

# Advance Planning by Non-Citizen Parents

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The Legal Aid Society, Immigration Law Unit  
Legal Services NYC

Urban Justice Center, Domestic Violence Project

# Planning ahead for care/custody of children

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



Passport

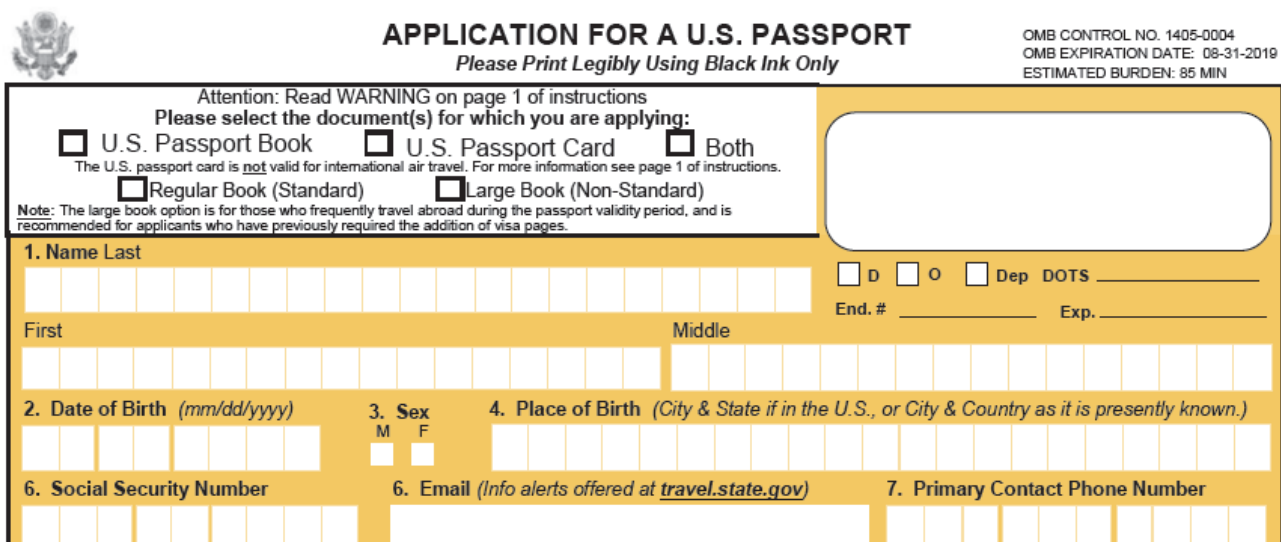
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# Passport for your child

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- U.S. passport - application
  - Form DS-11
- U.S. passport - consent of other parent
  - Form DS-3053
  - If order of protection, may be able to waive consent
- Home-country passport
  - Consent of other parent
- Easier to do before detention/removal

# Passport for your child (cont.)



 **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 \_\_\_\_\_  
6. Email (Info alerts offered at [travel.state.gov](http://travel.state.gov)) \_\_\_\_\_  
7. Primary Contact Phone Number \_\_\_\_\_

- Form DS-11, Application for US Passport



# Passport for your child (cont.)



U.S. Department of State  
**STATEMENT OF CONSENT:**  
**ISSUANCE OF A U.S. PASSPORT TO A MINOR UNDER AGE 16**  
Attention: Read **WARNING** and **FORM INSTRUCTIONS** on Page 1

OMB CONTROL NO. 1405-0129  
OMB EXPIRATION DATE: 08-31-2019  
ESTIMATED BURDEN: 20 Minutes

<b>1. MINOR'S NAME</b>			
Last	First	Middle	
<b>2. MINOR'S DATE OF BIRTH</b> (mm/dd/yyyy)		<b>3. THIS AUTHORIZATION IS VALID FOR:</b>	
		<input type="checkbox"/> Passport Book and Card	<input type="checkbox"/> Book Only <input type="checkbox"/> Card Only
<b>4. STATEMENT OF CONSENT</b> To be completed by the non-applying parent or guardian using his/her information when not present at the time the applying parent or guardian submits the minor's application. <b>Statements expire after 90 days.</b>			
I, _____ authorize _____			
Print Name (non-applying parent/guardian)		Print Name (person applying for minor's passport)	
to apply for a United States passport for my minor child named on this application. My consent is unconditional in regards to passport validity and travel.			
Street Address (non-applying parent)		Apartment	City State Zip Code

- Form DS-3053, Statement of Consent

# Travel Permission

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# Travel permission for child

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- Travel permission form for **adult accompanying your child**
  - To comply 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



# Travel permission for child (cont.)

## 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

\_\_\_\_\_

\_\_\_\_\_

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# School Emergency Contact Card

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# School Emergency Contact Card

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- “Blue Card”
- Parent can list up to 3 people to contact in case child has emergency or is sick in school
- Update now with the 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



# School Emergency Contact Card (cont.)

**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 \_\_\_\_\_

- “Blue Card”

# Designation of Person in Parental Relationship

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# Designation of Person in Parental Relationship

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- Medical and school decisions for child
- New York statutory form
- OCFS form in English and Spanish
- Valid for one year at a time
  - Effective date can be future event, e.g., detention and/or removal
- Notarize, but no need for lawyer



# Designation of Person in Parental Relationship (cont.)

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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.)

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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.

- Can commence upon detention by ICE

# Designation of Person in Parental Relationship (cont.)

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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.

- Other parent needs to consent as well
- Can be signed/notarized subsequently



# Designation of Person in Parental Relationship (cont.)

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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 \_\_\_\_\_

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

# Power of Attorney

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# Power of Attorney

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- **Property** transactions for parent
  - Apartment
  - Bank account
  - Insurance matters
  - Healthcare billing
  - Etc.
- New York statutory form
- Notarize, no need for lawyer



# Power of Attorney (cont.)

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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.)

**(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;

- Initial the relevant portions

# Power of Attorney (cont.)

## (m) SIGNATURE AND ACKNOWLEDGMENT:

In Witness Whereof, I have hereunto signed my name this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
(Signature of Principal)

STATE OF NEW YORK    )  
COUNTY OF            )    SS.:

On \_\_\_\_\_, 201\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally

- The principal signs in front of a notary



# Power of Attorney (cont.)

## (o) AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

*It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.*

I/we, \_\_\_\_\_ and \_\_\_\_\_, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

\_\_\_\_\_  
Agent

- The agent signs in front of a notary
- Can be signed/notarized subsequently

# Guardianship and Custody

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# Court Involvement

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



# Risks of Court Involvement

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- 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 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.)

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- Once custody order is finalized, court requires substantial change in circumstances, to modify
  - Change 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

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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



# Guardianship vs. Custody

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- 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.)

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- **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, and both require Court intervention
- Both require notice to both parents

## Guardianship vs. Custody (cont.)

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- 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, even if the parent is seeking the change



# Who can file for Guardianship?

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- 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?

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- 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.)

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- 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, or 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

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- 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

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- No longer only for medical issues
- Effective when parent:
  - Is mentally incapacitated
  - Is physically debilitated, and parent consents
  - Passes away
- Or upon
  - “Administrative separation” (like ICE detention)
- May petition Family or Surrogate’s Court upon designation, but not necessary until actually seeking guardianship

# Standby Guardianship Designation (cont.)

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## 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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# Custody Terms

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- **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)

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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.)

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- **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 the child the courts consider this a relocation.)

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- **BEST INTEREST** *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 the child the courts consider this a relocation.)

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- 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

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# Choosing an Option

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- 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 your children right away.
- Complete the **school emergency contact cards**.
- You can 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.

# Questions?

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**LEGAL  
SERVICES  
NYC**

**THE  
LEGAL AID  
SOCIETY  
CIVIL**

**URBAN  
JUSTICE  
CENTER**

Domestic  
Violence  
Project