</sup>**

Before the second Trump Administration, it was considered safe and even recommended for parents attending an ICE & ISAP check-in to bring their U.S. citizen children with them. Because the number of arrests at check-ins has increased, and because ICE has illegally deported some U.S. children with their parents against those parents' wishes and without following procedures that allow parents to take the time to make decisions or arrangements for their children, we have prepared this guide to help you decide whether or not to bring your children with you.

**PRE-CHECK IN PLANNING CONSIDERATIONS**

Have a conversation with the child's other parent or other caregiver(s), if any, about what you want to happen with your U.S. citizen children if you cannot stay in this country. **Having these conversations before a check-in for someone with a deportation order is critical, because arrest and deportation can happen very quickly after a check-in (sometimes less than 24 hours).**

- Check for deportation orders<sup>2</sup>: If any parent has a deportation order (you can check by putting your A-number in [this website](#)), deportation could happen very quickly after an arrest at a check-in (even less than 24 hours)
- Think about how and when you entered the country: Some people who entered the U.S. did not get sent to immigration court (which starts with a document called a "Notice to Appear"); instead, some people were told to check-in with ICE, and then had more check-ins scheduled. People in this situation can also be deported very quickly, unless they can say that they fear returning to the country they are being deported to, or unless they have filed an asylum application with USCIS.
- Remember that there is no guarantee what will happen at an ICE check-in. A parent may or may not be arrested whether or not they bring their children with them. Even if they bring their children, the children may not be deported with the parent. You may not and likely will not know when an arrest for deportation will happen, so **making a family plan as soon as possible is best.**
- Consider **writing and signing a statement** expressing your wishes that your U.S. citizen child either be deported with you or not be deported with you. Both parents, if available, can sign this letter. Identify in the letter who the caregiver of the child will be.

<sup>1</sup> This guide was produced in collaboration with and with deep appreciation for the thought partnership of Mich Gonzalez, co-founder of Sanctuary of the South, and Attorney Fatima Khan.

<sup>2</sup> ICE does detain "family units" who are in deportation proceedings with immigration court, but we have not seen ICE detain U.S. citizen children during their parents' immigration cases.

## IF YOU WANT YOUR U.S. CITIZEN CHILD TO BE DEPORTED WITH YOU

- Bring your child with you to the check-in. Also bring with you into the check-in :
  - Passports
  - Medication
  - Change of clothes and toiletries
  - Birth certificates, social security card, medical records (especially if bringing medication), and other important documents
  - Signed statement expressing your wishes
  - A list of everything you brought with you so that if anything is missing, you can easily tell. All items likely need to be able to fit in a small bag, like a backpack.
- Communicate clearly with the other parent, loved ones, community members and your attorney about your plan to take your child with you. Make sure the other parent or caregivers have a copy of the signed statement expressing your wishes.
- Prior to your check-in, notify loved ones in the country where you will be deported that you may be facing detention and deportation to make sure that you and your child have support upon arrival.

## IF YOU DO NOT WANT YOUR U.S. CITIZEN CHILD TO BE DEPORTED WITH YOU:

It is **not necessary** to bring your U.S. citizen child to your ICE check-in, and you do not have to even if ICE demands that you do. ICE does not have any legal authority to arrest a U.S. citizen for anything related to deportation and it is very unlikely that ICE would go to your home to arrest your U.S. citizen child for this purpose. In order to best protect your child if you do choose for them to come with you to a check-in:

### Before your check-in:

- If there is **not** an available other parent, get a document like a “Legal Temporary Custody Authorization” in place (the exact name of this document varies by state), which will allow another non-parent caregiver (such as a grandparent, aunt, uncle, or trusted friend) to take care of and make decisions for your child. The process for setting up this authorization is different depending on what state you live in, but it is always a good idea to make sure the document is signed both by you and the other, non-parent caregiver and that the document is notarized. **You will bring this notarized document with you to your check-in and have this person come too, if they have lawful status in the U.S.**
- Talk to a Lawyer
  - Let your immigration attorney know that ICE asked your U.S. citizen kids to come to the check-in. Ask the attorney to attend the check-in with you.
  - Provide the lawyer with copies of birth certificates, any important medical records for the child, any signed temporary custody documents, and your signed statement expressing your wishes.
  - Make sure the lawyer has filed and that you bring a signed copy of a G-28 for each non-U.S.-citizen adult and child going to the check in.
  - You may consider signing a congressional privacy waiver in case congressional advocacy is needed.
  - Talk with your lawyer about having prepared an administrative stay, Motion to Reopen, or

habeas petition in case detention happens.

- Understand ICE's own rules about caregivers
  - Read ICE's [Parental Interests Directive](#) (infographic available [here](#)). It says ICE has to consider your role as a parent and let you stay in contact with your kids. [This](#) is a really good resource explaining this directive.
  - There is additional information about these rights at the end of this document.
  - It's important to remember that ICE does not always follow its own rules.
- Put together your folder of documents to bring with you to the check-in:
  - Copies of birth certificates naming the other parent or other proof of parentage, or a copy of the temporary custody authorization.
  - Signed statement in English expressing your and the other parent's wishes
  - A G-28 for your lawyer, if you have one
  - Written phone number for the person accompanying you, and/or for the other parent or authorized caregiver (do not rely on having access to your phone)
- Make a pick-up plan
  - If another parent or lawful custodian cannot accompany you to the check in, have a **pick-up plan**. Make sure the parent or lawful custodian knows what time your check-in is and where it is so that they can come if needed.

#### At your check-in:

- **Have accompaniment!** If there **is** another parent with lawful status in the U.S., have that person come to the check-in. They may not be allowed in. If there **is not** another parent, bring the authorized caregiver or another U.S. citizen community member to accompany you to the check-in. If you spoke with your lawyer, ask the lawyer to attend the check-in with you.
- Bring your folder of documents that you put together.
- Whoever accompanies you (another parent, authorized caregiver, and/or lawyer) may not be allowed inside the building, but they can monitor how long you have been in and respond quickly if something happens. Have a plan for sending text messages every few minutes if that is a possibility.
- Make sure any person accompanying you has (1) the other parent or authorized caregiver's phone number, (2) the signed statement expressing your wishes, and (3) your A-number.
- If it has been too long or the person accompanying you has not heard from you at a planned interval, they can try to make contact with someone in the building to find out what has happened.

**If you and your U.S. citizen child are arrested** at a check-in and you **do not** want your U.S. citizen child to be deported with you:

- The person accompanying you should activate the detention steps:
  - If the person accompanying is not the other parent or authorized caregiver, call that person immediately. The other parent or lawful custodian should begin calling and emailing the ICE Field Office and demanding access to speak with you, and that they release your U.S. citizen child. The other parent or lawful custodian should go (if possible) in person to the nearest ICE Field Office.
  - Email the National Immigration Project with (1) time and location of the check-in; (2) contact information for the other parent or lawful custodian; (3) whether there has been

any communication with the detained parent; (4) information about the family's wishes; (5) contact information for any involved immigration attorneys; (6) congressional privacy waiver if one has been signed.

### What can an attorney do?

An attorney (potentially in conjunction with an advocacy group) may be able to intervene if the wishes are clear OR even if the wishes are not clear and the detained parent is being held incommunicado without an opportunity to speak with and plan with a co-parent or caregiver. Some potential options are:

- calls and emails to ICE demanding access to counsel and access to communicate with the non-detained parent or lawful custodian;
- contact with congresspeople for access or release of the child to their caregiver;
- file a petition for habeas corpus on behalf of the U.S. citizen child;
- file a stay of removal with ICE or motion to reopen or pursue other available immigration options;
- consider involving state courts if there are any pre-existing custody orders - risks vary;
- involve the media.

## TEMPLATE PREPARATION CHECKLIST

Before your check-in:

- ☐ Preparedness planning with a co-parent and/or other caregivers
- ☐ Signed letter stating whether you wish your U.S. citizen child to remain in the U.S. or to accompany you if you are deported Give a copy of your signed letter to a trusted loved one
- ☐ Communicate to other loved ones what you want to happen with your U.S. citizen child
- ☐ **If you want your U.S. citizen child deported with you**, pack a small bag (example of what to pack on page 2)
- ☐ **If you do not want your U.S. citizen child deported with you<sup>3</sup>**, consider executing your state's version of a temporary lawful custody agreement, assigning custody to someone with stable immigration status
- ☐ Talk to a lawyer if you are able to (what to talk to a lawyer about is listed on page 2)
- ☐ Put together a folder of important documents (what documents to collect are on page 3)
- ☐ Review ICE's policies about caregivers (key points on page 5)
- ☐ Make a pick-up plan for someone who can pick up your U.S. citizen children if ICE tries to detain them
- ☐ Give the person accompanying you to your check-in (1) your A-number, (2) your signed letter about what you want to happen with your U.S. citizen child if you are detained, and (3) contact information for the other parent or caregiver if that person is not accompanying you
- ☐ Make a plan with the person accompanying you for how frequently you will be in communication and for them to start asking questions about where you are if it has been too long since they have heard from you

<sup>3</sup> Although you **are not legally required** to bring your U.S. citizen child to your ICE check-in, ICE may tell you that you must and attempt to force you to do so.

## BASIC RIGHTS UNDER PARENTAL INTEREST DIRECTIVE (ICE DIRECTIVE 11064.3)

ICE is required to:

- Ask any person they're arresting if they are a primary caregiver or have custody of a minor child, regardless of the child's citizenship or immigration status. (Section 5.1)

If the answer is yes,

- ICE must accommodate efforts to make alternative care arrangements; AND
- document the decision to transfer physical custody of minor child(ren) to an identified third party. (Section 5.2(1))

If no alternative care arrangements are possible,

- ICE should contact local child welfare and document that contact (Section 5.2(2)).

ICE should **not** take custody of minor children if they are not detaining or deporting them and should not leave minor children alone without an alternative caregiver when detaining a caregiver. (Section 5.2(3))

ICE should keep detained primary caregivers in the same area as their children, or as close as possible. (Section 5.3)

ICE should accommodate visitation between a detained primary caregivers and their non-detained child(ren) and arrange for in-person visitation with the child(ren) within the first 30 days of detention (or, if in-person isn't possible, through video). (Section 5.5)

If the primary caregiver is being deported:

- ICE must facilitate the detained caregiver's efforts to make arrangements for their minor child(ren), including efforts to arrange for a temporary guardianship
- ICE must facilitate efforts to get travel documents for the minor child(ren) if the parents want the children to come with them when deported. (Section 5.7(1)). If the parent wants the child deported with them, ICE should consult with the other parent. (Section 5.7(4)(b))

ICE is **required to** give detained caregivers a reasonable opportunity to make a decision about their minor child(ren) as well as to consult with legal counsel and communicate with any of the following to execute powers of attorney, passport applications, appointment of guardian, etc., and to buy plane tickets or make arrangements for arriving in the country of deportation:

- consulates and consular officials;
- notaries;
- family courts and guardians ad litem;
- family members. (Section 5.7(2))

ICE can share travel information if it is helpful in making arrangements for children. (Section 5.7(3))

If a primary caregiver is being deported without their child, ICE should make sure, and document, that the primary caregiver has had an opportunity to

- request that the child come with them, and
- make alternative arrangements for the child. (Section 5.8(1))