

Advance Planning for Non-Citizen Parents

The Legal Aid Society, Immigration Law Unit
Legal Services NYC
Urban Justice Center, Domestic Violence Project

Planning ahead for care/custody of children

- Passport
- Travel permission
- School emergency contact card
- Designation of Person in Parental Relationship
- Power of Attorney
- Guardianship or Custody
- Standby Guardianship Designation

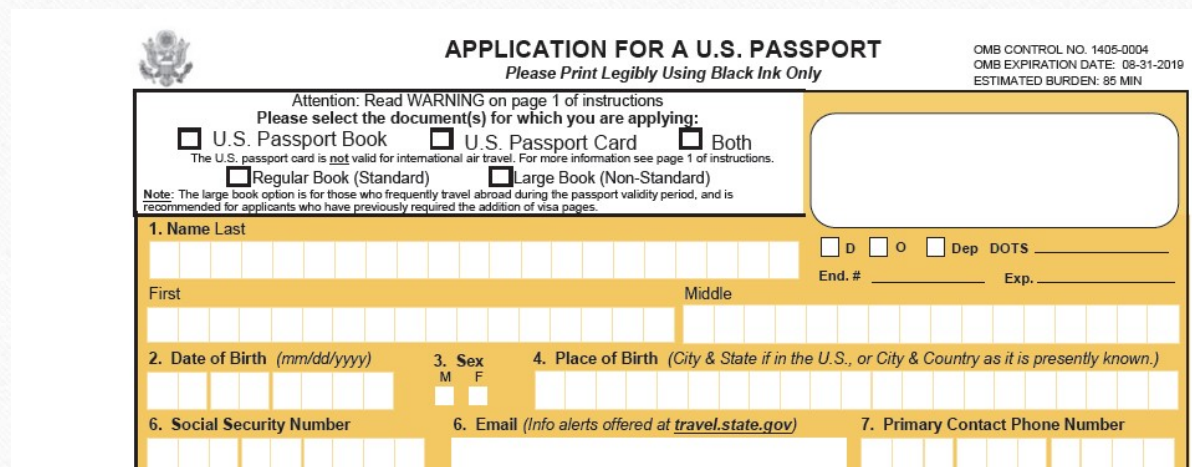
Passport


Passport for child

- Recommended in call cases, if child doesn't already have one
 - If parent deported, child needs passport to travel internationally to reunite with parent
 - Good to have even if plan is for child to remain in U.S., since allows for visits abroad
- Easier to obtain before parent's detention/removal
- U.S. passport
 - Discussed below
- Home country passport
 - Varies by country – contact the relevant consulate

U.S. Passport for Child

- Form DS-11, Application for US Passport



 **APPLICATION FOR A U.S. PASSPORT**
Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004
OMB EXPIRATION DATE: 08-31-2019
ESTIMATED BURDEN: 85 MIN

Attention: Read WARNING on page 1 of instructions
Please select the document(s) for which you are applying:
 U.S. Passport Book U.S. Passport Card Both
The U.S. passport card is not valid for international air travel. For more information see page 1 of instructions.
 Regular Book (Standard) Large Book (Non-Standard)

Note: The large book option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.

1. Name Last _____
First _____ Middle _____
 D O Dep DOTS _____
End. # _____ Exp. _____

2. Date of Birth (mm/dd/yyyy) _____
3. Sex M F
4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.) _____

6. Social Security Number _____
7. Primary Contact Phone Number _____

5. Email (Info alerts offered at travel.state.gov) _____

U.S. Passport for Child (cont.)

■ Form DS-11, Application for US Passport

- Child under 16yo:
 - Both parents must be present when applying, or
 - Written consent of absent parent, or
 - Explanation of why absent parent can't be present (OP, jail, unable to locate, etc)
 - (concerns around international child abduction)
- Child 16yo or 17yo:
 - One parent must be present
 - Maybe need written consent of absent parent; at officer's discretion

U.S. Passport for Child (cont.)

- Form DS-11, Application for US Passport
 - Two passport-style photos
 - \$100 application fee payable to Department of State
 - \$35 processing fee payable to Postmaster
 - No X gender marker; gender must match biological sex at birth

U.S. Passport for Child (cont.)

- Form DS-3053, Statement of Consent



U.S. Department of State

OMB Control No. 1405-0129
Expiration Date: 10-31-2027
Estimated Burden: 20 Minutes

STATEMENT OF CONSENT: U.S. PASSPORT ISSUANCE TO A CHILD

Print legibly or type using black ink only. If you make an error, complete a new form. Do not correct.

Reset

SECTION 1. CHILD APPLYING FOR A U.S. PASSPORT

Print your child's name as it appears on the passport application (Form DS-11) and child's birthdate.

a. Child's Name (LAST, FIRST MIDDLE) Example: SMITH, JOHN ROBERT	b. Child's Birthdate (MM-DD-YYYY) <input type="checkbox"/> Check box if age 16 or 17
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SECTION 2. ADULT APPLYING IN PERSON WITH CHILD UNDER AGE 16

Print name of adult appearing in person to apply for a U.S. passport and relationship to the above-named child.

a. Applying Adult's Name (LAST, FIRST MIDDLE)	b. Applying Adult's Relationship to Child (Check one)
	<input type="checkbox"/> Legal Parent <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Third Party

SECTION 3. STATEMENT OF CONSENT FOR PASSPORT ISSUANCE TO THE CHILD


In blank space 1 (and blank space 2, if applicable) below, print the full name(s) of the legal parent/legal guardian(s) who cannot appear in-person with the minor child to apply for the passport. Then complete the address and contact details in the boxes below.

U.S. Passport for Child (cont.)

- Form DS-3053, Statement of Consent
 - If only one parent applying in person with child, absent parent must consent in writing
 - Mandatory if child under 16yo
 - Discretionary with officer if child 16yo or 17yo

U.S. Passport for Child (cont.)

- Form DS-5525, Statement of Exigent/Special Family Circumstances



U.S. Department of State

**STATEMENT OF EXIGENT/SPECIAL FAMILY CIRCUMSTANCES
FOR ISSUANCE OF A U.S. PASSPORT TO A CHILD UNDER AGE 16**

Please print legibly using black ink only. If you make an error, complete a new form. Do not correct.

OMB CONTROL NO. 1405-0216
EXPIRATION DATE: 02-28-2025
ESTIMATED BURDEN: 30 Minutes

RESET

1. Child's Name (Last, First, Middle)		2. Child's Date of Birth (mm-dd-yyyy)	
3. Applying Parent/Legal Guardian's Name (Last, First, Middle)			
4. Non-Applying Parent/Legal Guardian's Information (Complete the information in fields a - e for the non-applying parent below.)			
a) Name (Last, First, Middle)		b) Date of Birth (mm-dd-yyyy)	
c) Other Names Used			
d) Contact Information	Telephone		Email
e) Address			

U.S. Passport for Child (cont.)

- Form DS-5525, Statement of Exigent/Special Family Circumstances
 - Absent parent abusive – need order of protection
 - Unable to locate absent parent – must explain attempts to locate
 - Absent parent deceased – need death certificate

U.S. Passport for Child (cont.)

■ Next Steps:

- Schedule an appointment with a passport acceptance facility.
- Gather required documents: birth certificate, proof of parental relationship, and identification.
- Take the original **Form DS-11** with you to the appointment.
- Both parents must appear in person with the child, or provide notarized consent if one is absent (**Form DS-3053**), or explain why consent of absent parent cannot be obtained (**Form DS-5525**).
- Pay both the application fee and processing fee and submit the form at the authorized acceptance facility.
- Track the application status online.
- Usually it takes 4 – 6 weeks to arrive but it can take longer.

Travel Permission

Travel permission for child

CONSENT FOR MINOR CHILD(REN) TO TRAVEL

State of New York _____)

County of _____) ss.

I, _____, currently residing at _____
_____, hereby affirm under penalty of perjury:

I am the mother father of the following child(ren):

Child's Full Name
(as written in passport)

Passport Country

Passport Number

Travel permission for child (cont.)

- Travel permission form for **adult accompanying child**
 - Form complies with Hague Convention on Child Abduction
 - US Transportation Safety Administration (TSA) does not require a particular form
- Airline unaccompanied minors policies, for **child traveling alone**
- Verify the destination country's requirements as well
- Recommended in all cases

Travel permission for child (cont.)

- Both parents must sign, unless:
 - Sole custody order
 - Other parent deceased; attach death certificate
 - Other parent not on birth certificate
 - Court order permitting such travel
- Must be notarized, but no need for lawyer
- Attach copies of child's birth certificate, parents' proof of identity, and any supporting documents

Travel permission for child (cont.)

- Next steps:
 - Give the completed notarized Parental Consent for Travel form to the designated person your child would travel with in case of emergency.

School Emergency Contact Card

School Emergency Contact Card

- “Blue Card”

EMERGENCY CONTACT CARD (Print information)

SCHOOL YEAR 200__ to 200__

Student: Last Name _____ First _____ MI _____ DOB _____ Sex _____ ID# _____

Parent/Guardian (Student resides with): _____ Relationship _____

Parent's Preferred Language of Communication: Written _____ Oral _____

Home Telephone () _____ Work Telephone () _____ Cell No. () _____ E-mail _____

Address _____ Apt. _____ Borough _____ ZIP _____

Other Parent/Guardian: _____ Relationship _____

Parent's Preferred Language of Communication: Written _____ Oral _____

Home Telephone () _____ Work Telephone () _____ Cell No. () _____ E-mail _____

Address _____ Apt. _____ Borough _____ ZIP _____

List below names of three (3) persons who may be called in case of emergency or if child is sick in school.

CHILD WILL BE RELEASED ONLY TO PERSONS NAMED ON THIS CARD.

Name _____ Telephone () _____ Relationship _____

Name _____ Telephone () _____ Relationship _____

Name _____ Telephone () _____ Relationship _____

School Emergency Contact Card (cont.)

- “Blue Card”
- Parent can list up to 3 people to contact in case child has emergency or is sick at school
- In case parent is picked up by ICE, need to have backup person to pick up child. If no one picks up, schools are mandated to report to Administration for Children's Services
- Update now with the school; recommended in all cases

School Emergency Contact Card (cont.)

- Next steps:
 - Take completed form to your child's school, and keep a copy for your records.

Designation of Person in Parental Relationship

Designation of Person in Parental Relationship

OCFS-4940 (06/2018)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES
DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP
Pursuant to section 5-1551 of the New York State General Obligations Law.

1. I, _____, hereby state that I am the parent of the child/children/incapacitated person(s) named below and there are no court orders now in effect in any jurisdiction that would prohibit me from exercising the power that I now seek to authorize.
2. The address and telephone number(s) where I can be reached while this designation is in effect is:

Designation of Person in Parental Relationship (cont.)

- Medical and school decisions for child
- New York statutory form
- Office of Children and Family Services (OCFS) form in English and Spanish
- Valid for one year at a time, if notarized (otherwise, just 30 days)
 - Effective date can be future event, e.g., detention and/or removal
- Must be notarized, but no need for lawyer
- Recommended in all cases

Designation of Person in Parental Relationship (cont.)

- Can commence upon detention by ICE

4. Any authority granted to the person in parental relationship pursuant to this form shall be valid (check appropriate box and initial):

____ a. for 12 months from the date of signature of this designation, or until the date of revocation, whichever occurs first (must include all parties' addresses and telephone numbers and be signed by all parties in the presence of a notary public); or

____ b. for 30 days from the date of signature of this designation, or until the date of revocation, whichever occurs first; or

____ c. from ____ / ____ / ____ (date) until and including ____ / ____ / ____ (date), or until the date of revocation, whichever occurs first; or

____ d. commencing upon my detention by ICE
(state event) and continuing until my release by ICE or until the date of
revocation, whichever occurs first.

Designation of Person in Parental Relationship (cont.)

- Other parent needs to consent as well
 - Unless sole custody order or other parent deceased or not on birth certificate; attach relevant proof
- Can be signed/notarized subsequently

8. I, _____, am also the parent of the child/children/incapacitated person(s) named herein, there is a court order directing that both parents must agree on education and/or health decisions concerning such child/children/incapacitated person(s), and I hereby consent to this designation by my signature below.

Designation of Person in Parental Relationship (cont.)

- Designee needs to consent
- Can be signed/notarized subsequently

9. I, _____, the person designated in parental relationship for the child/children/incapacitated person(s) named herein, hereby consent to this designation by my signature below.

Dated: ___ / ___ / ___ Signature _____

Designation of Person in Parental Relationship (cont.)

- Next steps:
 - Provide the original to the designated person and keep a copy for your records.
 - Have designated person attached proof of detention or deportation.
 - Proof of detention at www.ice.gov/locator
 - Immigration Court removal order
 - Proof of deportation can be sworn statement from parent attesting to the fact that they are now abroad after being deported

Power of Attorney

Power of Attorney



New York State Bar Association

New York Statutory Short Form Power of Attorney, 8/18/10, Eff. 9/12/10

POWER OF ATTORNEY NEW YORK STATUTORY SHORT FORM

(a) CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the “principal,” you give the person whom you choose (your “agent”) authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. “Important Information for the Agent” at the end of this document describes your agent’s responsibilities.

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

Power of Attorney (cont.)

- **Property** transactions for parent
 - Apartment, bank account, insurance matters, healthcare billing, etc.
- New York statutory form
- Must be notarized, but no need for lawyer
- **Not** recommended in all cases; only if need be

Power of Attorney (cont.)

- Principal (parent) signs in front of a notary
- Agent (designated adult) signs in front of a notary
 - Agent can sign/notarize on later date than principal
- Must be able to trust the agent with handling money/property!
 - Choose the agent wisely!

Power of Attorney (cont.)

- Initial the relevant portions

(f) GRANT OF AUTHORITY:

To grant your agent some or all of the authority below, either

- (1) Initial the bracket at each authority you grant, or
- (2) Write or type the letters for each authority you grant
initial the bracket at (P). If you initial (P), you do not

I grant authority to my agent(s) with respect to the following subject
through 5-1502N of the New York General Obligations Law:

(A) real estate transactions;

(B) chattel and goods transactions;

(C) bond, share, and commodity transactions;

(D) banking transactions;

Power of Attorney (cont.)

- Next steps:
 - Keep the original in a safe place or give the original to the person that will be granted the power of attorney and keep a copy for your records.
 - This goes into effect immediately, so be aware that the person you give it to will have access to your bank account and other assets immediately (whatever property is authorized in the document).

Guardianship and Custody

Note about Guardianship

- We do **not** recommend guardianship petitions while the parent is still here.
- We are **not** preparing pro se guardianship petitions at our clinics.
- We **are** providing information about guardianship, as necessary context.

Court Involvement

- Courts can get involved with:
 - Guardianship
 - Custody
- Issues that arise in these cases:
 - Abusive other parent
 - Child support
 - Visitation
 - Relocation

Risks of Court Involvement

- Other parent must generally be notified of court proceedings (Custody, Guardianship, Standby Guardianship)
- Other parent can call ICE to come to court
 - Especially dangerous if one parent already has final removal (deportation) order
- Other parent may reappear after absence and file own petition
 - Parents have greater “standing” than others

Risks of Court Involvement (cont.)

- Once custody order is finalized, court requires substantial change in circumstances, to modify (unless all parties consent)
 - Change in circumstances regarding child, not parent
 - If custodian does not consent, may need long trial to show (1) substantial change and (2) best interests of child
- Custodian may seek child support from parents

Courts and Immigration Status

Clients who do not have immigration status:

- Should not be denied access to the courts
- Entitled to a free interpreter
 - Request this immediately; for less common languages, interpreters may be hard to find
- Judges cannot order them to disclose their status
- They will not lose their case (or their children) just because of their status
- Judges should not refer them to ICE
 - But court officer could call ICE, even though not supposed to
 - NY Protect Our Courts Act – prohibits ICE enforcement in/around state courthouses

Guardianship vs. Custody

- Guardianship and custody are different ways to have authority to care for a child
- Parents typically seek custody
- Non-parents can seek guardianship
- Custody gives different rights than guardianship
- With custody, parents and non-parental custodians are treated differently.

Guardianship vs. Custody (cont.)

- **Guardianship** extends to **18yo or 21yo (depending on certain factors)** in Family Court and the entire life of the person in Surrogate's Court
- **Custody** ends at 18yo and only handled in Family Court or Supreme Court
- Both petitions are difficult to modify (unless all parties consent), and both require Court intervention
- Both require notice to both parents

Guardianship vs. Custody (cont.)

- Many people falsely believe you can leave your child with a caretaker and then return to “claim” them at any point in the child’s life
- **Not true:** caretaker can file for custody or guardianship, but once an order is entered, there must be significant change of child’s circumstances to change the order (unless all parties consent), even if the parent is seeking the change

Who can file for Guardianship?

- Family Court
 - with or without legal status, and over the age of 18
 - must have some relationship with the child
- Surrogate's Court:
 - legal resident or citizen and over the age of 18
 - no need for a relationship with the child

Who Can File for Custody/Visitation?

- Parent
- Person with a substantial connection or relationship with the child (ex. grandparent, sibling, stepparent, friend or domestic partner)
- In a battle between a parent and a non-parent, non-parent needs “extraordinary circumstances” to overcome presumption that parent’s rights are superior

Who Can File for Custody/Visitation? (cont.)

- Who can see a child is dependent on the parent's wishes.
 - This includes stepparents, who, once a divorce has occurred, have no legal right to visit with a child, nor obligation to support a child.
- These determinations are very fact-specific. The most recent body of case law involves non-married gay couples.

Travel with Custody/Guardianship

- Guardianship does not extend beyond NYS
- Custody most times extends beyond the USA and into Hague Convention countries
- Parental consent to travel still required with either
- Depending on type of custody, one parent may obtain a passport without the other's permission
- Issues: child abduction; parent's deportation (removal)

Standby Guardianship Designation

DESIGNATION OF STANDBY GUARDIAN

I, _____, residing at _____
_____, hereby designate _____, currently
residing at _____, as guardian of the person
and property of my children/minor wards:

NAME OF CHILD

CHILD'S DATE OF BIRTH

Standby Guardianship Designation (cont.)

- No longer only for medical issues
- Effective when parent:
 - Is mentally incapacitated
 - Is physically debilitated, and parent consents
 - Passes away
 - “Administrative separation” (like ICE detention)
- May petition Family or Surrogate’s Court upon designation, but not necessary until actually seeking guardianship
- Recommended if plan is for child to remain in US after parent's deportation

Standby Guardianship Designation (cont.)

- Next steps:
 - Provide original designation to standby guardian and keep copy for your records.
 - The guardian must attach proof that parent is being held in ICE custody (print out from www.ice.gov/locator) and/or copy of Immigration Court removal order.
 - Petition for guardianship must be filed in Family Court within 60 days of administrative separation or other triggering event.

Custody Terms

- **Sole custody** – custodial parent has legal authority to make all decisions in child's life; has physical custody of child, subject to visitation of other parent
- **Joint legal custody** – custodial parent must discuss all major decisions in child's life with other parent. Whether other parent has any final say depends on who has "final decision-making authority"
- **Joint physical custody** – parents split child's time 50/50, and neither parent has more time with child than other
- **Physical custody** (also called residential custody) – custodial parent physically has child

Visitation (a/k/a Parenting Time)

There are several types of visitation:

- **Visitation**, without any other terms, usually means the parent goes to the other parent's home to pick up the child. The child goes with the other parent for any length of time (day visit, overnight, entire weekend) and then is brought back.
- **Supervised visitation** means when the child and the parent see each other with another adult present. That adult can be from an agency (agency supervised) or a family member or friend. The agency can be paid by a party or the court.

Visitation (a/k/a Parenting Time) (cont.)

- **Therapeutic visitation** is when the child and the parent see each other in a therapist's office and the visitation is similar to a therapy session. This can be paid for by a party or the court.
- **Supervised exchanges** means that the child is exchanged (picked up and dropped off) with another adult present. The exchanges can also be done at a police precinct, open space or place of worship.
- Most judges try to strive for **unsupervised** visitation when the matter is concluded. Therefore, most final orders do not have any form of supervised visitation.

Relocation Factors

(If one parent is **removed** and wants to take child, courts consider this relocation)

- Best interest of child - *Tropea v. Tropea*, 87 N.Y. 2d 727 (1996)
- Distance, time and cost of travel
- Current visitation schedule
- Meaningful access (very subjective)
- Presence of non-custodial parent in the child's current life

Relocation Factors (cont.)

(If one parent is **removed** and wants to take child, courts consider this relocation)

- At new location: stability, employment, quality of life, more resources (family), school, child care
- Why relocate? Job, new family, more resources
- Relocation through courts is rare and difficult to achieve

Options

Choosing an Option

- Because of the risks when courts are involved, it may be preferable to use just a **Designation of Person in Parent Relationship** and a **Travel Authorization** rather than formal guardianship or custody.
- Get **passports** for children right away.
- Complete the **school emergency contact cards**.
- Prepare a **Standby Guardianship Designation** just in case formal guardianship might be needed later, but don't file it with the court. It might never be needed.
- A **Power of Attorney** is just for property, so might not be necessary.

Choosing the Adult

- Is the designated adult willing to shelter/feed/clothe the child? Will they support the child's education? What about religious instruction? How are their finances? Is there room in their home? Where is their home? On sex offender or child abuse registry? How does the child feel about them?
- Make sure designated adult knows and is willing to serve in the role!
 - Don't surprise the adult by naming them without their knowledge!

Questions?



**LEGAL
SERVICES
NYC**

**THE
LEGAL AID
SOCIETY
CIVIL**

**URBAN
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Domestic
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Project