

Office of Policy

U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

Ms. Leslye E. Orloff
Director, Immigrant Women Program
Legal Momentum
1101 14th Street, NW, Suite 300
Washington, DC 20005

Dear Ms. Orloff:

Thank you for providing U.S. Immigration and Customs Enforcement (ICE) a copy of Legal Momentum's draft booklet entitled, "Rights and Options for Battered Immigrant, Migrant, and Refugee Women and Immigrant Women Who Met Their Spouses Through International Matchmaking Agencies" for our comments.

I appreciate the importance of your project and am pleased to have had the opportunity to collaborate with your organization's efforts to provide information to assist women who are victims of domestic violence or human trafficking. I have enclosed a copy of your draft booklet with our edits in the portions of the draft that relate to ICE's mission.

You also inquired about ICE's detention policies and practices with regard to nursing mothers. ICE has provided written guidance to our field agents and officers to encourage the use of prosecutorial discretion when they encounter women who are nursing to ensure that custody determinations are made appropriately. These guidelines state that absent any statutory detention requirement or concerns such as national security, threats to public safety or other investigative interests, ICE agents should consider the conditional release of nursing mothers pending the results of their immigration removal hearings. I have enclosed copies of those guidelines for your information.

Additionally, you inquired about when ICE agents usually inform sole caregivers of our guidelines during an immigration enforcement operation. During such operations, we actively work to identify individuals that may have caregiver issues at the time of arrest. Screening for caregiver issues is done in English and Spanish and both orally and in writing to ensure that any alien with caregiver issues is not detained for any extensive period of time.

If ICE can provide any further assistance for your project, please do not hesitate to contact me or Kendra Wallace, National Outreach Coordinator in the Office of Policy, at (202) 307-6402.

Sincerely,

A handwritten signature in blue ink that reads "Susan M. Cullen".

Susan M. Cullen
Director, Office of Policy

Enclosures

Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees

When Conducting Worksite Enforcement Operations

- Prior to conducting a worksite enforcement operation targeting the arrest of more than 150 persons, ICE should develop a comprehensive plan to identify, at the earliest possible point, any individuals arrested on administrative charges who may be sole care givers or who have other humanitarian concerns, including those with serious medical conditions that require special attention, pregnant women, nursing mothers, parents who are the sole caretakers of minor children or disabled or seriously ill relatives, and parents who are needed to support their spouses in caring for sick or special needs children or relatives. Where practical, at the direction of the Assistant Secretary, ICE will continue to implement these guidelines in all smaller worksite enforcement operations.
- In support of ICE efforts to identify arrestees who should be considered for humanitarian release after processing, ICE should coordinate with the Department of Health and Human Services, Division of Immigration Health Services (DIHS), to provide a sufficient number of personnel to assess the humanitarian needs of arrestees at the ICE processing site.
- DIHS personnel should be given prompt access to all arrestees under safe and humane conditions on the day of the action. To the extent possible, DIHS should be provided access on a rolling basis right after processing of each arrestee. DIHS personnel should be given the time necessary to assess each arrestee's individual circumstances. The purpose of the assessment should be to determine whether the arrestee, the arrestee's children, or other people, including sick or disabled relatives, have been placed at risk as a result of the arrest, based on the illegal activity of the arrestee. To the greatest extent possible, the information provided in the course of such assessments should be used exclusively for humanitarian purposes. DIHS should also inform ICE of any medical issues that might necessitate humanitarian release or additional care. If, during the course of the arrest operation or processing, an emergency medical condition is identified, ICE will ensure that arrestees receive appropriate emergency medical care.
- If DIHS is unable to support an ICE request for a planned worksite enforcement action, ICE should consider coordinating with an appropriate state or local social service agency (SSSA) or utilizing contracted personnel to provide humanitarian screening. If DIHS support for ICE worksite enforcement operations is found not to meet the needs or standards of ICE and such issues cannot be resolved through consultation between ICE and DIHS, then ICE should consider coordinating with an alternative social service agency or utilize contracted personnel.
- In the event DIHS is unable to provide the requested support, ICE should provide advance notice of a planned worksite enforcement operation to the SSSA in the appropriate jurisdiction. In worksite enforcement operations, ICE will consider whether such coordination is appropriate, without regard to whether DIHS is able to provide the requested support, and will make such coordination whenever possible. While advanced notification to a large number of state social service officials may not be prudent or feasible for every operation, when practicable, ICE should attempt to inform the cabinet-level state official responsible for social services of an impending worksite enforcement action. The notification should be given with sufficient advanced notice to allow the SSSA to identify resources that can support the operation.
- Once the SSSA has been notified, ICE should work with the SSSA to define its role on the day of the enforcement operation, to include proactively screening arrestees for humanitarian concerns.

Humanitarian screening should occur at a time and place determined by ICE that minimizes its impact on the law enforcement operation, provided that such screening occur within 12 hours of the enforcement action, or as soon as practical.

- DIHS representatives and any SSSA representatives who have screened arrestees should make recommendations to ICE about individuals who should be released on humanitarian grounds. ICE should promptly take these recommendations into consideration when making determinations about whether arrestees will be released on their own recognizance or through some other alternative to detention. While ICE should take humanitarian issues raised by DIHS or an SSSA into consideration, these concerns will be weighed against other factors, including the arrestee's criminal record, an existing removal order and other factors that would normally mandate detention. It is also understood that aliens who are ordered detained by ICE can seek relief before an Immigration Judge, who can change ICE's detention decision.
- Detainees should not be transferred out of the general area until the above assessments have been completed.
- In addition to coordination with DIHS and the relevant SSSA, when conducting large worksite enforcement operations ICE should provide notification to key area nongovernmental organizations (NGOs) once an operation is underway. ICE should provide the NGOs with the name and contact information of an ICE representative with knowledge of the operation. This notification should be to request that the NGOs assist ICE with identifying any humanitarian issues that are not brought to the attention of ICE.
- As in all ICE law enforcement operations, ICE should provide arrestees with adequate food and water and allow reasonable restroom access. Arrestees will be restrained when operationally necessary in accordance with ICE policy.
- All ICE law enforcement officers receive training and guidance to ensure that individuals are provided access to legal counsel, consistent with principles of due process and fundamental fairness.
- As in all ICE law enforcement operations, ICE should ensure that all personnel assigned to the operation receive detailed instructions on what steps to take if they encounter individuals with humanitarian concerns.
- In accordance with existing law and procedure, during processing ICE should provide arrestees with oral notice, and written where practical, in their first language of their right to legal counsel and communication with consular officers, along with a list of *pro bono* legal services in the area. As soon as practical after processing, ICE should grant arrestees an opportunity to meet or speak by phone with legal counsel and consular officers. ICE should facilitate all such communication, as well as communication with family members, by providing free and reasonable telephone service.
- As in all ICE law enforcement operations, once ICE determines that an arrestee will be removed, ICE should give the arrestee adequate notice and access (by phone at a minimum) to relatives so that s/he may make plans for dependents. If the family requires assistance from an SSSA, ICE should facilitate contact by providing the arrestee with contact information for the SSSA. ICE should provide the arrestee access via telephone and, where possible, direct visits with the agency at the detention facility.
- As appropriate, if ICE is contacted by an SSSA or an NGO and provided with new information regarding a humanitarian condition after an arrestee has been processed and detained, ICE should

facilitate contact between the reporting entity and the arrestee. In compelling cases, ICE may consider the possibility of release on humanitarian grounds based on such newly obtained information.

- In furtherance of efforts to ensure that humanitarian issues are raised with ICE, the agency should staff a dedicated toll free hotline so that relatives seeking information about the location of a family member will have reliable up-to-date information. ICE should publicize the hotline information to the community.