DETENTION AND TERMINATION OF PARENTAL RIGHTS TOOL KIT

Developed by Leslye Orloff

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Detention and Termination of Parental Rights Tool Kit

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ATTORNEY GUIDE TO REPRESENTING IMMIGRANT VICTIM PARENTS WHO ARE AT RISK OF DETENTION/DEPORTATION, IN DETENTION, OR HAVE BEEN DEPORTED

A. Problem

An emergence of parental termination cases has arisen as a result of the increased immigration enforcement, particularly immigration enforcement at the local level due to programs such as 287(g) and secure communities. Many immigrant parents face the threat of detention or deportation, have been detained and/or deported as a result. Unfortunately, this immigration enforcement can lead to devastating consequences in the family law context, including termination of parental rights. Some immigrant parents in detention may have knowledge of the cases brought against them, but many are unaware of them because they do not receive proper notice in detention, either due to language access issues or an issue locating the detained parent. Also, for those that do have notification of the case, they may not be able to access a family law attorney. This tool kit of materials was created with the expectation that an increase in the number of family law assistance for immigrant parents will emerge and also in the hopes that family law attorneys nationwide will be equipped to handle these specific cases and can volunteer their services.

This tool kit of materials can also be adapted and used in contested custody cases and abuse and neglect cases involving immigrant victims since many of the same issues arise.

B. Law Surrounding Parental Termination Cases

Understanding Termination of Parental Rights cases requires knowing the general framework on Child Welfare Law and the Adoption and Safe Families Act (ASFA) of 1997. It should be noted that states differ on their adoption of these laws and therefore it is important to review the specific law of the state in which the case is brought.

The ASFA was created by Congress as a reaction to the Adoption Assistance and Child Welfare Act of 1980. This act required each state to develop a plan for child welfare services and required states to use reasonable efforts to prevent removal of children from their homes or to return them to their homes. This became known as the "federal reasonable efforts standard." However, an unintended consequence of the 1980 legislation was that the reasonable efforts standard, in practice, became unreasonable in that families that were dangerous or abusive were forced to attempt unification. Recognizing that remaining in or returning to abusive homes posed a potential danger to America's children, Congress amended the 1980 legislation to prevent children from remaining in homes that

were clearly dangerous or abusive and to encourage adoptions into non-abusive homes, thus enacting the ASFA act. The ASFA was passed by Congress in an effort to encourage the adoption of children who were in foster care placements. The act limits, and in circumstances, even removes, "the reasonable efforts requirement normally required to reunify families under 42 U.S.C.A. s 671(a)(15)(B) in order to encourage swift adoption and permanent and stable conditions for children.

In order to persuade states to follow the mandates of the ASFA, the federal government provides funding to states to develop and implement plans designed to further the purpose and intention of the legislation. In determining whether reasonable efforts were required in particular cases, different courts have applied provisions of the ASFA to limit the obligation to provide reasonable efforts to reunify parents with children in foster care, require permanency hearings within 12 months after a child enters foster care, and require the state to file or join a petition to terminate parental rights, subject to certain exceptions such as; when a child has been in foster care for 15 of the most recent 22 months or when a parent has committed certain serious crimes.

When the state or another individual seeks to involuntarily terminate parental rights, a judicial proceeding is required to take place in order to determine whether the biological parent's rights to the child should be terminated. Although every state has a termination statute in place, the states vary on when and what type of parental rights may be severed, and so the law may be different depending on which state the case is brought in.[1] For example, in the District of Columbia, a motion for the termination of the parent and child relationship may be filed six months after an adjudication of neglect and the child is in the court-ordered custody of a department, agency, institution, or person other than the parent. Pursuant to D.C. Code § 2354, the court may terminate parental rights when it finds that the termination is in the best interests of the child **and** there is evidence of one of the following: the parent has abandoned the child, drug-related activity continues to exist in the child's home environment after intervention and services have been provided, the child has been subjected to intentional and severe mental abuse, parental rights to another child of the parent have been involuntarily terminated, or the parent has been convicted of either; murder or voluntary manslaughter of a child sibling (or another child) **or** aiding, abetting, attempting, or soliciting to commit such murder or voluntary manslaughter **or** parent was convicted of a felony assault that has resulted in serious bodily injury to the child, a child sibling, or another child.[2]

When filing or opposing an involuntary TPR case, the burden is placed on the moving party to prove by a "clear and convincing evidence standard" that the biological parent's rights should be

[1] See attachment for state-by-state statutes on termination of parental rights. Child Welfare Information Gateway, State Statutes Search; http://www.childwelfare.gov/systemwide/laws_policies/state/index.cfm?event=stateStatutes.processSearch#sitetop

[2] D.C. Code § 16-2354(b)

severed.[3] Detained Immigrant parents subjected to the TPR process may face a unique set of circumstances different from that of normal TPR cases. Termination of parental rights cases may be brought against them under; neglect or abandonment. Furthermore, detained immigrants may have an issue adhering to reunification plans, which are implemented in some states, because they may not be able to satisfy the visitation requirements or parenting class requirements.

C. Victim Considerations

1. Using Immigration Status as a Tool of Power and Control

Abusers of immigrant spouses and intimate partners often use immigration-status-related abuse to lock their victims in abusive relationships. For immigrant victims, this form of power and centrality is particularly malicious and effective. The fear induced by immigration related abuse makes it extremely difficult for a victim to leave her abuser, obtain a protection order, call the police for help, or participate in the abuser's prosecution. Immigration-related abuse plays upon the fact that the abuser may control whether or not his spouse attains legal immigration status in this country, whether any temporary legal immigration status she has *may* become permanent, and how long it may take her to become a naturalized citizen. Immigration-related abuse plays upon particular vulnerabilities for immigrant victims and usually coexists with and/or predicts escalation.

In addition to deterring a victim from seeking help to counter abuse, immigration related abuse could be used to interfere with the victim's abilities to survive economically apart from their abusers. Legal immigration status leads to access to work authorization that allows immigrant victims to work legally in the United States. Moreover, abusers of immigrant victims who are the fathers of joint children often keep the victim from attaining legal immigration status, and then try to raise her lack of legal immigration status in a custody case in order to win custody of the children despite his history of abuse.

Some examples of immigration related abuse include, but are not limited to:

- Threatening to report her or her children to the Department of Homeland Security
- Threatening to turn her into Department of Homeland Security for deportation
- Not filing papers to confer legal immigration status on her or her children
- Threatening to withdraw or withdrawing immigration papers he filed for her and/or her children
- Asking Department of Homeland Security to revoke any family-related non-immigrant visa issued to the victim and/or her children as dependents on the abuser's work-related-diplomatic, student visa, or other visa.

[3] Santosky v. Kramer, 455 U.S. 745, 767 (1982).

- Asking Department of Homeland Security to revoke an approved family based visa petition filed by the abuser.
- Making her come to the United States on a visitor's or fiancé visa although she is already married to her spouse.
- Forcing her to sign papers written in English that she does not understand, that have to do with her immigration claims
- Not giving her access to documents that she needs for her application for lawful immigration status
- Threatening to tell immigration authorities that she married him only to obtain lawful immigration status and that their marriage is fraudulent
- Getting the immigration authorities to revoke a visa it has granted to her as his spouse
- Turning her into the immigration authorities for deportation, controlling the mail, and hiding from her notices to appear before an Immigration Judge to defend against her deportation.
- Telling her that if she calls the police for help he will have her deported
- Misinforming her about the legal system and her rights in the legal system and under immigration laws.

2. Screening for Immigration Relief

It is important to screen – and screen early – for immigration relief. Many immigrant victims may be eligible for immigration relief (VAWA, T and U visa). Immigration relief offers the victim the following benefits:

- Ability to work legally
- Path to lawful permanent residency and ultimately citizenship
- Protection from deportation
- Increased access to public benefits, including housing
- Severs dependence on potential abusers
- Ability to travel to and from the U.S. (with some exceptions)
- Improved access family law remedies, such as protection orders and custody

3. Ensuring the Child(ren) are Not Placed with the Abuser

Another consideration to watch out for is the placement of separated children with the abuser by child welfare agencies. There is particularly a risk if the immigrant victim is in detention and her family of separated children being placed with the abuser if the children have been removed from the immigrant parent due to neglect or because she is in detention

D. Template Materials & Resources

Below is a list of resources meant to be helpful to a family law attorney representing a detained or deported immigrant parent in a termination of parental rights case. However, there are bound to be other documents that would be helpful for such a case. If you have additional documents or suggestions for documents, please contact me at sfata@legalmomentum.org.

Included in Webinar packet:

- Bench Brief
- Motion Opposing Termination of the Parent and Child Relationship
- Motion to Appear Telephonically or via Video Conference
- Motion to Dismiss for Inadequate Service
- Motion for Protective Order
- Immigration Protection Screening Checklist for Family Lawyers
- Summary of Termination of Parental Rights State Laws
- VAWA Confidentiality DHS Notice
- VAWA Confidentiality DHS Torres Memo
- *In re Angelica* case decision
- Explanation and Power of Attorney Designation Instructions
- Appointment of Temporary Guardian (one parent)
- Appointment of Temporary Guardian (two parents)

Located at http://www.firrp.org

- FIRRP, Help I Can't Find the Parents Document
- Detained Parents Pamphlet

Located at http://www.fiacfla.org

- FIAC Frequently Asked Questions

Located at http://www.firstfocus.net

- Impact of Immigration Enforcement Policy Paper
- Language, Culture, Immigration Relief Options Policy Paper
- Public Benefits and Child Welfare Financing Policy Paper

Located at http://www.americanhumane.org

- A Social Worker's Toolkit for Working with Immigrant Families (3 documents)

Located at http://www.casey.org

- How Children Move Through the Child Welfare System

Located at http://www.appleseednetwork.org

- Appleseed Deportation and Custody Guide

D. Appealing the Decision

If you are unsuccessful representing a client in 1) an abuse and neglect case, (2) a termination of parental rights case, or (3) a contested custody case, you should consider filing a motion to set aside judgment or appealing the decision.

Fact Sheet on State v. Maria L.

In re Interest of Angelica L., 277 Neb. 984 (2009)

Unanimous Nebraska Supreme Court Decision on the Legal Rights of Immigrant Parents

November, 2009

Issue: The separation of US citizen children and immigrant parents due to immigration raids and detentions has emerged as a nation-wide issue. Detention can have a devastating impact on families, especially if immigrant parents are separated from their children. A pattern is emerging in which some state departments of social services are taking U.S. born children from undocumented immigrant parents and placing them in foster care, in violation of the undocumented immigrant parent's right to custody of their children. According to a report by the Inspector General's Office of DHS, at least 108,434 undocumented parents of US citizen children were removed from the US between 1998 and 2007. This number is likely to be underreported, but still indicates that this is an issue even according to DHS. Once children are separated from their immigrant parents, it can be difficult for those parents to get their children back. They may not be able to pursue a custody case before removal from the United States, especially if parents are detained in a different state. If immigrant parents are able to pursue a custody case, their deportation may hinder their case.

Legal Momentum's Role: Legal Momentum advocates around the issue of separation of US citizen children and immigrant parents. Most recently, Legal Momentum assisted with the recent Nebraska Supreme Court case, *State v. Maria L.*, which dealt with this very issue. The Nebraska Supreme Court affirmed the constitutional right of immigrant parents to care for, have custody of, and control over their children. The Court ruled that Maria Luis, a Guatemalan woman, should not lose custody of her children because she was deported from the United States. This ruling by the Supreme Court of Nebraska is a great victory for immigrant women because it protects mothers from the unconstitutional deprivation of their children without a showing of parental unfitness. Thus, it is now clear that immigrant women, both documented and undocumented, in deportation proceedings and not, deported and having had no contact with DHS, all have a constitutional right to raise and nurture their children whether or not they remain in the U.S.

What You Can Do to Protect Your Parental Rights:

- Immigrant families with undocumented immigrant family members must have a safety plan for caring for children if undocumented parents are detained. This might include:

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appointing a U.S. citizen friend or relative as designated guardian during detention; providing emergency contact information to children's schools; carrying prepaid phone cards on oneself at all times.

- In case of an immigration enforcement action or detention, immigrant parents who are the primary caretakers of children should tell DHS this fact immediately and ask not to be detained while DHS processes any case against them. DHS may allow humanitarian release from detention to primary caretakers and mothers who are breastfeeding until their case is decided.
- Those who are detained should contact an immigration attorney immediately and, if applicable, alert the immigration attorney about any history of domestic violence, sexual assault, trafficking, or other criminal victimization.

If you are an immigrant facing deportation or detention of yourself or a family member and you would like a referral for an attorney OR if you are a service provide seeking technical assistance, please contact The National Immigrant Women's Advocacy Project at American University, Washington College of Law (202) 274-4457 or niwap@wcl.american.edu.

There is nothing in Davlin's motion (or indeed in the record) that would suggest the nature of the exculpatory evidence to which Guilliatt and Davis would testify. Nor is there any indication what alibi either might provide Davlin. Rather than providing any detail, Davlin alleges only conclusions of fact and law. Such are insufficient to support the granting of an evidentiary hearing. As such, Davlin's fifth and final assignment of error is without merit.

CONCLUSION

The decision of the district court denying Davlin's motion for postconviction relief should be affirmed.

AFFIRMED.

WRIGHT, J., participating on briefs.

IN RE INTEREST OF ANGELICA L. AND DANIEL L., CHILDREN UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. MARIA L., APPELLANT.

___N.W.2d___

Filed June 26, 2009. No. S-08-919.

1. **Juvenile Courts: Appeal and Error.** Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.
2. **Evidence: Appeal and Error.** When the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other.
3. **Child Custody: States.** The whole subject of domestic relations, and particularly child custody problems, is generally considered a state law matter outside federal jurisdiction.
4. **Juvenile Courts: Jurisdiction.** The jurisdiction of the State in juvenile adjudication cases arises out of the power every sovereignty possesses as parens patriae to every child within its borders to determine the status and custody that will best meet the child's needs and wants.
5. ____: ____. To obtain jurisdiction over a juvenile, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of Neb. Rev. Stat. § 43-247 (Reissue 2004).
6. ____: ____. Neb. Rev. Stat. § 43-3804 (Cum. Supp. 2006) does not create a jurisdictional prerequisite to a juvenile court's exercise of jurisdiction.

7. **Parental Rights: Proof.** Under Neb. Rev. Stat. § 43-292 (Reissue 2008), in order to terminate parental rights, the State must prove, by clear and convincing evidence, that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests.
8. **Constitutional Law: Parental Rights: Courts.** The interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court.
9. **Parental Rights: Proof.** Before the State attempts to force a breakup of a natural family, over the objections of the parents and their children, the State must prove parental unfitness.
10. ____: ____. Until the State proves parental unfitness, the child and his or her parents share a vital interest in preventing erroneous termination of their natural relationship. In other words, a court may not properly deprive a parent of the custody of his or her minor child unless the State affirmatively establishes that such parent is unfit to perform the duties imposed by the relationship, or has forfeited that right.
11. ____: ____. The fact that a child has been placed outside the home for 15 or more of the most recent 22 months does not demonstrate parental unfitness.
12. **Parental Rights.** The placement of a child outside the home for 15 or more of the most recent 22 months under Neb. Rev. Stat. § 43-292(7) (Reissue 2008) merely provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness.
13. **Parental Rights: Proof.** Regardless of the length of time a child is placed outside the home, it is always the State's burden to prove by clear and convincing evidence that the parent is unfit and that the child's best interests are served by his or her continued removal from parental custody.
14. **Constitutional Law: Parent and Child: Presumptions: Proof.** When considering whether removal from parental custody is in the best interests of the child, the determination requires more than evidence that one environment or set of circumstances is superior to another. Rather, the "best interests" standard is subject to the overriding presumption that the relationship between parent and child is constitutionally protected and that the best interests of a child are served by reuniting the child with his or her parent. This presumption is overcome only when the parent has been proved unfit.
15. **Parent and Child.** The law does not require the perfection of a parent.
16. **Courts: Child Custody.** The Nebraska Supreme Court has never deprived a parent of the custody of a child merely because on financial or other grounds a stranger might "better provide."
17. **Parental Rights: Evidence: Proof.** It is the burden of the State, and not the parent, to prove by clear and convincing evidence that the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the case plan.
18. **Appeal and Error.** An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the controversy before it.

Appeal from the County Court for Hall County: PHILIP M. MARTIN, JR., Judge. Reversed.

Jeffrey R. Kirkpatrick and Sheri A. Wortman, of McHenry, Haszard, Hansen, Roth & Hupp, P.C., and Brian D. Buckley, Christopher M. Huck, and R. Omar Riojas, of DLA Piper, L.L.P. (U.S.), for appellant.

Monika E. Anderson, Special Assistant Attorney General, and Robert J. Cashoili, Deputy Hall County Attorney, for appellee State of Nebraska.

Vincent M. Powers, of Vincent M. Powers & Associates, and Shari Lahlou, Barbara H. Ryland, and Christine Sommer, of Crowell & Morning, L.L.P., for amicus curiae Legal Momentum.

Victor E. Covalt III, of Ballew & Covalt, P.C., and John De Leon, of Chavez & De Leon, P.A., for amicus curiae Consulate General of Guatemala.

Michael Kneale, guardian ad litem.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, and MCCORMACK, JJ.

MCCORMACK, J.

I. NATURE OF CASE

In this appeal, we must balance the conflicting right of an undocumented immigrant, Maria L., to maintain custody of her children, with the State's duty to protect her children who came with her or were born in this country. Maria failed to take her child, Angelica L., for a followup doctor's appointment despite a diagnosis of respiratory syncytial virus (RSV) and her worsening condition, which failure led to Maria's arrest and deportation. Maria's other child, Daniel L., and Angelica were placed in temporary emergency custody with the Nebraska Department of Health and Human Services (DHHS), and they were not allowed to reunite with Maria when she was eventually deported to Guatemala. Despite Maria's attempts to satisfy a DHHS case plan to regain custody, her parental rights were eventually terminated.

Because of the State's involvement with the family, Maria's parental rights under Nebraska's juvenile law have collided

with the sanction imposed on her by immigration law. We must now address the needs of these vulnerable children who are caught in the clash of laws, culture, and parental rights that occur when their parents cross international boundaries. But this responsibility initially lies with child protection workers and courts in the State's juvenile system. In the present case, the task of the child protection workers, and consequently our task, would have been much easier if the Guatemalan consulate had been included in these proceedings earlier. We ultimately conclude that the evidence was insufficient to terminate Maria's parental rights.

II. BACKGROUND

1. MARIA AND HER CHILDREN

Maria, a native of Guatemala, is the mother of four. In addition to Angelica and Daniel, Maria has two other sons. Maria's native language is Quiché, and Spanish is her second language. Maria first came to the United States in 1997 to forge a better living for herself and her two sons, her only children at that time. During the period that Maria lived in the United States, her two sons remained with family members in Guatemala.

In 1998, Maria lived in Michigan and worked in a slaughterhouse. Maria gave birth to Daniel on February 13, 1998. When Daniel was approximately 5 years old, Maria went back to Guatemala to take care of her ailing mother. Maria left Daniel in Michigan under her sister's care while she was gone. Maria's mother ultimately passed away, and about 11 or 12 months after leaving the United States, Maria returned by illegally crossing the border through Arizona.

In January 2004, Maria gave birth to Angelica. It is unclear whether the birth occurred shortly before or after Maria reentered the United States in 2004. Regardless, Angelica was born about 2 months prematurely.

By the time Angelica was 1 month old, Maria, Daniel, and Angelica were living in Grand Island, Nebraska. Their whereabouts during Angelica's first month of life are unclear. Angelica received medical attention and care for the first time at 1 month of age, when Maria brought Angelica to Saint Francis Medical Center (Saint Francis) in Grand Island. At that

time, Angelica weighed 3 pounds 9 ounces and was suffering from dehydration, malnutrition, a urinary tract infection, and a left pulmonary branch stenosis. Angelica remained in the hospital for several days and was eventually discharged on March 3, 2004. By the time of her discharge, Angelica weighed 4 pounds 14 ounces and she was in good condition.

The medical records regarding Angelica's first hospital visit indicate that Maria expressed her desire and determination to live in the United States. Aware of Maria's desire to remain in the United States, Angelica's treating physician warned Maria that if she did not follow her instructions, then she would recommend that Maria be deported. Angelica's treating physician was concerned about Maria's medical judgment because Angelica had not been provided medical care sooner. Angelica's treating physician told Maria that if she did not follow up on Angelica's medical care, she would notify Child Protective Services.

Shortly after Angelica was discharged from Saint Francis, Maria voluntarily sought the assistance of "Healthy Starts"—a program that provides education on the growth and development of newborn babies. Maria sought the assistance of Healthy Starts because she wanted information on how to properly care for Angelica. Through Healthy Starts, Maria met Lisa Negrete, a Healthy Starts employee. Negrete began making regular checks on Angelica at her home to follow up with Angelica's care. She also made regular visits to the house of Angelica's babysitter. The record reveals that after Maria became involved with Healthy Starts, DHHS was contacted on certain occasions regarding Angelica's and Daniel's well being. But after investigation, all reports were deemed unfounded.

On April 3, 2005, Maria brought Angelica to Saint Francis because Angelica had a fever and was having problems breathing. Angelica was diagnosed with RSV. Through a Spanish language interpreter, Maria was instructed to give Angelica nebulizer treatments every 4 to 6 hours as needed and "to follow up with [the doctor] in two days or return if she is worse."

Maria did not take Angelica back to the doctor because she thought that Angelica was recovering, so there was no need to return to the hospital. According to Negrete, however, who

observed Angelica at the babysitter's home sometime between April 5 and 7, 2005, Angelica had a temperature of over 100 degrees, was lethargic, smelled foul, and had on clothing stained with vomit. Negrete also observed that there was no medication in Angelica's bag. Negrete told the babysitter to advise Maria to take Angelica to the hospital right away.

Negrete contacted DHHS on April 7, 2005, stating that Angelica was diagnosed with RSV and was not improving or receiving any of her medication. The April 7 report also contained allegations of abuse, but these allegations were never substantiated and were deemed to be unfounded. Based on this report, Collete Evans, a DHHS social worker, and Doug Cline, a Spanish-speaking police officer, went to Maria's home to follow up on the report. When they arrived at Maria's home, Maria answered the door, but she misidentified herself as the babysitter. Maria told Evans and Cline that Maria had left while she was sleeping. Maria later explained that when she saw the police, she was afraid she would lose her children and be deported.

Later that day, Evans and Cline went to the babysitter's home and discovered that the woman who had previously identified herself as the babysitter was actually Maria. Cline observed Maria nursing Angelica, and in his opinion, Angelica appeared to be sick. He testified that Angelica cried out but that she had no tears. Evans testified similarly, stating that Angelica appeared lethargic, was warm to the touch, smelled foul, and had no tears when she attempted to cry.

Maria was immediately arrested for obstructing a government operation, and Angelica was placed in emergency protective custody. Daniel was at school and was also placed into protective custody. Cline explained that Daniel was placed in protective custody "simply to provide care for him while [Maria] was incarcerated." Angelica was placed in protective custody because Maria allegedly neglected her by not providing proper medical care.

After Angelica was removed from her home and placed in the custody of DHHS, Angelica was taken to the emergency room and was hospitalized for 4 days. Once her symptoms were under control, Angelica was released to foster placement.

Shortly after her arrest, Maria was taken into custody by U.S. Immigration and Customs Enforcement. The original obstruction charges against Maria were not pursued. Maria was scheduled to be deported on May 10, 2005. On April 8, 2005, the State filed a juvenile petition alleging that Angelica and Daniel were juveniles as defined by Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004) because they lacked proper parental care by reason of the fault or habits of Maria (count I); because Maria neglected or refused to provide proper or necessary assistance, education, or other care necessary for their health morals or well being (count II); and because they were in a situation or engaged in an occupation dangerous to their life or limb or injurious to their health (count III).

On April 13, 2005, the court held an initial hearing. Maria attended the hearing, but was not represented by counsel. Through a Spanish language interpreter, she was informed of her rights and the nature of the petition. Maria generally denied the allegations. Because Maria was incarcerated, the court ordered that Angelica and Daniel should remain in the temporary custody of DHHS pending adjudication.

The State was aware that Maria's incarceration was a temporary condition pending deportation. However, the State determined that it would not be returning the children to Maria to take with her to Guatemala "based on concerns [it] had for their safety." During the month that Maria was incarcerated pending deportation, she was provided only one visit with her children.

Although aware that Maria would no longer be in the country by that time, the court set the adjudication hearing for July 11, 2005. Maria was therefore not present at the hearing. She was instead represented by her legal counsel. At the State's request, the court struck count I of the petition. In support of its remaining allegations, the State offered as evidence the affidavit of Shawn LaRoche, a Child Protective Services worker employed by DHHS; a report prepared by the court-appointed special advocate; and the genetic testing report demonstrating that Maria was Angelica's biological mother. Maria's counsel presented no evidence on Maria's behalf.

LaRoche's affidavit, which was the original affidavit relied on when the children were removed, summarized the events of April 7, 2005, and stated that in LaRoche's opinion, it would be in the best interests of the children to be placed in the temporary custody of DHHS. The court concluded that immediate reunification of Angelica and Daniel in the parental home would be contrary to their health, safety, and welfare because Maria had been deported to Guatemala. The court ordered temporary custody of Angelica and Daniel to remain with DHHS and ordered DHHS to prepare a plan of rehabilitation. DHHS placed the children in at least three different foster families until they were placed, on September 6, 2005, with their current foster parents.

2. Case Plans

The court held dispositional hearings on September 8 and December 8, 2005, and June 15, 2006. At all of the dispositional hearings, Maria was unable to attend and counsel appeared on Maria's behalf. At the September 8 hearing, the court reiterated its finding that placement of the children with their foster parents was appropriate and that reunification would be contrary to the children's health, safety, and welfare. The court adopted the case plan, which was prepared by Lisa Hannah, a protection and safety employee for DHHS. The court instructed Maria's counsel to advise her that failure to comply with the case plan, combined with the children's being out of the home for 15 or more of the most recent 22 months, would trigger a motion to terminate parental rights.

The permanency goal of the case plan was reunification. Other goals of the September case plan included providing for the basic needs of the children, providing a safe and nurturing environment for the children, achieving timely permanency for the children, and addressing any individual mental health needs Maria may have had to effectively parent. Additionally, the case plan listed several tasks for Maria, including maintaining a job, maintaining an appropriate residence, not associating with individuals that are involved in criminal activities, and scheduling and completing a psychological evaluation. Maria was to keep in regular contact with the case manager, including providing

notification within 48 hours of any change in employment, residence, or contact information; maintaining contact with the children through telephone calls and letters at least once a month; keeping the case manager informed of any progress or contacts with professionals; and taking a parenting class and providing a certification of completion to the case manager. Because Maria was in Guatemala and DHHS had kept the children in Nebraska, physical visitation was not possible. Contact with the children was instead established through telephone calls. Although Maria wanted to initiate telephone calls with her children, she was not provided with a telephone number to contact the children and any contact with the children had to be initiated by their foster parents.

A few months after arriving in Guatemala, Maria contacted two missionaries, William Vasey and Pastor Tomas DeJesus, seeking help regaining custody of her children. Maria provided Hannah with Vasey's contact information and gave her permission to discuss her case with Vasey and DeJesus. The record indicates that Maria contacted DHHS several times, inquiring about how she could get her children back. All of Maria's communications with DHHS took place through the use of Spanish language interpreters because Hannah did not speak Spanish.

Hannah informed Vasey about the general goals and requirements of the case plan in August 2005. Sometime in February 2006, Hannah spoke to Maria over the telephone and through a Spanish language interpreter, and she read Maria the contents of the case plan. Hannah admitted that Maria never received a physical, translated copy of the case plan—even though DHHS generally provided translated copies to other non-English speakers.

On March 10, 2006, Hannah contacted Maria after learning that Maria had some questions about the case plan. At that time, Hannah told Maria that they were having difficulty arranging parenting classes and counseling for her, so Maria would "have to take the initiative for that" herself.

On June 2, 2006, Maria provided Hannah with DeJesus' contact information. Hannah testified that she discussed the requirements of the case plan with DeJesus and that DeJesus

said he would follow through on providing her with progress reports, counseling, and setting up parenting education classes for Maria. From that point on, most of Hannah's communications about Maria's case were with DeJesus, and Maria assumed that he provided Hannah with the information she needed regarding Maria's compliance with the case plan.

Although it was Hannah's job to monitor Maria's progress, Hannah admitted she could not do so because of Maria's location. Nevertheless, it was Hannah's opinion that Maria had failed to comply with the case plan requirements. Hannah testified that for the most part, Maria maintained contact with her and the children but that there was a period of time when she did not know how to contact Maria. Hannah stated further that she never received verification that Maria had completed a parenting class and that she knew that parenting classes were available in Guatemala. Hannah admitted that the parenting class requirement was not based on Hannah's personal observations of Maria, but was more or less a fail-safe matter. Finally, Hannah explained that she never received a psychological evaluation of Maria—although she did receive a written report discussing the mental health issues that women face in Guatemala.

3. Termination of Parental Rights Hearings

Based on Maria's failure to strictly comply with the case plan and the passage of more than 15 months of the most recent 22 months in foster care, on September 22, 2006, the State filed a motion to terminate parental rights. An initial hearing on the matter was held on November 9, and a hearing on the motion to terminate was scheduled for January 22, 2007. The case was continued several times so that Maria could obtain an entry visa to participate in the termination hearings. Hearings on the motion to terminate were eventually held on December 17 and 18, 2007, with Maria present.

During the hearings, the court heard testimony from various witnesses including Dr. John Meidlinger, a clinical psychologist; the foster mother; Hannah; Cline; Margorie Creason, a protection and safety worker of DHHS; Maria; Negrete; Evans; and Vasey.

Meidlinger testified that he believed it would be in both Angelica's and Daniel's best interests to remain with their foster parents. Meidlinger testified at length regarding the emotional trauma the children would suffer if they were uprooted from their foster parents and sent to live in Guatemala. Meidlinger stated that the children were currently well adjusted to their foster care and had a positive relationship with their foster parents. It was Meidlinger's opinion that if the children were sent to Guatemala, they would "experience culture shock, disorientation, fearfulness, sadness and anger." He posited that Daniel would need special help and reassurances expressing those feelings, but that the adjustment would not be as difficult for Angelica. Meidlinger opined that Daniel would suffer long-term effects such as "anger and confusion on a long-term basis; a sense of alienation or loss, a sense of sadness and depression, and likely future difficulties developing close and trusting relationships with other people." Meidlinger predicted that Angelica would suffer short-term problems similar to Daniel's, including anxiety, depression, culture shock, problems developing close interpersonal relationships, and a lifelong sense of loss and grief if she were returned to Maria in Guatemala.

Meidlinger testified that the standard of living in Guatemala is lower than the standard in the United States, the people are poorer, and there are less economic opportunities. Meidlinger was unfamiliar with the educational system or athletic opportunities available in Guatemala.

When asked what characteristics a parent needed for Angelica and Daniel to appropriately adjust, he stated:

> They would have to have a parenting figure who was completely committed to them, who had a foundation herself in the culture and some stability, both emotional and economic, and she would have to be very skilled in understanding that the children were going to have a variety of emotional reactions, that they could not be punished out of those reactions; that they needed to be allowed to express those feelings; and that they would have a depth of love and compassion; that would help the children connect to that person, that mother, probably; and, that bond

> of attraction and caring would be enough for the children to let go of some of the feelings of loss about what they no longer have.

Meidlinger did not testify as to his opinion whether Maria could meet the children's needs. Nor did he indicate that he had any concern that Maria would physically harm the children or any concern regarding her attachment to them.

Negrete likewise stated that she never observed any signs of physical abuse to Angelica. She testified that Angelica's emotional attachment to Maria seemed to decrease after Maria started working full time. According to Negrete, Maria's behavior with Daniel was appropriate but unaffectionate.

Hannah explained that the children were removed from Maria's custody due to concerns about Angelica's health. After that, normal visitations were impossible due to Maria's living in Guatemala. Hannah admitted that Maria stayed in contact with her children through telephone conversations and that their foster mother would report to Hannah about how the conversations went. Hannah testified that the conversations "went okay."

Creason began working on Maria's case in October 2007, and she testified generally as to her observations of the children as well adjusted to foster care. She noted that all of their medical and dental care is paid for. She also expressed concerns over Maria's past history of medical neglect of Angelica and Maria's "non-performance" of the case plan.

Maria testified through the aid of a Spanish language interpreter. Regarding the circumstances in 2005 which lead to her arrest and the children's being removed from her custody, Maria stated:

> [The doctor] said that I was supposed to come back on Tuesday. I didn't have a ride and I didn't have a car to take her back, and that's why I didn't come back. After those days I thought that she was getting better, that's why I decided I wasn't going to take her back.

Maria explained her living situation in Guatemala. She lives in Guatemala with her two other sons, who are 18 and 15 years old. There is a hospital within 10 minutes, walking distance, from her home, and Maria testified that she can receive

free medications for herself and her children. Maria testified she has beds and bedding, food, pots, pans, running water, electricity, and clothing. Maria also explained that there are at least three schools where she lives that the children could attend. Maria testified that she has maintained employment. The record indicates that together with her two older sons, the family earns a suitable income by Guatemalan standards. When asked about the breathing treatments Angelica may require if she gets ill again, Maria stated that she would take Angelica to the doctor in Guatemala and that she can get the medicine Angelica needs.

Vasey discussed his observations of Maria. Vasey has had close contact with Maria since June 2005. When asked if Vasey had concerns about returning the children to Maria, including whether they would receive proper medical care and education, Vasey testified that he had no concerns and would not hesitate to return the children to Maria. Vasey testified that Maria has strong ties to her community and that the people in her community respect her. Vasey also had no concerns about the education the children would receive in Guatemala. According to Vasey, Maria's two other sons lead healthy lives in Guatemala. Vasey stated he was "really impressed with [Maria's] ability as a caretaker and provider for those boys."

The State did not offer any evidence to rebut the testimony that Maria has established an appropriate residence in Guatemala or that she is a suitable caretaker to her sons in Guatemala.

The court received into evidence Angelica's and Daniel's medical records from 2004 through 2005. Those records show that Maria provided medical care to Angelica and Daniel on several occasions. On April 1, 2004, Maria, concerned about Angelica, brought Angelica to the emergency room because she was crying, would not eat, had a fever, and had not had a bowel movement. The report indicates the diagnosis as "Fussy baby. Nasal congestion." Angelica was discharged in stable condition. On July 2, Maria sought emergency medical attention for Angelica because she had a "[f]ever and [was] not eating." Angelica was diagnosed with an ear infection and fever, and she was discharged in stable condition. On July 18, Maria

brought Angelica into the emergency room again because Angelica was fussy and had a fever. The records indicate that Angelica was diagnosed with an ear infection in both ears and gas, and she was discharged in stable condition. On February 20, 2005, Maria brought Angelica to Saint Francis complaining of a fever, cough, and runny nose. The medical notes indicate that Angelica was in "no acute distress," and she was diagnosed with an upper respiratory infection and ear infection.

Maria also sought medical care for Daniel. The record indicates that Daniel was taken to the emergency room on July 2, 2004, because he was vomiting. The medical records state, "Apparently he has vomited x five tonight. He started at approximately 4:30. He has not been eating well but has been taking fluids such as juice and pop with no difficulty since. He has been acting pretty normal but his mom brings him in for evaluation." Daniel was diagnosed with gastroenteritis and was discharged in stable condition with no pain. On February 22, 2005, Maria again sought medical attention for Daniel. Daniel was diagnosed with influenza and sent home.

Two home studies were entered into the record regarding Maria's ability to care for her children in Guatemala. One home study was prepared by Josefina Maria Arellano Andrino, a child and adolescent agency supervisor on behalf of the "Child & Adolescent Agency" in Guatemala, and the other home study was prepared by Vasey. Both home studies were prepared at the State's request.

In the home study prepared by Vasey, he stated that "Maria is able to provide a very stable life to her family." Vasey's home study indicates that Maria has provided for her two other sons with appropriate clothing and food, and she earns a suitable income. Vasey's home study also stated, "[Maria] has a reputation in town as being an excellent mother." Vasey described Maria as being surrounded by extended family and as having strong ties to her community.

After termination proceedings were already underway, DHHS requested Andrino's home study to obtain a report that "was a little more neutral" than the home study prepared by Vasey. The Andrino study contained conclusions similar to Vasey's. Andrino discussed Maria's living conditions, explaining that

Maria has maintained suitable housing. The home study states that Maria, "in spite of her cultural and low education level, has shown to be a woman that struggles and makes efforts to give her children a better quality life." Andrino considers it to be in the children's best interests that they be reunited with Maria. As such, she recommended that the children be returned to Maria.

4. COMMUNICATIONS WITH GUATEMALAN CONSULATE

Hannah testified that she faxed a letter to the consulate for Guatemala in Houston, Texas, in July 2005, inquiring about Maria. Hannah also testified that on February 14, 2007, she contacted the U.S. Embassy in Guatemala to get information and to request a home study. The record contains letters from an attorney for the Guatemalan consulate general in Miami, Florida, and the Guatemalan consulate in Denver, Colorado. The letter from the Colorado consulate indicated it never received notification concerning Maria's case prior to the commencement of the termination proceedings. The letters also indicate that there were services available in Guatemala designed to monitor and protect the well being of children and that transportation is available for the children to return to Guatemala to live with Maria.

5. DISPOSITION

The juvenile court rejected Maria's argument that it lacked jurisdiction due to violations of the Vienna Convention on Consular Relations (Vienna Convention),[1] concluding that its jurisdiction was authorized by § 43-247. The court stated:

> Even if this Court were to find that notification was required, which it does not, the testimony of the case worker in this case indicated that phone calls were made and faxes were sent to the Guatemalan Consulate and, in fact, the file in this case indicates contact at a later point by counsel undertaking representation of the Guatemalan Consulate.

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[1] See Vienna Convention on Consular Relations, art. 37, Apr. 24, 1963, 21 U.S.T. 77, 102.

The court next held that the State had met its burden of proof and that termination was in the children's best interests. The court questioned whether parental unfitness needed to be established in this case in order to terminate parental rights, but it concluded that, regardless, the State provided sufficient evidence of Maria's unfitness. Specifically, the court stated that Maria "either A) embarked on an unauthorized trip to the United States with a newborn premature infant or B) gave birth to a premature infant in the United States. In either event, it is clear that [Maria] did not provide the basic level of prenatal and postnatal care . . . ." Additionally, the court stated Maria's fear of deportation "serves as no excuse for her failure to provide the minimum level of health care to her children."

With regard to Maria's compliance with the case plan, the court concluded that despite "serious obstacles," DHHS "went to great lengths to communicate the requirements and expectations" of the case plan to Maria and that Maria failed to comply with those requirements. In so concluding, the court stated "there is no requirement that [DHHS], to effectuate a case plan, lead a mother by the hand to the services." The court remarked that "[b]eing in the status of an undocumented immigrant is, no doubt, fraught with peril and this would appear to be an example of that fact."

The court noted that neither Angelica nor Daniel were familiar with Guatemala or had ever met their two half siblings and that both children were thriving in the only locality they have ever known with the only parental figures they have ever known. Accordingly, the court terminated Maria's parental rights.

Maria filed a motion for new trial alleging that new evidence was available to establish that she had received and completed parenting classes. Maria sought to introduce the new evidence to prove that she had complied with the case plan. When Maria was asked why she had not informed Hannah sooner that she completed a parenting class, Maria testified that she was not asked whether she had completed the parenting class, and she testified that she assumed DeJesus was keeping Hannah informed about the counseling. Maria also maintained that she

had a difficult time understanding what people said at the termination hearings, because Spanish is her second language and everyone was talking too quickly. The court denied the motion and concluded that Maria did not sufficiently establish that the information was not available at the time of the termination hearings. Maria appeals.

III. ASSIGNMENTS OF ERROR

Maria assigns, restated and reordered, that the juvenile court erred in (1) concluding that her parental rights should be terminated pursuant to Neb. Rev. Stat. § 43-292(6) and (7) (Reissue 2008), (2) concluding that it was in the children's best interests to terminate her parental rights, (3) concluding that her due process rights were not violated, (4) allowing her counsel to deliver ineffective assistance of counsel, and (5) overruling her motion for new trial. Maria also contends that the court had no jurisdiction to enter any order with respect to Angelica or Daniel.

IV. STANDARD OF REVIEW

[1,2] Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.[2] However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other.[3]

V. ANALYSIS

1. JURISDICTION

Maria maintains that the juvenile court lacked jurisdiction to determine custody. Maria argues that once the U.S. Immigration and Customs Enforcement became involved and deportation proceedings were scheduled, the State no longer had jurisdiction and that the State should have deferred to the federal government. Additionally, Maria argues that DHHS

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[2] *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007).

[3] *In re Interest of Tyler F.*, 276 Neb. 527, 755 N.W.2d 360 (2008).

failed to comply with the Vienna Convention, article 37,[4] which provides in pertinent part:

> If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:
>
> . . . .
>
> (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments.

Maria argues that although the State did eventually notify the Guatemalan consulate, the notification was delayed and such delay defeated the purpose of the Vienna Convention. Alternatively, Maria maintains that despite the juvenile court's finding that the State complied with the Vienna Convention, the State failed to comply with statutory jurisdictional prerequisites. Thus, Maria argues the State did not have jurisdiction. We conclude that the juvenile court properly exercised jurisdiction over the child custody proceedings.

(a) Federal Jurisdiction Versus State Jurisdiction

[3,4] Our court has never addressed whether State courts have jurisdiction over child custody disputes when a parent involuntarily faces deportation. However, case law from other jurisdictions indicates that issues concerning child custody are within the province of state jurisdiction, not federal immigration jurisdiction, even when a parent involuntarily faces deportation.[5] The whole subject of domestic relations, and particularly child custody problems, is generally considered a

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[4] Vienna Convention, *supra* note 1.

[5] See *Johns v. Department of Justice of United States*, 653 F.2d 884 (5th Cir. 1981). See, also, *Huynh Thi Anh v. Levi*, 427 F. Supp. 1281 (D.C. Mich. 1977).

state law matter outside federal jurisdiction.[6] We cannot conclude, simply because a party to this case faces deportation, that federal immigration laws preempt this State's authority to decide matters involving child custody. We have stated that the jurisdiction of the State in juvenile adjudication cases arises out of the power every sovereignty possesses as parens patriae to every child within its borders to determine the status and custody that will best meet the child's needs and wants.[7] As such, the juvenile court properly exercised jurisdiction over Angelica and Daniel.

(b) Compliance With Vienna Convention and § 43-3804

Whether compliance with the Vienna Convention is a jurisdictional prerequisite to parental termination actions involving foreign nationals is an issue of first impression for this court. Although we were presented with the same issue in *In re Interest of Aaron D.*,[8] we declined to decide whether compliance with the Vienna Convention was jurisdictional. We reasoned that because the juvenile court erred in terminating the mother's parental rights, we did not need to address the mother's remaining assignments of error. However, because the mother raised a potential jurisdictional issue, we took note of her argument that the court lacked jurisdiction based on the State's failure to comply with the Vienna Convention. Additionally, we reasoned that the record was devoid of any evidence regarding whether the Mexican consulate had been informed of the termination proceedings, and as such, we concluded that we could not conduct a meaningful analysis.[9]

Other jurisdictions have considered the same issue and have concluded that compliance with the Vienna Convention is

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[6] See *Schleiffer v. Meyers*, 644 F.2d 656 (7th Cir. 1981), citing *In re Burrus*, 136 U.S. 586, 10 S. Ct. 850, 34 L. Ed. 500 (1890).

[7] *In re Interest of M.B. and A.B.*, 239 Neb. 1028, 480 N.W.2d 160 (1992).

[8] *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

[9] *Id.*

not a jurisdictional prerequisite.[10] In *In re Stephanie M.*,[11] the California Supreme Court concluded that any delay in notice to the Mexican consulate did not deprive the California court of jurisdiction. In so concluding, the court analyzed and interpreted the language of the Vienna Convention to mean that the jurisdiction of the receiving state is permitted to apply its laws to a foreign national and that the operation of the receiving state's law is not dependent upon providing notice as prescribed by the Vienna Convention.

Other jurisdictions have concluded that state courts do not lose jurisdiction for failing to notify the foreign consulate as required by the Vienna Convention unless the complainant shows that he or she was prejudiced by such failure to notify.[12] Moreover, where there is actual notice, jurisdictions decline to invalidate child custody proceedings based on violations of the Vienna Convention.[13]

In the present case, the record presents conflicting testimony regarding whether and when the Guatemalan consulate was notified about Maria's case. Hannah testified that she sent notification to the Guatemalan consulate of Colorado, but letters from the Guatemalan consulate claim that no such notice was ever received. Based on Hannah's testimony that telephone calls were made and faxes were sent to the Guatemalan consulate and the fact that counsel was later appointed to represent the Guatemalan consulate, the juvenile court concluded that the State had complied with the Vienna Convention. The juvenile court specifically noted that regardless of whether compliance with the Vienna Convention was required, Hannah had made efforts to notify the Guatemalan consulate and did so in compliance with the Vienna Convention. An appellate court does

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[10] See *In re Stephanie M.*, 7 Cal. 4th 295, 867 P.2d 706, 27 Cal. Rptr. 2d 595 (1994).

[11] *Id.*

[12] See, *Breard v. Greene*, 523 U.S. 371, 118 S. Ct. 1352, 140 L. Ed. 2d 529 (1998); *E.R. v. Office of Family & Children*, 729 N.E.2d 1052 (Ind. App. 2000).

[13] See *Arteaga v. Texas Dept. of Prot. and Reg.*, 924 S.W.2d 756 (Tex. App. 1996).

not reweigh the evidence or resolve conflicts in the evidence, but, rather, recognizes the trial court as the finder of fact and considers it observed the witnesses.[14] As such, we consider that the juvenile court observed the witnesses and believed one version of the facts over the other. And assuming without deciding that compliance with the Vienna Convention is a jurisdictional prerequisite, we cannot say, based on the record before us, that the juvenile court's finding that the State complied with the Vienna Convention was erroneous.

But Maria argues that the State failed to comply with Neb. Rev. Stat. § 43-3804 (Cum. Supp. 2006) and that such compliance is also a jurisdictional prerequisite. At the time of the juvenile court's decision, § 43-3804(2) stated:

> The department shall notify the appropriate consulate in writing within ten working days after (a) the initial date the department takes custody of a foreign national minor or a minor holding dual citizenship or the date the department learns that a minor in its custody is a foreign national minor or a minor holding dual citizenship, whichever occurs first, (b) the parent of a foreign national minor or a minor holding dual citizenship has requested that the consulate be notified, or (c) the department determines that a noncustodial parent of a foreign national minor or a minor holding dual citizenship in its custody resides in the country represented by the consulate.

Section 43-3804 was enacted by the Legislature in 2006, after the children had been removed but before the juvenile court ordered that Maria's parental rights be terminated. Maria argues that § 43-3804 applies retroactively and that the State did not comply with § 43-3804. Because the State did not comply with § 43-3804, Maria argues that the juvenile court did not have jurisdiction.

[5,6] We have stated that to obtain jurisdiction over a juvenile, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within

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[14] *In re Interest of Tyler F., supra* note 3.

the asserted subsection of § 43-247.[15] As such, we conclude that § 43-3804 does not create a jurisdictional prerequisite to a juvenile court's exercise of jurisdiction. In other words, when the State fails to strictly comply with the requirements of § 43-3804, the juvenile court is not divested of its jurisdiction to make decisions regarding a juvenile of which it properly exercised jurisdiction under § 43-247.

In sum, we conclude that the juvenile court properly exercised jurisdiction over Angelica and Daniel.

2. Sufficiency of Evidence to Terminate Parental Rights

Before we consider whether the State proved by clear and convincing evidence that termination of Maria's parental rights was in Angelica's and Daniel's best interests, we take a moment and address certain issues regarding the dilemma we are presented with. First, we recognize that the children in this case have lived in the United States and with a seemingly healthy foster home for approximately 4 years. This delay was due, in part, to the difficulties inherent to Maria's location. Our decision in this case will undoubtedly have serious impacts on these children. However, we are faced with deciding whether the children should remain in the United States or be returned to Maria in Guatemala. With that in mind, we now turn to whether the State proved by clear and convincing evidence that termination of Maria's parental rights was in Angelica's and Daniel's best interests.

[7] It is axiomatic that under § 43-292, in order to terminate parental rights, the State must prove, by clear and convincing evidence, that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests.[16] And the proper starting point for legal analysis when the State involves itself in family relations is always the fundamental constitutional rights of a parent.[17]

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[15] *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008); *In re Interest of Brian B. et al.*, 268 Neb. 870, 689 N.W.2d 184 (2004); § 43-247.

[16] *In re Interest of Xavier H., supra* note 2.

[17] *Id.*

[8-10] We have explained that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court.[18] Accordingly, before the State attempts to force a breakup of a natural family, over the objections of the parents and their children, the State must prove parental unfitness.[19] "'[U]ntil the State proves parental unfitness, the child and his [or her] parents share a vital interest in preventing erroneous termination of their natural relationship.'"[20] In other words, a court may not properly deprive a parent of the custody of his or her minor child unless the State affirmatively establishes that such parent is unfit to perform the duties imposed by the relationship, or has forfeited that right.[21]

[11-13] We have also explained that the fact that a child has been placed outside the home for 15 or more of the most recent 22 months does not demonstrate parental unfitness.[22] Instead, the placement of a child outside the home for 15 or more of the most recent 22 months under § 43-292(7) merely provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness.[23] Regardless of the length of time a child is placed outside the home, it is always the State's burden to prove by clear and convincing evidence that the parent is unfit and that the child's best interests are served by his or her continued removal from parental custody.[24]

[14] When considering whether removal from parental custody is in the best interests of the child, the determination requires more than evidence that one environment or set of

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[18] *Id.*

[19] See *id.*

[20] *Id.* at 348, 740 N.W.2d at 24-25, quoting *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

[21] See *In re Interest of Xavier H., supra* note 2.

[22] *Id.*

[23] *Id.* See *In re Interest of Ty M. & Devon M.*, 265 Neb. 150, 655 N.W.2d 672 (2003).

[24] See *In re Interest of Xavier H., supra* note 2.

circumstances is superior to another. Rather, the "best interests" standard is subject to the overriding presumption that the relationship between parent and child is constitutionally protected and that the best interests of a child are served by reuniting the child with his or her parent.[25] This presumption is overcome only when the parent has been proved unfit.[26]

The juvenile court in this case concluded that the State proved, by clear and convincing evidence, that Maria's parental rights ought to be terminated pursuant to § 43-292(6) and (7) and that such termination was in Angelica's and Daniel's best interests. We determine that the State failed to consider Maria's commanding constitutional interest, and the State failed to rebut the presumption that it is in Angelica's and Daniel's best interests to reunite with Maria.

The State presented several witnesses to testify at the termination hearing, but none of the State's witnesses were asked about Maria's parental fitness and nothing in the record establishes that Maria is an unfit parent. The State and the guardian ad litem argue simply that Maria's failure to provide medical care to Angelica—in two isolated instances—was sufficient to terminate her parental rights. We disagree.

[15] While we recognize and express concern over Maria's medical judgment, we disagree that such error in judgment warranted termination of her parental rights. We have repeatedly said that the law does not require the perfection of a parent.[27]

Maria crossed the border either pregnant or with a newborn infant. We do not know the details of Maria's circumstances while crossing the border, but, regardless, we do not conclude that Maria's attempt to bring herself and her child into the United States, in the belief that they would have a better life here, shows an appreciable absence of care, concern, or judgment. Because of a fear of being deported, and perhaps other circumstances of which we are unaware, Maria was hesitant to

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[25] *Id.*

[26] *Id.*

[27] *In re Interest of Xavier H., supra* note 2; *In re Interest of Aaron D., supra* note 8.

seek medical attention for Angelica when she was first born. The record is unclear when Maria became aware that Angelica was not thriving, but the record shows that Maria took Angelica for medical care by the time she was 1 month old. After that, Maria regularly sought medical care for her children, despite her ongoing fear of deportation. On these occasions, the children's illnesses were deemed not serious. When Maria failed to take Angelica to the followup appointment after she was diagnosed with RSV, Maria thought Angelica was getting better and also, she did not have a ride to the appointment. There is no evidence calling into question the sincerity of Maria's assessment of the medical situation. Maria made obvious mistakes in medical judgment, but they are insufficient lapses to establish her unfitness to parent. Moreover, Maria has demonstrated a continual willingness to learn more about how to avoid such mistakes in the future. After Angelica's initial visit to the doctor, which resulted in a 4-day hospital stay, Maria sought advice from Negrete on how to properly care for Angelica. And when Negrete advised Maria to take Angelica to the doctor in 2004, Maria did.

When Maria was questioned at the termination hearing about whether she knew how to provide Angelica with proper medical care, she testified that she would take Angelica to the hospital so the doctor can treat her. Additionally, Maria testified that she has access to free medications and hospitals within walking distance from her home. The evidence presented is that Maria would provide adequate medical care for Angelica and Daniel in Guatemala.

The evidence from the home studies is that Maria has established a stable living environment in Guatemala and can provide for all of her children's basic needs. They also indicate that Maria is a fit parent and that it would be in the best interests of Angelica and Daniel to be returned to Maria in Guatemala.

The juvenile court seemingly ignored the overwhelming evidence provided in the home studies, and the State failed to provide any testimonial evidence rebutting the indications of the two home studies. Instead, the State introduced testimonial evidence attempting to show that it would be in the children's

best interests to remain with their foster parents, because living in Guatemala would put them at a disadvantage compared to living in the United States. What we are dealing with here is a culture clash. However, whether living in Guatemala or the United States is more comfortable for the children is not determinative of the children's best interests. We reiterate that the "best interests" of the child standard does not require simply that a determination be made that one environment or set of circumstances is superior to another.[28]

[16] We are mindful that Daniel has always lived in the United States and that Angelica has been in the United States since she was an infant. We also acknowledge that the children seemed to be doing well in their foster home. But unless Maria is found to be unfit, the fact that the State considers certain adoptive parents, in this case the foster parents, "better," or this environment "better," does not overcome the commanding presumption that reuniting the children with Maria is in their best interests—no matter what country she lives in. As we have stated, this court "'"has never deprived a parent of the custody of a child merely because on financial or other grounds a stranger might better provide."'"[29]

The juvenile court expressed concern regarding the children's extended placement outside of the home and for their need to stay in foster placement, "the only circumstances that they have ever known." While we share the same concern regarding the children's extended foster placement, we must protect Maria's commanding constitutional interest. Maria did not forfeit her parental rights because she was deported. We note that this circumstance would not exist had the State allowed Maria to take the children with her to Guatemala. It is especially clear that as to Daniel, as soon as Maria was released from custody and awaiting deportation, Daniel could have been safely returned to her. At oral arguments, when the State was asked why Daniel was placed in custody, the State's only response was that it had received unsubstantiated reports of abuse. And as for Angelica,

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[28] *In re Interest of Xavier H., supra* note 2.

[29] *Id.* at 350-51, 740 N.W.2d at 26, quoting *In re Guardianship of D.J.*, 268 Neb. 239, 682 N.W.2d 238 (2004).

the record reveals that while Maria was being detained by the U.S. Immigration and Customs Enforcement, Angelica received the medical care she needed and had recovered before Maria was deported.

The government of Guatemala has the resources to monitor the children's well being and Angelica's rehabilitation, and, thus, the State has failed to prove that reunification while Maria continued with her case plan in Guatemala would endanger the children. Instead, the record demonstrates that the State made no efforts to reunify Maria and the children largely because DHHS thought the children would be better off staying in the United States. But so long as the parent is capable of providing for the children's needs, what country the children will live in is not a controlling factor in determining reunification.

[17] The State also maintains that Maria is unfit because she failed to comply with the case plan adopted by the court. It is the burden of the State, and not the parent, to prove by clear and convincing evidence that the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the case plan.[30] The State has failed to sustain its burden in this case. While it may be true that Maria did not strictly fulfill every detail of the case plan requirements, Maria clearly progressed, and any deficiencies in following the case plan are inadequate to prove unfitness.

From the beginning, the State was less than helpful in providing Maria with a compliable case plan. Although Hannah acknowledged that case plans are provided to Spanish speakers in their native language, Maria never received a copy of the case plan in her native language. There is no evidence in the record to suggest that Maria ever received a written copy of the case plan in any language—despite the fact that Hannah had access to Maria's address. Although the case plan was prepared in September 2005, Maria was never directly informed of the contents of the case plan until sometime in February 2006. At that time, Hannah simply read the plan over the telephone to Maria and then told her that she would have to take the initiative herself to comply with the case plan, because Hannah was

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[30] See *In re Interest of Kassara M.*, 258 Neb. 90, 601 N.W.2d 917 (1999).

having a hard time setting up a parenting class or counseling. The record does not contain any evidence showing what efforts Hannah actually made.

Despite this notable lack of guidance on the part of DHHS, Maria progressed and generally complied with the case plan. Maria remained in contact with her children, by telephone, as required by the case plan. Martha testified that she initiated telephone calls between Maria and the children approximately once a month. Additionally, the record shows that Maria has established and maintained a home for herself and her other children in Guatemala. Maria testified, and other evidence confirms, that she has everything her family needs, including running water, a bathroom, pots and pans, dishes, a kitchen table, and beds. Maria is employed, and there is no evidence in the record indicating that Maria associates with individuals involved in criminal activity.

The only two requirements Maria did not seemingly comply with included getting a psychological evaluation and completing a parenting class. Hannah testified that she never received any information indicating Maria was psychologically evaluated but that she did receive a general letter describing the concerns and living conditions of women in Guatemala. Our review of the record reveals that Hannah never informed anyone, including DeJesus, Vasey, or Maria, that the psychological report she received was not sufficient. When Hannah was asked why the case plan required Maria to receive a psychological evaluation, Hannah explained that it was just "common practice" to require it. The record does not indicate that Maria actually suffered from any psychological health issues which would affect her ability to properly care for the children or that the State was actually concerned with Maria's psychological health. As for the parenting classes, Hannah concluded that Maria had failed to comply with this requirement based solely on the failure to hear otherwise. Hannah explained that due to Maria's location, she could not monitor Maria's progress, and thus essentially placed the burden on Maria to show she had met the case plan requirements. We note that despite the fact that Maria was normally available by cellular telephone, Hannah never attempted to call and ask her how she was progressing with the case

plan requirements. Even when Maria was again present in the United States for the hearing, the State never even asked Maria the simple question of whether she had completed a parenting class.

Thus, at most, the State proved that Maria failed to submit to a psychological evaluation, which she seemingly understood had been satisfied and which the State admits was not necessary for Maria to become a fit parent. Otherwise, it is clear that Maria made a genuine effort to follow a case plan that was imposed upon her with little guidance. Her failure to follow the plan as thoroughly as DHHS desired is simply not probative of Maria's fitness to parent. The undisputed evidence is that she has been able to establish in Guatemala an appropriate living environment and that she can provide for her children, in accordance with the case plan.

As such, we conclude that the court erred in finding that the State established, by clear and convincing evidence, that termination of Maria's parental rights was in Angelica's and Daniel's best interests. First and foremost, a child's best interests are presumed to lie in the care and custody of a fit parent. The State failed to sustain its burden to prove by clear and convincing evidence that Maria is unfit. This evidentiary failure is related to the State's initial failure to make greater efforts to involve the Guatemalan consulate and keep the family unified. Because the State did not make this effort, it had scant evidence to support its claims that Maria was unable to care for her children.

[18] In conclusion, we are mindful that the children will be uprooted. But we are not free to ignore Maria's constitutional right to raise her children in her own culture and with the children's siblings. That the foster parents in this country might provide a higher standard of living does not defeat that right. Having so concluded, we do not address Maria's remaining assignments of error. An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the controversy before it.[31]

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[31] *Burke v. McKay*, 268 Neb. 14, 679 N.W.2d 418 (2004).

VI. CONCLUSION

We conclude that the State properly exercised jurisdiction over Angelica and Daniel. However, the State did not present clear and convincing evidence that termination of Maria's parental rights was in Angelica's and Daniel's best interests. We, therefore, reverse the judgment of the juvenile court terminating Maria's parental rights.

REVERSED.

WRIGHT, J., participating on briefs.

MILLER-LERMAN, J., not participating.

GERRARD, J., concurring.

I agree completely with the court's main opinion. I write separately because of my concern regarding DHHS' communications with the Guatemalan consulate in this case. I agree with the court's conclusions that compliance with Neb. Rev. Stat. § 43-3801 et seq. (Cum. Supp. 2006 & Supp. 2007) is not jurisdictional and that DHHS' notification of the Guatemalan consulate minimally satisfied the Vienna Convention on Consular Relations (Vienna Convention).[1] That does not mean, however, that minimal compliance is the standard to which DHHS and the juvenile court should aspire.

It must be remembered that the foremost purpose and objective of proceedings under the Nebraska Juvenile Code[2] is the protection and promotion of a juvenile's best interests.[3] The Legislature has recognized that early and active involvement of a foreign consulate is beneficial where the welfare of a foreign juvenile is concerned.[4] And the Vienna Convention represents the judgment of the United States, and 176 other governments,[5] that a consulate should be informed without

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[1] See Vienna Convention on Consular Relations, art. 37, Apr. 24, 1963, 21 U.S.T. 77, 102.

[2] Neb. Rev. Stat. § 43-245 et seq. (Reissue 2004, Cum. Supp. 2006 & Supp. 2007).

[3] See *In re Interest of Corey P. et al.*, 269 Neb. 925, 697 N.W.2d 647 (2005).

[4] See § 43-3801.

[5] See Office of the Legal Advisor, U.S. State Dept., Treaties in Force 330-31 (Jan. 1, 2009).

delay when a guardian appears to be in the interests of a foreign minor.[6]

Which makes perfect sense. This case, for instance, might have proceeded far differently had Guatemalan consular officials been appropriately and actively engaged in the process from the beginning. The result in this case—a rather startling departure from Maria's rights and the children's best interests—might have been prevented. This case illustrates why DHHS, and the juvenile court, should not regard § 43-3801 et seq. and the obligations of the Vienna Convention as simply another legal hoop to jump through on the way to termination. Rather, the involvement of a foreign juvenile's consulate should be regarded as important to promoting the juvenile's best interests. The full participation of the consulate can help the juvenile and the juvenile's parents by ensuring that their interests are represented, and can also assist DHHS, the guardian ad litem, and the juvenile court by providing information and experience helpful to determining the juvenile's best interests.

In other words, the apparent miscommunication in this case should not have happened, because if DHHS notifies a foreign consulate of a pending proceeding and receives no reply, DHHS should try again. And if DHHS does not, then the guardian ad litem or the juvenile court should act to ensure that the consulate is notified and involved. The children whose interests are at issue in these proceedings deserve effective notice and, hopefully, participation of their consulates. DHHS' cursory compliance with what was apparently regarded as a legal technicality falls short of the effort that should be made to protect and promote a child's best interests.

HEAVICAN, C.J., and CONNOLLY and STEPHAN, JJ., join in this concurrence.

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[6] See Vienna Convention, *supra* note 1.

Power of Attorney Designation Instructions

A guardianship election form is a notarized statement indicating who should have the authority to act as the temporary guardian of your child if some circumstance, such as sudden hospitalization or detainment, kept you from caring for your child. This document tells authorities who you wish to have care for your child, and make important decisions for your child, under such circumstances. At your election, such decisions may include:

- Decisions about medical and dental care;
- Decisions about education and any special needs;
- Decisions about travel.

Electing the person that you wish to be the temporary guardian of your child, in the case that you are unable to care for your child, does not compromise your parental rights. Neither parent will lose any parental rights as a result of designating a temporary guardian. A temporary guardian has the authority to act on your behalf *only* during such times as you are unable to act. For example, if you are hospitalized, then, as soon as you are released from the hospital and able to care for your child, the temporary guardian's authority would cease. In addition, at any time, you may revoke the guardianship designation and elect someone else that you wish to be the temporary guardian of your child by filling out a new guardian election form and having it notarized.

You also may state in the document that, upon your death or permanent incapacity, you would like the elected person to become the permanent guardian of your child. This is completely optional and is a decision that you should carefully consider. Please note that, although a court will consider your wishes regarding a permanent guardian as stated in the document, the court is not required to honor them.

Attorneys will hold a clinic at [*place*] on [*date*] to prepare guardianship paperwork for free from [*time*].

Should you wish to have the attorneys prepare and notarize the paperwork for you to elect a guardian for your child please bring the following things to the clinic:

- The full name of your child as it appears on his or her birth certificate;
- An identification card with your photo on it (a passport from a foreign country is fine);
- If possible, both parents should attend and both should bring identification cards;
- If possible, the elected guardian should attend and also bring an identification card.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, D.C. 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

POWER OF ATTORNEY
AND
DESIGNATION OF TEMPORARY
GUARDIAN FOR MINOR CHILD

I, _____, the mother/father of my child, _____ ("my child"), appoint and authorize _____ to serve as the Guardian of the person and property of my child at any time I am unavailable to exercise the authority provided for herein.

If _____ is not able or willing to serve as my child's Guardian, I appoint _____ to serve as my child's Guardian instead.

I hereby authorize the Guardian to exercise any and all rights and responsibilities and do any and all acts appropriate for a legal Guardian of a minor child including, but not limited to, the following:

1. **Education**. To enroll my child in the appropriate educational institutions, obtain access to my child's academic records, authorize my child's participation in school activities and make any and all other decisions related to my child's education.

2. **Travel**. To make travel arrangements on behalf of my child for destinations both inside and outside of the United States of America by air and/or ground transportation; to accompany my child on any such trips; and to make any and all related arrangements on behalf of my child including, but not limited to, hotel accommodations.

3. **Health Care**. To inspect and disclose any information relating to the physical and mental health of my child; to make any and all health care decisions; to sign documents, waivers and releases required by a hospital or physician; to authorize my child's admission to or discharge from any hospital or other medical care facility (including transfer to another facility); to consult with any provider of health care; to consent to the provision, withholding, modification or withdrawal of any health care procedure; and to make any and all other decisions related to my child's health care needs.

The Guardian may exercise any of these powers at any time that I am unavailable to exercise such authority. Any person may deal with the Guardian in full reliance that this Power of Attorney and Designation of Temporary Guardian for Minor Child has not been revoked and that I am then unavailable to exercise the authority provided for herein, if the Guardian submits a written statement to that effect.

STATEMENT OF ADDITIONAL DESIRES,
SPECIAL PROVISIONS AND LIMITATIONS

_____
_____
_____

This Power of Attorney and Designation of Temporary Guardian for Minor Child shall not be affected by my disability or incapacity. The authority granted herein shall continue during any period while I may be disabled, incapacitated or unavailable.

I am emotionally and mentally competent to make this Power of Attorney and Designation of Temporary Guardian for Minor Child, and I understand its purpose and effect.

It is my intent and desire that, upon the first to occur of (i) my death, (ii) such time as I become incapacitated (as such term is defined for purposes of Maryland guardianship law), or (iii) such time as I am otherwise unavailable to care for my child and consent in writing, before two witnesses, to the appointment of a legal guardian, _____ (or, if he/she is unable to serve, _____) be appointed to serve as the Guardian of my child's person and property, without bond, by the Court having appropriate jurisdiction.

Notwithstanding the foregoing, this Power of Attorney and Designation of Temporary Guardian for Minor Child shall not be construed as a waiver of my parental rights, and I retain the right to revoke this Power of Attorney and Designation of Temporary Guardian for Minor Child at any time.

WITNESS:

_____
Print Name: _____
Date: _____

_____
Print Name: _____
Date: _____

_____
Print Name: _____
Date: _____

STATE OF MARYLAND: TO WIT

I hereby certify that on this _____ day of _____, 2009, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared _____ and acknowledged the foregoing Power of Attorney and Designation of Temporary Guardian for Minor Child to be his/her act and deed.

As witness my hand and notarial seal.

_____
Notary Public
My Commission Expires: _____

ACCEPTANCE OF DESIGNATION AS GUARDIAN FOR MINOR CHILD

I, _____, hereby acknowledge that I have been designated to serve as the Guardian of the person and property of _____ by his/her mother/father, _____, pursuant to the foregoing Power of Attorney and Designation of Temporary Guardian for Minor Child. I hereby accept said designation as the Guardian of the person and property of _____ and agree to begin serving in such capacity at any time _____ is available to exercise the authority provided for therein. **In addition, upon the first to occur of (i) the death of _____, (ii) such time as _____ becomes incapacitated (as such term is defined for purposes of Maryland guardianship law), or (iii) such time as _____ is otherwise unavailable to care for _____ and consents in writing, before two witnesses, to the appointment of a legal guardian, I agree to serve as the legal Guardian of the person and property of _____.**

WITNESS:

_____
Print Name: _____
Date: _____

_____
Print Name: _____
Date: _____

_____
Print Name: _____
Date: _____

POWER OF ATTORNEY
AND
DESIGNATION OF TEMPORARY
GUARDIAN FOR MINOR CHILD

We, _____ and _____, the father and mother of our child, _____ ("our child"), appoint and authorize _____ to serve as the Guardian of the person and property of our child at any time neither of us is available to exercise the authority provided for herein.

If _____ is not able or willing to serve as our child's Guardian, we appoint _____ to serve as our child's Guardian instead.

We hereby authorize the Guardian to exercise any and all rights and responsibilities and do any and all acts appropriate for a legal Guardian of a minor child including, but not limited to, the following:

1. **Education**. To enroll our child in the appropriate educational institutions, obtain access to our child's academic records, authorize our child's participation in school activities and make any and all other decisions related to our child's education.

2. **Travel**. To make travel arrangements on behalf of our child for destinations both inside and outside of the United States of America by air and/or ground transportation; to accompany our child on any such trips; and to make any and all related arrangements on behalf of my child including, but not limited to, hotel accommodations.

3. **Health Care**. To inspect and disclose any information relating to the physical and mental health of our child; to make any and all health care decisions; to sign documents, waivers and releases required by a hospital or physician; to authorize our child's admission to or discharge from any hospital or other medical care facility (including transfer to another facility); to consult with any provider of health care; to consent to the provision, withholding, modification or withdrawal of any health care procedure; and to make any and all other decisions related to our child's health care needs.

The Guardian may exercise any of these powers at any time that neither of us is available to exercise such authority. Any person may deal with the Guardian in full reliance that this Power of Attorney and Designation of Temporary Guardian for Minor Child has not been revoked and that neither of us is available to exercise the authority provided for herein, if the Guardian submits a written statement to that effect.

STATEMENT OF ADDITIONAL DESIRES,
SPECIAL PROVISIONS AND LIMITATIONS

_____
_____
_____

This Power of Attorney and Designation of Temporary Guardian for Minor Child shall not be affected by our disability or incapacity. The authority granted herein shall continue during any period while we may be disabled, incapacitated or unavailable.

We are emotionally and mentally competent to make this Power of Attorney and Designation of Temporary Guardian for Minor Child, and we understand its purpose and effect.

It is our intent and desire that, upon the first to occur of (i) the death of the survivor of the two of us, (ii) such time as both of us, if we both are living, or the survivor of us, if only one of us is living, becomes incapacitated (as such term is defined for purposes of Maryland guardianship law), or (iii) such time as both of us, if we both are living, or the survivor of us, if only one of us is living, is otherwise unavailable to care for our child and consents in writing, before two witnesses, to the appointment of a legal guardian, _____ (or, if he/she is unable to serve, _____) be appointed to serve as the Guardian of our child's person and property, without bond, by the Court having appropriate jurisdiction.

Notwithstanding the foregoing, this Power of Attorney and Designation of Temporary Guardian for Minor Child shall not be construed as a waiver of our parental rights, and we retain the right to revoke this Power of Attorney and Designation of Temporary Guardian for Minor Child at any time.

WITNESS:

_____ _____
Print Name: _____ Print Name: _____
Date: _____ Date: _____

_____ _____
Print Name: _____ Print Name: _____
Date: _____ Date: _____

STATE OF MARYLAND: TO WIT

I hereby certify that on this _____ day of _____, 2009, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared _____ and _____ and acknowledged the foregoing Power of Attorney and Designation of Temporary Guardian for Minor Child to be their act and deed.

As witness my hand and notarial seal.

_____
Notary Public
My Commission Expires: _____

ACCEPTANCE OF DESIGNATION AS GUARDIAN FOR MINOR CHILD

I, _____, hereby acknowledge that I have been designated to serve as the Guardian of the person and property of _____ by his/her parents, _____ and _____, pursuant to the foregoing Power of Attorney and Designation of Temporary Guardian for Minor Child. I hereby accept said designation as the Guardian of the person and property of _____ and agree to begin serving in such capacity at any time neither of _____ and _____ is available to exercise the authority provided for therein. **In addition, upon the first to occur of (i) the death of the survivor of _____ and _____, (ii) such time as both of _____ and _____, if both are living, or the survivor of _____ and _____, if only one of them is living, becomes incapacitated (as such term is defined for purposes of Maryland guardianship law), or (iii) such time as both of _____ and _____, if both are living, or the survivor of _____ and _____, if only one of them is living, is otherwise unavailable to care for _____ and consents in writing, before two witnesses, to the appointment of a legal guardian, I agree to serve as the legal Guardian of the person and property of _____.**

WITNESS:

_____
Print Name: _____
Date: _____

_____
Print Name: _____
Date: _____

_____
Print Name: _____
Date: _____

SUPERIOR COURT OF THE DISTRICT OF [INSERT STATE/JURISDICTION]
FAMILY DIVISION--DOMESTIC RELATIONS BRANCH

PLAINTIFF	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Plaintiff,	)	
	)	
v.	)	**DR No. _____**
	)	
DEFENDANT	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Defendant	)	

MOTION TO DISMISS FOR INADEQUATE SERVICE OF PROCESS

Defendant, by and through counsel, submits a Motion to Dismiss on the grounds of inadequate service of process under District of Columbia Superior Court Rules of Civil Procedure section 12(b)(5) [INSERT RELEVANT COURT RULE IN YOUR STATE/JURISDICTION]. Defendant states the following in support of the request:

1. Defendant received the petition to terminate the parental rights and Notice of Hearing and Order to Appear on [INSERT DATE].
    a. Defendant is a native speaker of [INSERT LANGUAGE] and is not proficient in the English language (or insert other language the notice appeared in).
2. Due process requires that a Defendant be given adequate and timely notice of an action brought against him/her in order to afford the Defendant an opportunity to defend or accept the claims.

3. Due process is not met where a Defendant is unable to read, speak or comprehend the language in which notice to the Defendant is provided.
4. Due process prohibits a Defendant from being deprived of life, liberty or rights with out first, being granted due process.
5. Moreover, Plaintiff failed to adequately communicate the case plan to Defendant as required by law.
6. Not providing information in a language that the mother understands is akin to providing substandard information, which is a violation of basic rights and due process.
7. The Defendant must be provided with adequate notice of the requirements imposed on her so that she is able to comply with those requirements in order to regain custody of her children.
8. To satisfy due process requirements in this case, Plaintiff should have served Defendant the Notice of Hearing and Order to Appear in her native language, [INSERT NATIVE LANGUAGE] and should have had the notice interpreted for her in her native language if need be.
9. The notice delivered to Defendant was not in her native language nor was the notice translated for her.
10. Defendant did not receive adequate notice of the Hearing and therefore, Defendant requests the Motion to Dismiss be granted.

WHEREFORE, Defendant prays that the court grant Defendant's Motion to dismiss for Inadequate Service of Process.

Respectfully,

_____

[INSERT ATTORNEY NAME

[State Bar #]
[INSERT FIRM NAME]
Attorney for Defendant
[INSERT ADDRESS]

SUPERIOR COURT OF THE [STATE/JURISDICTION]
FAMILY DIVISION--DOMESTIC RELATIONS BRANCH

PLAINTIFF	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Plaintiff	)	
	)	
	)	
v.	)	**DR No. _____**
	)	
DEFENDANT	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Defendant		

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF

DEFENDANT'S MOTION TO DISMISS FOR INADEQUATE SERVICE OF

PROCESS

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1. See "*Improving Access to Services for Persons with Limited English Proficiency,"* Exec. Order No. 13, 166, *reprinted at* 65 FR 50121 (August 16, 2000).
2. *Lau v. Nichols*, 414 U.S. 563 (1974)
3. See attached trial brief for language access arguments.

Respectfully submitted,

_____
[INSERT ATTORNEY]
[INSERT BAR NUMBER]

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of Defendant's Motion to Dismiss for Inadequate Service of Process. Plaintiff, [INSERT ADDRESS] with proper affixed postage on [INSERT DATE].

_____

[INSERT ATTORNEY NAME]

[STATE BAR #]

SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY DIVISION--DOMESTIC RELATIONS BRANCH

Plaintiff	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Plaintiff	)	
	)	
v.	)	**DR No. _____**
	)	
Defendant	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Defendant	)	

DEFENDANT'S MOTION TO APPEAR TELEPHONICALLY OR VIA VIDEO CONFERENCE

Comes now Defendant, (hereinafter "Defendant"), by and through her attorney, and requests permission from the Court to appear telephonically or via video conference for [**INSERT TYPE OF HEARING**] on [**INSERT DATE**] because defendant is currently in an immigration detention facility and is therefore unable to appear in person on the specified hearing date. In support of this motion, defendant states as follows:

1. The parties' hearing is on [**INSERT DATE AND TIME of HEARING**].
2. Defendant was detained on [**INSERT DATE**].
3. Defendant will be accessible via telephone or videoconference on [**INSERT DATE**].
4. Defendant requested permission to attend the hearing in person and the request was denied by the detention facility, therefore defendant requests to appear via

telephone or videoconference on, [**INSERT DATE OF HEARING**], the date of the hearing.

5. A defendant's right to be heard in any hearings associated with a parental rights termination case is a fundamental right under due process.
6. Preventing a defendant parent from exercising the right to participate in a parental termination hearing violates due process and may lead to erroneously depriving an individual of their parental rights with out the opportunity to be heard. [Insert case here- still exploring the case law on this].
7. If plaintiff's attorney has **consented** to telephonic appearance: [**INSERT** as follows: Counsel for defendant was able to contact counsel for plaintiff on [**DATE**], who consented to this motion. [**OMIT FACT** if party did not consent to telephonic appearance or videoconference].
8. [**INSERT OTHER RELEVANT FACTS IF NEEDED**].

Wherefore, the defendant respectfully requests:

1. That defendant be permitted to appear telephonically or via video conference on [**INSERT DATE OF HEARING**].
2. That this Court grant any such other relief this Court deems just, equitable and proper.

Respectfully Submitted,

_____
[INSERT ATTORNEY'S NAME]
[STATE BAR NUMBER]
Attorney for Defendant

SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY DIVISION--DOMESTIC RELATIONS BRANCH

Plaintiff	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Plaintiff	)	
	)	
	)	
v.	)	**DR No. _____**
	)	
Defendant	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Defendant		

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO APPEAR TELEPHONICALLY OR VIA VIDEO CONFERENCE

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1. SCR-DR Rule 7(b) (2003). [INSERT RELEVANT COURT RULE OF STATE/JURISDICTION]

2. The interest of justice.

3. Attached trial brief.

4. The Record herein.

Respectfully submitted,

_____
[INSERT ATTORNEY]
[STATE BAR NUMBER]
Attorney for Defendant

SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY DIVISION--DOMESTIC RELATIONS BRANCH

Plaintiff	)	
Attorney ‘s Office	)	
[INSERT ADDRESS]	)	
Plaintiff	)	
	)	
v.	)	**DR No. _____**
	)	
Defendant	)	
Attorney’s Office	)	
[INSERT ADDRESS]	)	
Defendant	)	

ORDER

Upon consideration of Defendant’s Motion to Appear Telephonically or Via Video Conference, it is this _____ day of _____, 20___:

ORDERED that the defendant be permitted to present her testimony via telephone or video conference in the parties’ hearing on [**INSERT HEARING DATE]**.

DATE

_____
JUDGE, SUPERIORCOURT
[INSERT STATE/JURISDICTION]

Copies to:

[INSERT ATTORNEY NAME]
Attorney for Plaintiff
[INSERT FIRM NAME]
Attorney’s Office
[INSERT ADDRESS]

[INSERT ATTORNEY NAME]
Attorney for Defendant
[INSERT FIRM NAME]
Attorney’s Office
[INSERT ADDRESS]

SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY DIVISION--DOMESTIC RELATIONS BRANCH

Plaintiff	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Plaintiff	)	
	)	
v.	)	**DR No. _____**
	)	
Defendant Doe	)	
Attorney's Office	)	
[INSERT ADDRESS]	)	
Defendant	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Motion to Appear Telephonically or Via Video Conference, with attached Memorandum of Points and Authorities and Proposed Order, was sent via first class US mail to defendant's attorney via U.S. Mail with sufficient postage affixed to: [INSERT ADDRESS] on this ____ day of [INSERT DATE].

_____
[INSERT ATTORNEY NAME]
Attorney's Office
[INSERT ADDRESS]

SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY COURT

IN THE MATTERS OF	:	
	:	
CHILD #1	:	**[INSERT Case No.]**
	:	**[INSERT Social File No.]**
	:	**[INSERT Date of Birth]**
	:	
CHILD #2	:	**[INSERT Case No.]**
[If involving multiple children]	:	**[INSERT Social File No.]**
	:	**[INSERT Date of Birth]**
	:	
	:	
	:	**Magistrate Judge (Name)**

MOTION OPPOSING TERMINATION OF THE PARENT AND CHILD RELATIONSHIP

[THE FOLLOWING IS A SAMPLE OF A MOTION USED WHERE A PARENT IS IN DETENTION, BUT CAN ALSO BE ADAPTED AND USED WHERE PARENT HAS RISK OF DETENTION, THREAT OF DETENTION, THREAT OF DETENTION, OR HAS BEEN].

In the best interest of Child #1 (and Child #2) (hereinafter "Child(ren)") by and through its attorneys, [INSERT ATTORNEY NAME HERE] on behalf of [INSERT ORGANIZATION NAME HERE] hereby opposes the motion set forth by Petitioner for an order terminating the parent and child relationship between Respondents and their natural Mother and Father. In opposition of this motion, Respondent states the following:

1. Child #1 was born on MM DD YYYY and is # years old. [INSERT INFO FOR ADDITIONAL CHILDREN IF APPLICABLE]

2. Before Child(ren) was removed, Child(ren) resided with her birth Mother, [INSERT NAME HERE & WHERE CHILDREN AND FAMILY RESIDED], in Washington, D.C. [OR APPLICABLE STATE/JURISDICTION]
3. Birth Mother, [hereinafter referred to as "Mother"] is actively involved in the lives of her Child(ren) and has lived together at the same physical address with her child(ren) for [INSERT TIME DURATION HERE].
4. Natural Father of Child(ren), [INSERT NAME HERE; IF UNKNOWN INSERT UNKNOWN], is/is not (DEPENDING ON CASE FACTS) involved in Child's life or in the planning for permanency. His address is [INSERT IF KNOWN].
5. Mother does not have a history with the Child and Family Services Agency (the "Agency") until the case at hand arose on MM YYYY when Mother was detained based on her immigrant status.
6. Mother does not have any current or former issues with substance abuse [INSERT RELEVANT CASE FACTS WHERE APPLICABLE]
7. The Agency received a child neglect referral in MM YYYY asserting that Mother had abandoned/neglected her child(ren) on [INSERT DATE].
8. The abandonment [INSERT SPECIFIC CLAIM] referral to the "Agency" derived from the fact that Mother was placed in detention and was unable to physically care for her Child(ren) while in the detention facility. [INSERT FACTS that demonstrate immigrant parents efforts before being detained and/or while in detention to arrange for the care of children].

9. Between MM DD YYYY and MM DD YYYY, Mother contacted [or attempted] to contact Child(ren) via telephone, written form and visitation while in the detention facility. [INSERT ALL METHODS OF ATTEMPTED COMMUNICATION].
10. The Agency did not make reasonable efforts towards family reunification prior to pursuing an adoption plan.
11. The Mother wants to be reunited with Child(ren), therefore, a permanency or reunification plan, accessible in her native language and feasible given her detention facility location and rules, would have been followed by the Mother if such a plan was made available to her. [INSERT FACTS AS RELEVANT TO INDIVIDUAL CASE]
12. A termination of the parent and child relationship between Child(ren) and natural mother is contrary to the desire of both the Mother and the child(ren).
13. D.C. Code § 16-2353 [INSERT APPLICABLE STATUTE FROM STATE/JURISDICTION] provides for termination of the parent and child relationship when the termination is in the best interest of the child(ren).
14. It is not in Child(ren)'s best interest to have the relationship with his Mother severed.
15. It is in Child(ren)'s best interest that this Motion for the termination of the parent and child relationship be denied.

WHEREFORE, for the foregoing reasons, the Respondent urges that the Order terminating the parent and child relationship and such other and further relief as may be requested in the Motion be denied by the Court.

Respectfully submitted,

[INSERT ATTORNEY NAME]
[INSERT ATTORNEY ADDRESS]
[STATE BAR #]

_____

Attorney Name, Bar #
[INSERT FIRM NAME]
[INSERT FIRM ADDRESS]
[INSERT FIRM PHONE]

Date: MM DD YYYY

SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY COURT

IN THE MATTERS OF	**:**	
	:	
CHILD #1	**:**	**[INSERT Case No.]**
	:	**[INSERT Social File No.]**
	:	**[INSERT Date of Birth]**
	:	
CHILD #2	**:**	**[INSERT Case No.]**
	:	**[INSERT Social File No.]**
	:	**[INSERT Date of Birth]**
	:	
	:	
	:	**Magistrate Judge (Name)**

MEMORANDUM OF POINTS AND AUTHORITIES OPPOSING MOTION FOR TERMINATION OF THE PARENT AND CHILD RELATIONSHIP

I. This Court has Jurisdiction Over Termination of the Parent and Child Relationship

D.C. Code § 16-2354(b) provides that a Motion for the Termination of the Parent and Child Relationship may be filed six months after an adjudication of neglect and when the child(ren) is in the court-ordered custody of a department, agency, institution, or person other than the parent. [SUBSTITUTE RELEVANT STATE/JURISDICTIONAL LAW].

Child(ren) was placed in foster care on MM DD YYYY. More than six months have passed since an adjudication of neglect in this case, and the Respondent [hereinafter "Mother"] continues to reside in detention/has been released from detention/has been deported [INSERT CASE SPECIFIC FACTS] and is affirmatively seeking reunification with her child(ren). Therefore, the Court has jurisdiction to hear this Motion for the Termination of the Parent and Child Relationship.

II. The Family Court Should Not Terminate the Parent and Child Relationship When Termination Is Not In the Best Interest of the Child(ren).

The Mother asserts that termination of the parent and child relationship is not appropriate in this case. Child(ren) has been placed in a group home or foster care due to the Mother being detained for her immigration status. There is no relationship between Mother's immigrant detention and Mother's ability to adequately parent. Mother has been and is planning to continue to be involved in Child(ren)'s life and in the planning for permanency and reunification.

[INSERT FACTS ABOUT FATHER AS APPROPRIATE] Natural Father of Child(ren), [INSERT natural father's name here] is not involved in Child(ren)'s life or in the planning for permanency. His address is [INSERT HERE IF KNOWN]. He is believed to be currently residing in [INSERT STATE/JURISDICTION]. To the extent that the mother's abuser participated in having her detained that should be discussed as well.]

Child(ren) deserves an opportunity to grow up in a stable, permanent, and loving environment with Child(ren)'s biological parent absence any indication of suspected abuse. All of Child(ren)'s needs were being met in the home prior to Mother being detained. The state concedes and has not alleged or proven any facts or signs of abuse by Mother to Child(ren) and that the only reason for Child(ren)'s removal is Mother's confinement in immigration detention. It is conceded that there are no signs of abuse by Mother to Child(ren) and that the only reason for Child(ren)'s removal is Mother's confinement in detention. Mother has consistently provided a nurturing and healthy environment in the past, and has asserted that she can continue to provide such an environment in the future. Furthermore, the Mother and Child(ren) both are being

adversely affected by the separation from one another and desire to be back together subsequent to Mother's release from detention. The termination of parental rights is therefore not in the best interests of the child(ren).

III. Mother Did Not Abandon Child(ren) When She Was Detained

Mother did not abandon Child(ren) or her legal parental rights to Child(ren) when she was involuntarily placed in detention due to her immigrant status.

Abandonment is defined as a settled purpose to forego all parental duties and to relinquish all parental claims to a child. The abandonment must be willful in order to constitute a ground for involuntary termination of parental rights. D.C. Code § 16-304(d); Petition of C.E.H., 391 A.2d 1370 (1978). The Mother did not choose to forego her legal parental rights to her child(ren); it was a consequence of being detained. There was no willful act on the part of Mother to separate herself from Child(ren) and therefore, there was no act of abandonment.

Mother's temporary detained state is not sufficient to constitute grounds for a termination of parental rights. Although there is currently no available binding law that governs the specific facts at issue, the case at bar is relatable to cases involving incarcerated parents whose parental rights are the subject of litigation. In the Matter of W.T.L., 825 A.2d 892 (2002), an incarcerated mother, battling substance abuse issues, made no effort to contact her child during period of incarceration including not notifying caretaker of child that mother would not be returning to pick up her child because she was incarcerated. The Court terminated parental rights but did so because the mother was not diligent in her efforts to communicate with the child, not because the mother was incarcerated. The Court further stated, "An incarcerated parent alone is not sufficient

grounds for terminating a parent's legal rights to their child." Id. at 894. The Court based its conclusion on the surrounding factors in addition to incarceration, such as; mother's substance abuse issues, other forms of neglect at home and incarceration with out communication to child.

Here, Mother was detained and alleged to have abandoned Child(ren), however, according to In the Matter of W.T.L., incarceration, or in the case at issue, detention, alone is not sufficient to constitute grounds for termination of parental rights. In considering the totality of the circumstances, Mother has no substance abuse history, Child(ren) was not neglected and Mother consistently communicated with Child(ren) during period of detention. Since an individual's immigrant status does not hinder a parent's ability to parent or render a parent negligent or abusive, Mother's detained state should be outweighed by Mother's proven ability to effectively parent. Mother's parental rights should not be terminated based on Mother's detention status.

IV. Consideration of the Factors in D.C. Code § 16-2353 [INSERT STATUTE FROM RELEVANT STATE/JURISDICTION]Compels a Finding that Termination of the Parent and Child Relationship Is Not in Child(ren)'s Best Interest

In determining whether termination of the parent and child relationship is in the child(ren)'s best interests, the Court is required to consider the following factors:

> (1) The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
>
> (2) The physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child; the decisive consideration being the physical, mental and emotional needs of the child;
>
> (3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relative[s], and/or caretakers, including the foster parent;

> (3A) The child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken and action or made and effort to maintain a parental, guardianship or custodial relationship or contact with the child;
>
> (4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and
>
> (5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; Section 4-1301.06(a)). Evidence of continued drug activity shall be given great weight.

D.C. Code § 16-2353(b) (2001).

This is a case that involves a loving family who were separated not because of abuse or neglect but because of Mother's immigrant status, which led to detention and thus the child(ren)'s placement in foster care. Mother has never conceded or demonstrated that she is unable to effectively provide care for Child(ren), nor have Mother's actions demonstrated that she is anything less than a nurturing parent. [INSERT FACTS THAT DEMONSTRATE THE MOTHER'S ROLE IN CARING AND NURTURING HER CHILD(REN)]. From the date the Mother was placed in detention in MM YYYY, she made virtually every effort to communicate with Child(ren) or otherwise be involved in Child(ren)'s life. [INSERT FACTS THAT DEMONSTRATE SUCH EFFORTS] In short, the alleged abandonment/neglect claim is based on Mother being involuntarily placed in detention and forced to separate from Child(ren). The alleged abandonment claim is a result of Mother's confinement and not Mother's desire or willful acts. When the Court considers the totality of the

circumstances, based on an analysis of the above factors, it can reach no other conclusion but that the termination of parental rights is not in Child(ren)'s best interests.

A. The Birth Mother Is Able to Meet The Child's Need for Continuity of Care in a Stable and Permanent Home

From the Child(ren)'s birth until the date Mother was detained and separated from her Child(ren) against her will, Mother has demonstrated a strong ability to provide the Child(ren) with a stable and loving home and permanent environment. The only instance where the Mother was unable to provide this type of lifestyle for her Child(ren) has been while she has been detained and not physically near her child(ren) to care for the day-to-day care and routine tasks. Upon being released from detention, Mother's ability to care for Child(ren) remains as it was prior to Mother's confinement and Child(ren)'s removal. [INSERT SPECIFIC FACTS SUPPORTING STABILITY THE MOTHER PROVIDED FOR CHILD PRIOR TO REMOVAL AND INCLUDE STEPS MOTHER TOOK TO SET UP PROVISIONS TO CARE FOR HER CHILDREN SHOULD SHE EVER BE DETAINED].

Although Child(ren) is presently residing with [INSERT FOSTER FAMILY/INSTITUTION] in a safe environment, Child(ren) is emotionally better off to be united with Child(ren)'s natural Mother as Mother is a loving and nurturing parent. [INSERT ANY FACTS DEMONSTRATING THAT MOTHER HAS EITHER; 1) APPLIED FOR IMMIGRATION STATUS OR 2) HAS MADE ARRANGEMENTS TO TAKE CHILD(REN) WITH HER IF DEPORTED].

B. The Child(ren)'s Birth Mother Is Able to Meet The Child(ren)'s Physical, Mental, and Emotional Needs

Mother has demonstrated (prior to detention) that she is more than able to meet the needs of Child(ren)'s physical, mental and emotional needs. First and foremost,

Mother provided a safe and permanent environment for Child(ren) prior to being detained. There is no evidence of Mother willfully abandoning her parental responsibilities or permissively accepting the temporarily relinquishment of parental responsibilities while in detention. Indeed, Mother is pursuing reunification and seeks to have her parental responsibilities affirmatively restored subsequent to her release from detention. Moreover, Mother provides emotional and mental nurturing for Child(ren), which is a stronger bond than would develop between a Child and foster parent. Terminating the parent and child relationship would further emotionally and mentally harm Child(ren) and thus, it is not in the best interest of Child(ren) to terminate the relationship between Child(ren) and Mother.

C. The Presence of Consistent and Reliable Interaction or Relationship Between Child(ren) and Mother Demonstrates a Lack of Support for Terminating the Parent and Child Relationship.

Mother has had consistent contact with Child(ren) since MM DD YYYY the date Mother was detained. [INSERT RELEVANT FACTS OF MOTHER'S CONTINUED COMMUNICATION OR EFFORTS TO COMMUNICATE WITH CHILD] The presence of all consistent and reliable interaction or relationship between Child(ren) and Mother provides another reason for the Court to deny this motion.

D. The Child(ren) Wants to Remain with Birth Mother.

The statute requires the Court give consideration to the child's opinion to the extent feasible. [INSERT SPECIFIC FACTS DEPENDING ON CHILD'S AGE] In this case, Child(ren) is [above/under] the age of consent and is [likely/unlikely] to understand this concept sufficiently to offer an opinion. Child(ren) wants to be reunited with Mother and would be emotionally distraught if the relationship between Mother and Child(ren) was severed.

E. There is No Evidence of Continued or Past Drug-Related Activity in the Home.

Mother does not have substance abuse problems. In addition, Child(ren) has not been subjected in either the past or present to any drug related behavior in the home. [If Mother has a history of drug abuse problems, discuss efforts to remedy problem.]

CONCLUSION

The Respondent respectfully submits that, based on the above factors, the Court should not terminate the parent and child relationship between Child(ren) and Mother.

WHEREFORE, the Respondent hereby moves this Court to enter the following order:

1. That the parent and child relationship between Child and Child's birth mother, Mother, is not terminated; and
2. That such other and further relief as may be just and proper be granted.

Respectfully submitted,

[INSERT ATTORNEY NAME]
[INSERT ATTORNEY TITLE]
[DIVISION]

_____
[INSERT ATTORNEY NAME] Bar #
[INSERT POSITION TITLE]
[INSERT FIRM NAME]
[INSERT ATTORNEY ADDRESS AND TELEPHONE]

Dated: MM DD YYYY

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of Respondents Motion Opposing Termination of Parent and Child Relationship. Petitioner [INSERT ADDRESS] with proper affixed postage on [INSERT DATE].

_____

[INSERT ATTORNEY NAME]

[STATE BAR #]

IN THE [INSERT COURT] COURT OF [INSERT JURISDICTION]

IN RE **[INSERT NAME]**	)	
	)	
Plaintiff,	)	
	)	Case No.
vs.	)	
	)	
[INSERT NAME],	)	
	)	
Defendant.	)	
	)	
	)	
	)	

TRIAL BRIEF IN SUPPORT OF DEFENDANT[1]

Plaintiff's Counsel
FIRM NAME
Firm Address
Firm telephone

Defendant's Counsel
Firm Name
Firm Address
Firm Telephone

1 This terminology may change depending on who is bringing the case and also whether the case is a custody matter or a neglect/abuse matter.

[This sample trial brief is intended to assist counsel representing immigrant victims of domestic violence, sexual assault and human trafficking as well as other immigrant mothers in a family court proceedings. It focuses on the intersection between family law (termination of parental right, child abuse and neglect proceedings and contested custody cases brought by the state or by the children's other parent against an immigrant parent. What follows is a sample trial brief written in the context of a termination of parental rights proceeding. This brief can be easily adapted for use in child abuse and neglect proceedings or child custody cases when similar issues are raised. We encourage you to add the facts of your case and local state family law and to use this brief as a tool to inform judges about the law that should be applied in cases of undocumented, detained and even deported immigrant parents]

I. INTRODUCTION

[Sample Introduction for termination of parental rights proceedings]

This Court seeks to terminate the parental rights of [CLIENT], a direct violation of well settled principles of [INSERT STATE OR JURISDICTION] family law and constitutional due process rights afforded to [CLIENT]. In seeking to terminate her rights, the Jasper County Circuit Court District would inappropriately have to determine that her son would be better off growing up with an American couple than with a natural parent who entered this country as an undocumented immigrant. As courts throughout the country have consistently recognized, immigration status cannot, and should not, serve as the basis to extinguish a parent's rights. But [CLIENT]'s immigration status appears to be the only basis—or at least one of the key bases—on which [the State or other parent] seeks termination of parental rights here. In addition, [CLIENT] has thus far been deprived of the due process rights to which she is entitled because, among other things, she was not properly informed of the proceedings or her rights in her native

language in a manner in which she could understand them. She therefore was unable to participate in the early hearings in this case. Accordingly, [INSERT FIRM NAME] submits this trial brief in support of Defendant [CLIENT] and urges this Court to decide in her favor and deny the State's request to terminate [CLIENT'S] parental rights and to work quickly to reunite her with her son.

II. STATEMENT OF THE CASE

[INSERT CASE FACTS HERE] Include the circumstances leading up to the [child abuse or neglect action, the Parental Termination case, or contested custody case] any due process rights of the detained parent that may have been violated, any relevant facts to the immigrant parents fitness as a parent and the best interests of the child, as relevant to the proceeding and under state law].

III. ARGUMENT

A. Fundamental Importance of the Parent Child Bond

[This section articulates these arguments based upon constitutional law and the laws of the State of Missouri. You may craft a similar argument using the law of the jurisdiction of this proceeding. We encourage you to consider including as persuasive authority rulings in similar matters from other state courts in addition to the court rulings in your jurisdiction. It is particularly important to do this when case law in your state is silent on any of the particular issues addressed in this sample brief.]

A parent has a fundamental, constitutional right to the care, custody and control of his of her child, absent a compelling state interest. *Santosky v. Kramer*, 455 U.S. 745, 747 (1982). This Court has characterized the parent child bond as "one of the oldest fundamental liberty interests." *In re KAW and KAW*, 133 S.W.3d 1, 12 (Mo. 2004).

Precisely because of the fundamental nature of the right to raise one's

biological children, courts have routinely admonished that great care be taken in proceedings seeking to terminate that right, and that adequate protections be afforded the parent whose parental rights are the subject of the proceeding:

> "The fundamental liberty interest of natural parents in raising their children does not evaporate simply because they have not been model parents or have lost temporary custody of their children to the State." *Santosky v. Kramer*, 455 U.S. at 753, 102 S.Ct. 1388; *In the Interest of M.D.R.*, 124 S.W.3d 469, 472 (Mo. Banc 2004). Those faced with forced dissolution of their parental rights have a more critical need for protections than do those resisting state intervention into ongoing family affairs. *Id.* The termination of parental rights has been characterized as tantamount to a "civil death penalty." *In re N.R.C.*, 94 S.W.3d 799, 811 (Tex. App. – Houston [14th Dist.] 2002); *In re Parental Rights as to K.D.L.*, 118 Nev. 737, 58 P.3d 181, 186 (2002). "It is a drastic intrusion into the sacred parent-child relationship." *In the Interest of P.C., B.M. and C.M.*, 62 S.W.3d at 603.

Id. See also Interest of K.T.K. v. Crawford County Juvenile Office, 229 S.W.3d 196, 200 (Mo. Ct. App. 2007). As this court and the appellate courts of Missouri have noted time and again, "[t]he termination of parental rights is an exercise of awesome power and strict and literal compliance with the statutory language is demanded." *In re Baby Girl W*, 728 S.W.3d 545, 547 (Mo. Ct. App. 1987). After the court determines that one of the statutory bases for termination is satisfied, it must then determine by a preponderance of the evidence that termination is in the best interest of the child. *Id.* at 601.

B. Statutory Grounds to Terminate Parental Rights

In determining whether to terminate parental rights, a court is bound by the grounds set forth in Missouri Rev. Stat. 211.447. "[T]he court must find that there exists clear, cogent and convincing evidence that one or more statutory grounds

for termination exist." *In the Interest of E.A.C.*, 253 S.W.3d 594, 599 (Mo. Ct. App. 2008). There are only six statutory grounds that provide a legitimate basis for termination of parental rights: (1) the child has been abandoned; (2) the child has been abused or neglected; (3) the child has been in the juvenile court system for a year; (4) the parent pleads or is found guilty of a sexual offense against any child in the family; (5) the child is a result of forcible rape; and (6) the parent is determined to be unfit. Mo. Rev. Stat. 211.447(5).

It appears that the sole basis for [The State's or Plaintiff's] abandonment allegation is [CLIENT]'s detention due to her immigration status. In fact, the *only* circumstances which led to [CLIENT]'s separation from her son are her status as an undocumented immigrant and her consequent arrest and detention for using false identifying papers to gain employment in the United States. However, neither [CLIENT]'s immigration status, nor her detention resulting from that status constitutes abandonment, and there is not other permissible basis for the State to exercise its "awesome" power to irrevocably deprive [CLIENT] of her son and him of his biological mother.

While various circumstances have been found to constitute abandonment, Missouri law makes clear that the parent's separation from the child must be intentional and willful, accompanied with an intent not to act as a parent to the child:

> Intention to abandon a child has been variously defined. It is the willful giving up of a child with the intention that the severance be of a permanent nature. It is the voluntary and intentional relinquishment of custody of the

> child with the intent to never again claim the rights or duties of a parent. Abandonment implies a willful positive act such as deserting the child.

In re Baby Girl W, 728 S.W.3d at 548 (citations omitted).

[The following paragraph would only be relevant for immigrant parents who had, in the context of Department of Homeland Security enforcement actions been arrested and federally prosecuted for identity theft]

It is clear that [CLIENT]'s conviction and incarceration cannot amount to "clear, cogent and convincing evidence" that she intended to abandon her son within the confines of the statute. Like many undocumented immigrants, [CLIENT] used identifying information that was not her own to gain employment in this country. After an immigration raid by the Immigration and Customs Enforcement, Rosa was detained and prosecuted for aggravated identity theft under 18 U.S.C. § 1028(a)(1). This federal statute contains a mandatory two-year prison sentence, which [CLIENT] served.[2]

[2] It is important to note that the U.S. Supreme Court recently addressed the issue of under what circumstances can federal prosecutors bring charges and secure convictions of undocumented workers for aggravated identity theft under 18 U.S.C. § 1028(a)(1). In *Flores-Figueroa v. U.S.*, 556 U.S. ---, 129 S.Ct. 1886, 1894 (2009).
The U.S. Supreme Court ruled that in order to win federal prosecutions under the this statute, federal prosecutors must prove both that the undocumented worker charged was using false documents and that the immigrant worker knew that the false documents they were using contained a social security number that in actuality belonged to another person. It is an unfortunate irony that [CLIENT]'s incarceration stemmed from criminal proceedings in which the government under this U.S. Supreme Court ruling would have failed to plead or prove facts sufficient to sustain a conviction for aggravated identity theft under 18 U.S.C. § 1028(a)(1). Id. It is very unlikely that [CLIENT] would be charged, much less convicted, of

Consistent with its inherent involuntariness, incarceration for any reason is routinely rejected as a grounds for "willful abandonment" with the intent to permanently severe ties with a child. *See In re C.J.G.*, 75 S.W.3d 794, 801 (Mo. Ct. App. 2002) ("a finding of abandonment is inconsistent with a situation where a child has been taken from a parent involuntarily, such as in protective custody cases" where father is incarcerated); *In re Baby Girl W.*, 728 S.W.2d at 549 (no abandonment, where, upon release from prison, father actively opposed termination proceedings). Incarceration in and of itself is insufficient because "[t]he forced separation operates to create the very circumstances (*i.e.*, lack of communication and visitation), complained of in the termination proceedings." *In re C.J.G.*, 75 S.W.3d at 801. This is precisely what happened here.

Moreover, [CLIENT]'s actions themselves outright defy any notion that she intentionally or willfully abandoned her son. To the contrary, she reportedly did everything in her power, with her limited resources, to prevent her child from being taken from her. [INSERT FACTS THAT DEMONSTRATE REUNIFICATION EFFORTS] There simply is no basis for a finding of abandonment.

Aside from abandonment, the [STATE or Plaintiff] argues for termination of parental rights [Alternate language: for custody; for adjudication of child abuse or neglect) based in part on a finding of unfitness due to [CLIENT]'s immigration

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this sentence enhancing statute today.

status. A finding of unfitness based solely on [CLIENT]'s immigration status would be inappropriate, and similarly fails to meet the statutory strictures. Plaintiff claims that [CLIENT]'s "lifestyle as an undocumented person is not a lifestyle that can provide stability for a child. Plaintiff also asserts that a child cannot be educated in this way, always in hiding or on the run."

As discussed in more detail below, weighing the legality of a parent's mere *presence* in the United States as an undocumented immigrant against the American citizenship of proposed adoptive parents has no place in termination proceedings—no more so than weighing their respective personal wealth. Any reliance by the Plaintiff on the fact that [CLIENT] is an undocumented immigrant who faces deportation to terminate her rights should be rejected by this Court. *See In the Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 767 N.W.2d 74, 93 (Neb. 2009) ("we do not conclude that Maria's attempt to bring herself and her child into the United States, in the belief that they would have a better life here, shows an appreciable absence of care, concern, or judgment").

C. Best Interest of the Child

[This section is written for a termination of parental rights case or a child abuse or neglect adjudication, but can be adapted for use in a contested custody case].

The [STATE'S OR PLAINTIFF'S] analysis of what is in the child's best interests is fatally flawed. The [STATE/PLAINTIFF] improperly disregards the strong presumption that the child should remain with [CLIENT] and instead weighed how, in the Court's opinion, the child would fare in the custody of an

American couple versus [CLIENT], an immigrant who the State presumes would likely return to her native Guatemala.

When an alien-parent's minor child is a United States citizen and the alien parent is deported, it is the parent's prerogative whether to take the minor child along or leave the child in this country. *Liu v. United States Dep't of Justice*, 13 F.3d 1175, 1177 (8th Cir. 1994); *see also Newton v. Immigration & Naturalization Service*, 736 F.2d 336, 343 (6th Cir. 1984). As the Supreme Court of Nebraska recently reaffirmed:

> [T]he "best interests" standard is subject to the overriding presumption that the relationship between parent and child is constitutionally protected and that the best interests of a child are served by reuniting the child with his or her parent. This presumption is overcome only when the parent has been proved unfit.

In the Interest of Angelica L. and Daniel L., 277 Neb. 984, 767 N.W.2d 74, 92 (Neb. 2009). Parental rights are not forfeited simply because a mother is detained by immigration authorities or deported; nor can the deportation itself form the basis of a termination decision. *Id.* at 94.

A non-citizen parent's rights over her dependent child directly relate to the best interest of the child analysis and create a strong presumption in favor of keeping the child with his biological mother. Keeping the family together would preserve the continuity of the family's heritage. Placing greater value on a childhood in the United States than a childhood with his biological mother in her native country completely disregards the "fundamental interest" of the mother and devalues her social, cultural and biological ties with her child. Moreover, failing

to address the potential harm to the child in the loss of any potential contact with his biological mother, family and cultural heritage ignores important interests of the *child.* Specific risks to children associated with loss of contact with a biological parent can include:

- Permanent cut-off in family ties results in a grief-type experience, as though there were the death of a loved one.
- The usual life passages such as adolescence, marriage, childbirth, deaths, or divorce often reactivate the feelings of separateness from the family of origin.
- With adoption, some children are at risk of losing intimate contact with and connection to their family, ethnic or cultural heritage.

See Matthew B. Johnson, *Examining Risk to Children in the Context of Parental Rights Termination Proceedings*, 22 N.Y.U. Rev. L. & Soc. Change, 397, 414-15 (1996). As this article notes:

> When children are to be adopted as a result of some perceived inadequacy in their parents, a significant risk of a negative impact on the child's identity and self-esteem results. When the message is that the parents were inadequate to provide care and the child cannot visit or even see the family of origin, the child must either disconnect psychologically from the family of origin, with the resultant loyalty conflict, or accept some injury to their self-esteem for maintaining some identification with the 'defective family.'

Id. at 415 (citations omitted).

Moreover, any sort of balancing between the rights of a biological parent against the interests of third parties, such as a foster or potential adoptive family has been held to improperly encroach on the prerogatives of the biological parents. In *Troxel v. Granville*, 530 U.S. 57 (2000), the United States Supreme Court emphatically confirmed that a court cannot favor the interests of third parties (in *Troxel*, grandparents) to override the rights of a parent. "So long as a parent

adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Id.* at 68-69.

In its efforts to terminate [CLIENT]'s parental rights, the State is disregarding these well settled principles and instead relies heavily on the perceived benefits to [CLIENT]'s son in remaining in the United States rather than returning to Guatemala with his mother. [INSERT FACTS]

However, a best interest analysis must start with the fundamental constitutional rights of a parent, not what situation might be "better" for the child. *In the Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 767 N.W.2d at 92 ("whether living in Guatemala or the United States is more comfortable for the children is not determinative of the children's best interests. We reiterate that the "best interests" of the child standard does not require simply that a determination be made that one environment or set of circumstances is superior to another."); *see also Ruth v. State*, 803 S.W.2d 528, 532 (Mo. Ct. App. 1990) ("The General Assembly has not authorized the removal of children from the custody of their parents on the ground that the children would be 'better off' in another home.").

Thus, a proper analysis must give great deference to the mother's interests and to the potential harm to a child when faced with the loss of continued access to his or her mother, their family and their shared heritage. In *In re H.G., a Minor*, 757 N.E.2d 864, 873 (Ill. 2004), the Illinois Supreme Court observed that if a

court does not adequately consider parental rights, including circumstances beyond a parent's control, that court might find that a parent is "abundantly fit," but "that the child's best interests will not be served by returning the child to the parent's home." The Illinois Supreme Court found such an outcome intolerable.

Precisely because of the sort of injustice that might result when termination decisions do not adequately account for the rights of natural parents and the resulting presumptions, decisions that rely on immigration status should be viewed with great skepticism. In an instructive article on this issue, "*Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts*" Professor David Thronson discusses the issue:

> The patterns that emerge from reviewing family court decisions indicate that the impact of immigration status in family court is not an irregular occurrence. *Whether family courts are discriminating, manipulating, obfuscating or accommodating, immigration status influences, sometimes determinatively, the outcome of cases.* … Especially when fundamental rights such as rights arising from the parent-child relationship are at stake, courts need to consider skeptically the constitutionality of arguments asserting the relevance of immigration status."

Id. at 71-2 (emphasis added).

Immigration issues are rarely central (or even relevant) to the required analysis in a termination proceeding, just as they were not here. Considering a parent's immigration status, and certainly relying on it, in such cases is inappropriate. In fact, some Courts have "recognized the in terrorem effect of inquiring into a party's immigration status when irrelevant to any material claim." *Topo v. Dhir*, 210 F.R.D. 76, 78 (S.D.N.Y. 2002).

The decision to terminate [CLIENT]'s parental rights has profound emotional and permanent consequences for both mother and child. Rather than placing the unparalleled interests of the biological mother at the apex of the rights and interests involved, the States appears to have put those interests aside, improperly devaluing them in light of [CLIENT]'s immigration status. Terminating [CLIENT]'s parental rights is directly contrary to [INSERT RELEVANT STATE] law and the United States Constitution.

IV. DUE PROCESS PROTECTION OF PARENTAL RIGHTS

[This is drafted for use in a termination of parental rights proceeding. These arguments should also be made at any child abuse and neglect proceeding in which the issues that the State is raising in that proceeding are similar to those discussed below. The language access discussions contained in this section could also be very relevant in a contested custody case].

The State in bringing this case is defective in another important respect: it appears that [CLIENT] was deprived of her procedural due process rights. Procedural due process limits the government's ability to deprive people of interests including those that constitute "liberty" or a parent's interest in the parent-child relationship. In this case, [CLIENT]'s due process rights dictated that, among other things, she be timely informed of the proceedings and her rights in her native language of Spanish in a manner that she could fully understand, so as to meaningfully participate in the process.3

3 *See "Improving Access to Services for Persons with Limited English Proficiency,"* Exec. Order No. 13, 166, *reprinted at* 65 FR 50121 (August 16, 2000) (confirming that Title IV requires applicable state actors to "take steps to ensure that language barriers [do] not exclude LEP persons from effective participation in [the system's] benefits and services," and citing as Supreme Court precedent *Lau v. Nichols,* 414 U.S. 563 (1974)).

A. Due Process Extends to Immigrant Family Relations

The U.S. Supreme Court has long recognized that state intervention in a parent-child relationship is subject to constitutional oversight, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923), and that a familial relationship is a liberty interest entitled to substantial due process. *Lehr v. Robertson*, 463 U.S. 248 (1983). This supports the position that "parents retain a vital interest in preventing the irretrievable destruction of their family life." *Santosky v. Kramer*, 455 U.S. at 754. And perhaps most importantly, the Court has recognized that the "Due Process clause *applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.*" *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (emphasis added).

Missouri law similarly forbids violations of parent-child relations without the adequate protection of due process standards. And, in a termination of parental rights proceeding, the "[c]ourt must be diligent to uphold the requirements of due process and protect the parent's fundamental liberty interest in the parent-child relationship. The termination of parental rights is an awesome power that involves fundamental liberty interests associated with family and child rearing." *In re E.A.C.*, 253 S.W.3d at 601.

Indeed, this Court has found that that the termination of parental rights is tantamount to a "civil death penalty." *In re K.A.W. and K.A.W.*, 133 S.W.3d at 12. In *K.A.W.*, the Court explained that: "A parent's right to raise her children is a

fundamental liberty interest protected by the constitutional guarantee of due process. It is one of the oldest fundamental liberty interests recognized by the United States Supreme Court…. Those faced with forced dissolution of their parental rights have a more critical need for protections than do those resisting state intervention into ongoing family affairs." *Id.* This is why Missouri law mandates that "the parent, whose rights are threatened, must be given an opportunity to defend the allegations against them." *In re E.A.C.*, 253 S.W.3d at 601.

B. Additional Due Process Protections for LEP Persons

In order to effectuate the due process mandated by the Supreme Court and Missouri law, in connection with a proceeding involving a limited English proficiency ("LEP") parent, like [CLIENT], the Court must ensure that [CLIENT] is provided with an oral interpretation and translation of written materials. Thus far, this does not appear to have happened here, depriving [CLIENT] of her due process rights.

Indeed, Missouri law mandates that state courts shall appoint qualified interpreters in all civil legal proceedings in courts of record in which the non-English speaking person is a party or a witness. Mo. Rev. Stat 476.800 and 476.803(1). In fact, Missouri court practice permits, even prior to any proceeding requiring an interpreter, that one or both private parties deposit an amount of money "reasonably necessary" to cover interpreter costs, and that the court can require payment of the interpreter costs from that deposit. In at least some

counties, parties to civil cases who call a witness needing an interpreter must "arrange and pay for such interpreter." Mo. Ann. Stat. 476.806.3; Missouri 9th Jud. Cir. Ct. R. 56.1 ("In any civil action, an attorney representing a party or a party, not represented by an attorney, intending to call a witness who will require a foreign language interpreter shall arrange and pay for such interpreter."). *See also* 21st Jud. Cir. Ct. R. 25.1 (the court will arrange for an interpreter but not until after the requisite deposit has been made). And this is not a novel approach—for over 10 years, Missouri has been a member of the Consortium for Language Access in the Courts, whose mission is "to promote equal access to justice in courts and tribunals by eliminating language barriers for persons with limited English proficiency." Consortium for Language Access in the Courts, Mission Statement, *available at:*

http://www.ncsconline.org/D_Research/CourtInterp/MissionStatementFinal.pdf

(last visited Dec. 29, 2009). Thus, the court in this case—either sua sponte or through oversight of the parties' case—is obligated to ensure that [CLIENT] is provided with resources to enable her to understand the termination proceedings. A failure to do so would constitute a violation of her due process rights and provide grounds for reversal of the termination order.

C. The Court Has Failed to Protect [CLIENT]'s Due Process Rights

[INSERT FACTS]

[CLIENT] must be given access to a qualified professional interpreter to render that opportunity to defend herself meaningful. *See* Mo. Rev. Stat 476.800 and

476.803(1). This means both the court and the adoptive parents should provide [CLIENT] with sufficient documentation (*i.e., in her native language*) and access to a court interpreter in order to participate in the termination proceeding.

V. CONCLUSION

[This section is an example from a termination of parental rights proceeding and can be adapted for child abuse and/or neglect or custody proceedings]

The Trial Court must give adequate deference to the parental bond between [CLIENT] and her child and the rights that bond ensures. Moreover, the court must avoid lowering the standard for terminating the rights of parents and improperly relying on [CLIENT]'s immigration status to reach its decision. Additionally, the court is required to engage in a proper best interest analysis as opposes to determine that her son should be taken away from her permanently because an American couple would, as the State asserts, be better parents than a biological parent who is an undocumented immigrant. The Court further must ensure that [CLIENT]'s due process rights are protected. [CLIENT] should receive adequate notice and understand the proceedings so as not to prevent her from meaningfully participating in the hearing. Anything less would be an injustice of the Court.

RESPECTFULLY SUBMITTED this [INSERT DATE].

By:_____
Defendant's Counsel
FIRM NAME
Firm Address

CERTIFICATE OF SERVICE

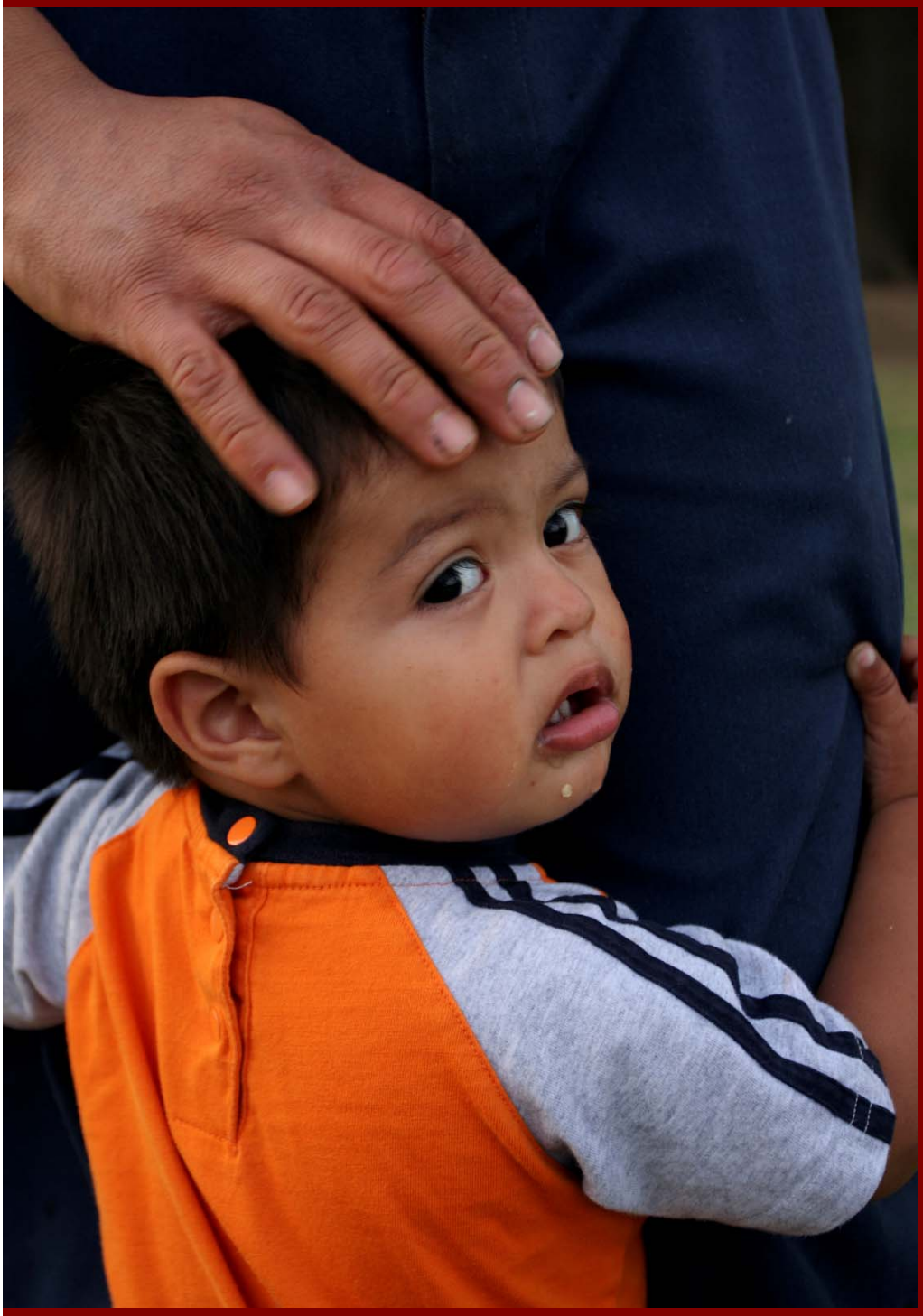
The undersigned hereby certifies that a true and complete copy of the foregoing **Trial Brief in Support of Defendant** was delivered via _____ on [INSERT DATE], to the following:

Plaintiff's Attorney or State Attorney
Firm Address
Firm Telephone

By:_____
[Insert name of Certifier]

Protecting Assets & Child Custody in the Face of Deportation

A Guide for Practitioners Assisting Immigrant Families



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Protecting Assets and Child Custody in the Face of Deportation

A Guide for Practitioners Assisting Immigrant Families

The Financial Cost of Deportation

The United States deported more than 358,000 immigrants in 2008, the sixth consecutive year of record-high deportations. In recent years, the number of individuals deported has increased by a precipitous 60 percent. This increase in deportation has been fueled largely by detentions for non-violent immigration violations.

Deportation is thus a growing concern for immigrant families until they are able to achieve citizenship. Indeed, the Pew Research Center found that 53% of Latino immigrants worry a lot about deportation of themselves, family members or close friends; 72% worry at least some.

Immigrants come to the United States to build a better future and to unite with family members, some of whom are citizens and some of whom also face the possibility of deportation. Most immigrants have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses, and build personal assets.

Thus, in addition to the emotional difficulties caused by the division of families and the forced departure from homes and communities in the United States, immigrants subject to deportation face a range of financial and custodial issues in need of special considerations. These issues benefit from advanced planning. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

Deportation, however, does not deprive persons of all financial or parental rights, and in fact, immigrant advocates, families, and persons facing deportation have many strategies for handling the difficult issues of access and control over such property. This manual summarizes several potential issues an individual may confront in the face of deportation or voluntary departure. The manual also outlines basic steps a person can take to manage these issues before or, if necessary, after they have left the United States.

This manual is designed to aid direct service providers as they counsel their clients through the process. In particular, this manual walks through the following issues:

- **Powers of attorney**
- **Collecting unpaid wages**
- **Bank accounts and cash**
- **Cars, homes, and businesses**
- **Government benefits and obligations**
- **Assets held in a child's name**
- **Child custody**

By reviewing and following the steps outlined in this manual, individuals and families facing deportation may be able to prepare themselves for the financial fall-out of being detained, which will allow them more time to focus on the immediate legal issues they face if and when such a scenario arises.

The Importance of Legal Advice

LEGAL ADVICE IS IMPORTANT AND SHOULD BE GIVEN ONLY BY STATE-APPROVED PROFESSIONALS. THIS MANUAL IS A GENERAL EDUCATIONAL RESOURCE AND SHOULD NOT BE REGARDED AS LEGAL ADVICE. THE RIGHTS DISCUSSED IN THIS MANUAL MAY CHANGE AND MAY NOT APPLY IN CERTAIN STATES. WHENEVER POSSIBLE, READERS SHOULD SEEK LEGAL SUPPORT. CLIENTS SHOULD BE ADVISED ON WHO CAN AND WHO CANNOT PROVIDE COMPETENT LEGAL ADVICE.

This manual focuses on the financial and parental rights of individuals in the face of deportation. The manual does not address an individual's legal rights during the deportation process, and we recommend you consult with an immigration legal service group for information related to legal rights during the deportation process.

Terms Used in this Manual

This manual addresses the needs of immigrants in three general situations:

1. Non-citizen immigrants, both undocumented individuals and legal permanent residents, who do not face immediate deportation. These individuals may be concerned about future deportation and wish to make preparations. This manual refers to individuals in this situation as "**Preparing Immigrants**."

➔ Preparing Immigrants may choose (and are encouraged) to prepare their assets and child custody in case of deportation, even though they do not face any immediate threat of removal from the United States. They may have a fair amount of time in which to arrange their affairs, and prepare powers of attorney and other documents and contingency plans. Then, if they are ever detained, they will be better prepared to take the necessary steps to sell their property or retain control and access it from abroad once they are deported.

2. Non-citizen immigrants who have been detained but have negotiated voluntary departure or who are otherwise released on bond, parole, or pursuant to orders of supervision. These individuals may have a short amount of time to manage their assets and child custody before departure from the United States. This manual refers to individuals in this situation as "**Supervised Immigrants**."

➔ Supervised Immigrants, facing impending deportation, will need to make definite plans for their property and finances under tight time constraints. Those who have negotiated voluntary departure sometimes have between 90 and 120 days to arrange their affairs and leave the country. Individuals who have been detained and paroled may have a few weeks to over a year to plan. Even if these individuals have not arranged their finances and child custody previously, they still can take most of the steps available to Preparing Immigrants.

➔ In some situations, such as a Mexican immigrant in Texas who has negotiated voluntary departure, a Supervised Immigrant may only have a day or two to prepare. Individuals in this situation may want to take the steps outlined in this manual for Detained Immigrants, as discussed below.

3. Non-citizen immigrants who have been detained and are being held in detention until the Department of Homeland Security arranges their physical deportation from the United States. These individuals face particular challenges in managing assets and child custody. This manual refers to individuals in this situation as "**Detained Immigrants**."

➔ Detained immigrants who are already detained by the Department of Homeland Security, and who will not be paroled or released before being deported, have the least amount of time and the fewest options for managing their property and their parental rights. However, there are still steps these individuals can take, while in detention and from abroad, to maintain control of their property and parental rights.

The Manual: Checklists, Chapters, Appendices, and Glossary

The manual is separated into four sections. The checklists at the beginning are designed to be take-home summary documents that immigrants can take with them after meeting with a service provider. The checklists are reminders only and should supplement, not replace, the detailed advice provided in the manual chapters. Spanish-language checklists are available on the Appleseed website.

The chapters provide fuller explanations of the financial issues immigrants must manage in the face of deportation. The appendices provide sample forms and letters as well as advice for selling a car or home. The glossary provides definitions for uncommon terms used in the manual.

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Training materials are available online at http:/www.familiesforfreedom.org/httpdocs/deportation101.html

FFF has also developed a Financial Handbook for Families Facing Detention and Deportation directly addressed to immigrant families. Appleseed's manual is designed to address additional areas as a complement to the Financial Handbook.

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About Appleseed

A nonprofit network of 16 public interest justice centers in the United States and Mexico, Appleseed uncovers and corrects social injustices through legal, legislative and market-based structural reform. Appleseed and Appleseed Centers bring together volunteers from the law, business and academic professions to devise long-term solutions to problems affecting the underprivileged and underrepresented in such areas as financial access and immigration. For more information, visit: www.appleseednetwork.org.

Summary Checklist for Key Financial Items

- ☐ Make a list of all of your assets (for example, your bank accounts, lease, car, home and business ownership) and make a list of key contacts for each in case you need to wind up your affairs.

- ☐ For each asset, develop a plan for how you want to deal with the asset in case you have to leave the United States. Some common assets and considerations are listed below:

  - **Bank account**: Think about whether you can access your bank account in your home country or if it would be easier to close your bank account. Follow the specific procedures that your bank requires.
  - **Cash**: To avoid problems with carrying cash across the border, try to plan ahead by finding a U.S. bank with ATM machines in foreign countries and find out the fees associated with accessing the account in the other country. (You might consider sending a duplicate ATM card to a trusted family member abroad as a backup measure to ensure you have access to funds.) Another option is to get a bank draft (a bank draft is a check from your bank that orders the bank in your home country to pay the person named on the check) from your bank that is made out to a specific person. Bank drafts can be advantageous since they can be cancelled if lost.
  - **Car**: If you sell your car, remember to put the sale terms in writing, request that the buyer pay in cash or by certified check, file title and tax forms with the department of motor vehicles, and communicate the sale to your auto insurance carrier. If you still owe money on a car loan, make sure to get the loan payoff amount from your lender so you know the minimum amount of money you need to make the sale complete.
  - **Residential lease**: Understand the terms of your lease – know what your liability is for unpaid rent and whether you can assign or sublease to someone else. Be sure to remove personal property from the apartment within a reasonable period of time after you leave.
  - **Home**: Your home may be your most valuable asset, so it is important that the sale of your home complies with all laws. A real estate agent can be very helpful, and you should contact one if you are not familiar with the sales process. If you want to give your home to someone as a gift, you will need to (i) execute a deed; (ii) prepare the appropriate state and local tax forms; (iii) resolve mortgage issues; and (iv) register miscellaneous liabilities, such as utilities and insurance.
  - **Business**: Transferring or selling a business is a complex process that is set by local rules and regulations. Therefore, you should consult with local city, county, and state agencies for additional guidance on the process.
  - **Social security and veterans benefits**: If you are a wage-earner, and your dependents (for example, your children) are U.S. citizens, your dependents can continue to receive benefits. However, if your dependents do not have legal status in the U.S., they cannot receive benefits.

- ☐ Consider whether you want to write a power of attorney to someone you trust. A power of attorney is a legal document that allows another person to act on your behalf. You can use a power of attorney to give someone you trust the power to handle your affairs for you after you leave the U.S.

- ☐ Organize all relevant financial paperwork into one binder so that they are readily available should you need to wind up your affairs in a short amount of time. You should include documentation related to your bank account, car, apartment or house, insurance, taxes, business interest, loans and other outstanding debts.

- ☐ Notify your employer of your new address if you are detained or deported and ask your employer to send your last paycheck to that address. You have a right to receive your promised wages for any work that you do. It does not matter if you do not have work authorization or a social security number.

- ☐ If you have debt, you should contact your lender or credit card company to provide updated contact information or make arrangements to settle the debt. Most banks and credit card companies are multi-national and will try to collect the debt outside the U.S. if the debt is not paid.

- ☐ You may need to file a tax statement with the IRS before leaving the U.S. You should also be prepared to file a U.S. tax return for the year, even if you have left the country.

CHECKLIST FOR POWERS OF ATTORNEY

- ☐ Consider granting a power of attorney to someone you trust who will remain in the U.S. to take care of matters for you as your agent. (A power of attorney is a legal document that allows another person to act on your behalf. You can use a power of attorney to give someone you trust the power to handle your affairs for you after you leave the U.S.) You can grant a general power of attorney to one agent who can handle all of your matters, but you may want to grant separate powers of attorneys to different people for different purposes. For example, you might grant a power of attorney to your aunt to make decisions regarding your children and a separate one to your brother to handle financial matters such as managing your bank account or selling your car.

- ☐ Be careful in choosing an agent, especially if he or she will have access to your bank account. He or she must be an adult, and you should trust him or her to act carefully to carry out your wishes.

- ☐ Make a list of all of the financial matters you would need an agent to help you handle.

- ☐ Write the document authorizing the power of attorney. Consider the following when writing it:

  - **Consider how long the power of attorney should last.**
  - **Try to provide as many details about the assets as possible. For example, list the names of the banks, the account numbers, the car registration numbers and the locations of assets.**
  - **You will need to find out the legal requirements for a power of attorney in your state. If you have already left the U.S., a power of attorney can be drafted from abroad; however, this may require an authentication process depending on which country it is drafted in.**

- ☐ Give the original power of attorney to the agent you have chosen. Keep a copy of your records.

- ☐ Ask the agent to keep clear records of all the actions he or she takes as your agent under the power of attorney. If another person refuses to accept your agent's power of attorney, contact a lawyer.

KEY TAKEAWAY

➔ **Because it can be overwhelming to think about your financial assets when dealing with a possible deportation, you should consider if there is anyone you trust who can be given a power of attorney to handle your financial matters for you. If so, you should get the appropriate documentation drafted ahead of time.**

Checklist for Collecting Unpaid Wages

- ☐ You have the right to wages for any work that you have done. You have the right to workers' compensation. It does not matter if you do not have work authorization or a social security number.
- ☐ If you have changed addresses because of detention or deportation, notify your employer of your new address and ask your employer to send your final paycheck to the new address.
- ☐ If your employer does not pay you your last paycheck, you may make a complaint with the Department of Labor or your state labor office. There are also several nonprofit organizations that can assist you. Your consulate may also be able to help you.
- ☐ It is illegal for your employer to retaliate against you for protecting your rights to wages for the work you have done.

Key Takeaway

➔ **Notify your employer of your new address. If your employer has violated your rights to wages, you may file a complaint with your state labor office or the federal Department of Labor. A nonprofit organization may be able to assist you.**

Checklist for Taking Money Across the Border

- ☐ If you take more than $10,000 in cash, traveler's checks, checks made out to you or money orders across the border at one time, you must fill out a "Report of International Transportation of Currency or Monetary Instruments," which can be obtained from a customs officer at the point of departure or online at http://www.fincen.gov/forms/files/fin105_cmir.pdf. If you do not make this declaration, the currency may be seized.
- ☐ Be very careful when transporting cash since it is not recoverable if it gets lost.
- ☐ If you are detained, you may have limited options for accessing your funds:
  - You may want to select a trusted friend or family member to give your debit card to in order to withdraw cash for you. The friend could give you the cash or send it to you by wire transfer once you reach your home country.
  - If you have had a chance to set up a power of attorney, your agent could authorize a bank draft or wire transfer of money to an account in your home country or send you a check or money order there.

Key Takeaway

➔ **Given that there are risks associated with each option for transporting cash or things like cash across the border, to the extent possible, it is best to plan ahead and weigh the pros and cons of each of these options.**

Checklist for Managing, Accessing & Closing a Bank Account

- ☐ Decide whether to close your bank account(s) or leave them open.

- ☐ If you want to keep your bank account open, decide whether you will be able to manage your account from abroad or if it would be easier to give someone you trust a power of attorney to manage your account on your behalf.

  - If you want to manage your bank account yourself, find out if you can access your account abroad either through a local branch or ATMs, or by telephone or internet.
  - If you are going to grant a power of attorney, ask the bank if it has special requirements for accepting a power of attorney.

- ☐ If you want to close your bank account, contact the bank to find out the bank's procedures for closing an account. The bank may have special instructions if you hold an account jointly with another person. If a bank allows you to close your account from abroad, you usually must send a signed letter with specific information to the local branch of your bank. **Appendix H** has a sample letter.

  - Make sure all checks have cleared before closing your bank account.
  - Decide how you want the remaining balance in your bank account transferred to you. Generally, the bank can send your balance to you in your home country by bank draft or a wire transfer. You could have your agent use a power of attorney to manage this process for you.

- ☐ If you rent a safety deposit box at a bank and want to keep it open, consider either:

  - Adding another person to the account as a joint renter; or
  - Appointing a deputy who can access the safety deposit box. A bank will not usually recognize a power of attorney because of the confidential nature of safety deposit boxes.

Key Takeaway

➔ **Deportation does not mean you have to leave your hard-earned money behind. You should carefully consider whether you can access your bank account in your home country or if it would be easier to close your bank account.**

Checklist for Selling a Car

- ☐ If you decide to sell your car, make sure to put the sale terms in writing and to get the payment from the buyer in cash or a certified check to limit the chances of fraud.
- ☐ If you still owe money on the car, contact all lenders in order to coordinate for the sale of the car:
  - Contact the lenders who have a claim on your car early in the process to determine how much you will have to pay and to get approval of the sale in order to transfer clear title to the buyer. If you do not have enough money to pay off the car loans before finding a buyer, you can use the buyer's payment to pay off the loans.
- ☐ There are library resources and internet websites, including the Kelley Blue Book (available at www.kbb.com), that will help you determine the average selling price for your car in the area.
- ☐ Before allowing a potential buyer test drive the car, check your insurance policy to make sure that it covers test drives.
- ☐ When you sell your car, you should immediately notify your auto insurance carrier to terminate your policy.
- ☐ Make sure to remove the license plates, registration sticker, and inspection sticker from the car; promptly return the license plates to the department of motor vehicles.
  - Remember to file with the department of motor vehicles the necessary forms for transferring title and for sales tax purposes.

Key Takeaway

➔ **You should keep all of the important documents, like your registration papers and auto insurance information together, so that you can find them quickly and tell someone else where they are if needed. Before starting the sale process, determine the car's market value and the lowest price you are willing to accept. If you sell your car, make sure to put the sale terms in writing and to get the payment from the buyer in cash or a certified check.**

Checklist for Residential Leases

- ☐ You should find out whether you will have to pay the remaining rent due under your lease. Your liability will be determined by the lease agreement and local law, so you might consider seeking legal advice concerning your lease from an organization that provides free legal services.
- ☐ Remember that you have the right to enter your home to remove your property within a reasonable time – likely three days or less – after a lease is terminated. If you fail to remove property within a reasonable time you may owe the landlord for expenses associated with storing or disposing of the property.
- ☐ Family members who wish to continue your lease have three options:
  1. **Continue the original lease with the landlord's consent;**
  2. **End the original lease and enter into a new lease with the landlord's consent; or**
  3. **"Succeed" the lease through an assignment or sublease from you.**
- ☐ You should find out now if your lease allows for assignment or sublease and if the lease specifies what the landlord can do if you abandon the property.
- ☐ You should arrange for a trusted person to have keys to ensure that someone is able to remove your personal property within a reasonable amount of time if you are detained or deported.

Key Takeaway

➔ **Understand your lease and whether you will be liable for unpaid rent and whether you will be able to assign or sublease to your family members. Be sure to remove your property within a reasonable period of time.**

Checklist for Home Ownership

- ☐ If you sell your home or give it as a gift, you will need to execute a deed, which is a document recording proof of ownership of a home or land.
  - Contact the city or county's register's or clerk's office, as well as a title company, about the required content and form of a deed, as well as any other paperwork that you must file at the same time as the deed.
  - You may want to consider granting a "quitclaim" deed, which allows you to transfer the property without creating any promises the buyer can enforce against you.
- ☐ If you give your house as a gift, you will need to file appropriate tax forms.
  - Generally, a tax for the transfer of property will be imposed on your gift, unless an exemption exists or your state does not tax house transfers. In addition, local counties and cities may charge an additional tax.
  - Even though you are giving the property as a gift and are not receiving money, your state likely will require that you fill out a state income tax filing form.
- ☐ Determine whether your mortgage can be transferred to the buyer and, if so, what forms must be completed to execute the transfer of the mortgage.
  - Pay any fees and record the transfer of the mortgage in the county or city.
- ☐ Transfer the utility bills, insurance, and other liabilities to the recipient's name.
- ☐ Employ the services of a real estate agent, or if selling on your own, familiarize yourself with the sales process. It may also be beneficial to retain a real estate lawyer who can ensure compliance with all laws in your area.
  - Disclose to the purchaser material facts, including defects and flaws. State and federal laws will determine the extent of disclosure necessary.
  - Locate and prepare the contract. Standard form contracts are available online or from a real estate professional. The main documents required for sale of a home are: Offer to Purchase; Real Estate Sales Contract; and Residential Property Disclosure Statement (including Lead-Based Paint Disclosure). Other documents may also be required, depending on each specific sale.
  - Determine who is responsible for the home inspections and other costs based on negotiations with the seller. Set cut-off dates for inspections and approvals of inspection reports. Establish who is responsible for making repairs, if any, mandated by the inspection reports.
- ☐ Speak to lenders early and frequently whenever there might be a problem with making a mortgage payment. Lenders are generally more responsive if you notify them upfront instead of waiting and becoming delinquent on your mortgage.
- ☐ Consult housing counseling agencies for advice about dealing with missed payments and alternatives to foreclosure. In today's economic environment, lenders are more willing to negotiate with a borrower instead of initiating foreclosure.

Key Takeaways

➔ **Be aware that once you give your home to someone as a gift, you no longer have any legal rights to the property. Also, there may be significant taxes owed when you give your home to someone as a gift.**

➔ **Your home may be your most valuable asset, so it is important that the sale of your home complies with al laws. Real estate agents are very helpful, and you should contact one if you are not familiar with the sales process.**

Checklist for Transferring or Selling a Business

- ☐ Transferring or selling a business will likely take a long time. If you own a business, you may want to plan ahead to prepare for the possibility of sudden deportation. You may want to consider granting powers of attorney in case of deportation.

- ☐ Familiarize yourself with the basic process and requirements for transferring a business. When a business owner sells a business or gives it as a gift, he or she no longer has the right to control or profit from it. In addition, only certain people can run a business: For example, sole proprietors must be over 18 years of age and legally competent (that is, not incapacitated in some way).

- ☐ Depending on the laws of the state, county, and city, you may have to dissolve your business and the recipient may have to re-register it in the recipient's name. Consult with your city, county, and state agencies for additional guidance on this process.

- ☐ Transfer any mortgages or leases on the business assets to the new owner. By doing this, you will not be liable for those obligations once you cease to be involved in the business. If you have agreements that do not allow you to transfer these obligations, try to renegotiate them.

- ☐ Transfer, or have the recipient reapply for, any state licenses (for example, licenses to sell alcohol or lottery tickets), zoning permits or other applicable authorizations. Obtaining approval from the appropriate government agency may take several months.

- ☐ Seek the advice of a qualified tax advisor to ensure compliance with all applicable tax rules and regulations.

- ☐ Inform the new owner of any issues and information required for operation of the business. Your "know-how" and experience are an essential element for the continued success of the business.

Key Takeaway

➔ **Transferring or selling a business is an important and complex process. Local rules and regulations will dictate the steps required to properly transfer a business to a new owner. Consult with local city, county, and state agencies for additional guidance on the process.**

Checklist for Credit Card Debt

- ☐ If you have time before leaving the country, you should contact your lenders, notify them of the situation and provide a forwarding address in your home country. Be sure to contact them both by phone and by mail, sending your notification by certified mail, return receipt requested.

- ☐ If you are subject to immediate deportation, you should keep a record of the creditor's contact information accessible and send a payment to the lender upon arriving in your home country. You should also attempt to contact the lender after being deported to provide an updated mailing address.

Key Takeaway

➔ **Your debt is not discharged after you leave the country. Many banks and other lenders are multi-national and may attempt to collect the debt outside the United States if the debt is not paid.**

Checklist for Social Security & Veterans Benefits

- ☐ If you were a wage-earner in the United States and received social security benefits, your children and other dependents can continue to receive benefits if they are U.S. citizens.

- ☐ If you were a wage-earner in the United States and received social security benefits and your dependents do not have legal status in the United States, you should let them know that they cannot receive benefits for any month that they are outside the U.S. for any length of time.

- ☐ You will not be able to receive social security benefits once the Social Security Administration is notified that you have been deported. However, if you are lawfully admitted to the U.S. for permanent residence after being deported, any benefits that were unpaid on account of your deportation may be payable when you are readmitted.

- ☐ If you are the wage-earner, a lump-sum payment of social security benefits will not be made upon your death unless you are lawfully readmitted to the U.S. for permanent residence after being deported.

- ☐ If you receive social security benefits as the dependent of a wage-earner, and you are deported, but the wage-earner is not, the wage-earner will continue to receive benefits.

Key Takeaway

➔ **Deportation of an immigrant wage-earner or his dependents can affect social security and Veterans benefits. If you are a wage-earner, your dependents will continue to receive benefits if they are U.S. citizens, but if they do not have legal status in the United States, make sure they understand that they cannot receive benefits on your record for any month that they are outside the U.S. for any length of time.**

CHECKLIST FOR TAX FILING ISSUES

- ☐ Even if you are not a lawful permanent resident for immigrant law purposes, you may be – and if you have lived in the U.S. for a long time, you probably are – a resident alien for tax law purposes.

- ☐ If you are a non-resident alien for tax purposes, you should complete Form 1040NR or Form 1040NR-EZ at the end of the tax year in order to receive any refund for the year.

- ☐ If you are a resident alien for tax law purposes, you should complete the Form 1040 at the end of the tax year as you would have if you were in the United States.

- ☐ A resident spouse can file his or her tax returns jointly with a deported spouse if the deported spouse chooses to be treated as a resident alien for tax purposes. In that case, the deported spouse must declare his or her worldwide income on the return.

- ☐ If you fail to file your appropriate tax forms, you may be subject to civil and criminal penalties. This may make it impossible for you to ever immigrate to the United States again.

- ☐ All necessary forms are available on the IRS website at www.irs.gov.

KEY TAKEAWAY

➔ **If you are deported, you should still file a Form 1040 or 1040 NR, as appropriate, at the end of the tax year. Filing a tax return will allow you to receive any overpaid taxes and any tax credits – such as the Earned Income Tax Credit – that you are owed.**

Checklist for Assets & Benefits of Minors

- ☐ Special rules apply to property held by a minor. These rules vary from state to state, and an expert on the rules specific to your state should be consulted for any questions or issues.
- ☐ Make a list of any bank accounts, car registrations, or credit cards for which you and your minor child are co-signers. If possible, take action before deportation to protect these assets.
- ☐ If your minor child has possession of expensive property, consider transferring 'legal title' of that property to another guardian or custodian under your state's UTMA or UGMA statute if you are deported.
- ☐ Make a list of all situations where you act as a trustee, guardian or custodian of assets for the benefit of your minor child (including investments, inheritance, educational savings accounts, and assets held in trust). Consider transferring control over those assets to another adult if you are deported.
- ☐ Make plans for any government benefits your minor child receives and that may be affected by your deportation.
- ☐ If your minor child is leaving the country with you during deportation, a professional with expertise should be consulted to determine if and how your child's assets may be sold and taken out of the country with him or her.
- ☐ You and your child may request an accounting from any custodian or trustee managing your child's assets in order to ensure that the assets are safe and are being managed appropriately.
- ☐ If your minor child is responsible and mature, you should consider an emancipation petition if you are deported so that your child can take legal control of his or her own affairs.

Checklist for Child Custody

- ☐ You may name an individual to act as your child's temporary guardian by executing a Power of Attorney and Designation of Temporary Guardian form. Authorities are not required to honor the Designation of Temporary Guardian, but it is better than having nothing in place.
  - Although a court will consider many factors in determining a legal guardian for your child, the most important factor is the "best interests of the child." It is possible that a court would consider an individual's undocumented status as a factor contrary to a child's best interests.
  - It is also a good idea to name a guardian in your Last Will and Testament who will take care of your child upon your death. The guardian will need to petition the court to be formally appointed.
- ☐ You should keep your child's birth certificate, social security card and passport(s), any custody orders or custody agreements, the Designation of Temporary Guardian form and your Last Will and Testament in a safe location. You also should tell someone you trust where they can find these important documents if you are detained.
- ☐ If there is more than one legal custodian of your child, both are required to apply for your child's passport. Fill out the Notarized Statement of Consent or Special Circumstances (DS-3053) if either parent or legal custodian is unable to apply for the child's passport in person.

Powers of Attorney

A "power of attorney" (POA) is a powerful tool available to immigrants to help them manage their property in the face of deportation. Because a POA can be an invaluable first step in protecting an immigrant's assets, we begin the manual with an in-depth discussion of the tool. This section answers the questions:

- **What is a "power of attorney" (POA)?**
- **What does a POA look like?**
- **Why would someone facing deportation grant a POA?**
- **How should you choose the kind of POA to grant?**
- **How should you choose an agent?**
- **How long does a POA last?**
- **How do you draft a POA?**

What is a power of attorney?

A power of attorney (POA) is a written document that allows a person (who will be called the "principal" in the POA) to choose someone else (who will be called the "agent" in the POA) to act on their behalf with respect to finances, business or a child's care. A POA is especially useful for a person facing deportation or detention who simply does not have the time to get everything done before leaving the country or getting detained. For example, a POA can give an agent the power to sign checks from the immigrant's bank account, make decisions about children's schooling and healthcare, or use the immigrant's money to buy or sell major items like a car. While the term "power of attorney" might sound like something related to an attorney, such as an immigration attorney, it is not. It is simply a legal term used for the document that gives one person the legal right to act on behalf of another. Neither person needs to be an attorney.

What does a POA look like?

Generally, a POA starts with a paragraph identifying the state and county where the immigrant is when he or she is signing the form, giving the name of the immigrant principal and the name of the agent. The next paragraph is usually a list of possible powers the immigrant can give the agent. The immigrant will check off all the powers he or she would like the agent to have. Again, these can range from authority over the immigrant's bank account to authority to make decisions regarding a child's health or education. The last paragraph typically explains whether the POA takes effect immediately or upon the occurrence of some event in the future. Finally, there are signature lines for the immigrant and the agent, as well as a place for a notary public or witnesses to sign.

This is a very general description of what a POA looks like. The requirements in each state differ, so before trying to write one, please do a search on the internet for a sample POA from your state. There are a number of websites that prepare the form for you for a fee, for example: www.legacywriter.com ($20) or www.legalzoom.com ($35). As discussed in Section B.II. below, the immigrant's bank may have its own POA form to cover banking transactions or access to a safety deposit box. Additionally, as discussed in Section A.VII. below, many states have their own "statutory" POA forms that an immigrant can use. Finally, organizations such as Legal Aid, local Bar Associations or Voluntary Legal Services organizations may have sample POAs that can be used as a model or may be able to draft a POA at no cost.

Why would someone facing deportation grant a POA?

A POA can be a useful tool for a person to settle his or her affairs before or after being deported. The first thing an individual may wish to do when facing deportation is to grant a POA to a trusted family member or other person that will be staying behind in the United States. It can be very difficult, for example, to sell a house or end a rental agreement when an individual is detained and awaiting deportation, or to access a safety deposit box from abroad. With a POA, a trusted friend or family member can act on an immigrant's behalf in these matters with full legal authority.

POAs can be used to accomplish many things. For example, a health care power of attorney can be created appointing an agent to act for the immigrant if he or she is injured or too ill to make decisions for themselves. POAs can also be used to provide for the care and education of children or to handle almost any financial or business issue, such as banking, gaining access to safety deposit boxes, buying life insurance, entering into contracts, filing tax returns or settling legal claims.

How should you choose the kind of POA to grant?

Three types of POAs are particularly relevant for people facing deportation: general POAs, special or limited POAs, and springing POAs. In order to determine which kind of POA to grant, an immigrant should first decide whether a general POA or a limited POA best suits his or her purposes. As described below, there are advantages and disadvantages to both.

After deciding on a general or a limited POA, an immigrant needs to decide whether the POA will become effective immediately or only after a triggering event.

➔ **The "general" POA**

A "general" POA gives an agent a wide range of powers, essentially enabling the agent to do almost anything on behalf of the immigrant. However, even with such broad powers, there are some things that an agent with a general POA cannot do. For example, an agent acting under a general POA cannot take oaths, go through marriage ceremonies, sign wills, or access a safety deposit box on behalf of the immigrant.

A general POA is not necessary, or even recommended, for most people who face deportation. However, it can be useful when the immigrant does not have much time before being deported and needs to sell a business or have access to money when they get to their home country.

➔ **The "special" or "limited" POA**

A "special" or "limited" POA allows an agent to do only the specific acts listed in the POA document. It can be used for a wide range of activities. For example, a special POA can give an agent authority to access a bank account, sell an immigrant's home or car, ship personal property to another country, or care for minor children.

Although this type of POA is called "limited," it can actually be more useful and effective than a general POA in many instances. Banks, doctors or school officials are often more likely to accept limited POAs because the acts that the agent can undertake are clearly specified, giving a clearer idea of the immigrant's intent. The documents are therefore considered more trustworthy.

➔ **The "springing" POA**

Both a general POA and a limited POA will typically become effective as soon as they are signed, but they can be written to take effect only after a certain event occurs. A POA written to take effect only after a certain event is called a "springing" POA. For example, in the health care context, a springing POA may become effective only after a doctor has declared the immigrant incompetent.

For an individual facing deportation, a springing POA could say that it only takes effect after the immigrant has been detained or has left the country. To make sure that the triggering event has actually happened, the POA can designate a person to sign a very short statement promising that the immigrant has been detained or deported. If and when the person is detained or deported, the designated person would write out something like the following sentences:

"I, [insert name of the designated person], declare that [insert name of the immigrant] has been detained."

—OR—

"I, [insert name of the designated person], declare that [insert name of the immigrant] has left the United States."

The designated person would then sign and date the piece of paper and attach it to the power of attorney. The POA would be effective as of that date.

How should you choose an agent?

It is very important to choose the right agent. POAs can be abused, especially when the immigrant is detained or has been deported and cannot monitor the agent's actions.

An agent must be a legal adult (over 18 or 21 depending on the state), but otherwise an immigrant has a very wide range of choices when picking agents for a POA. It is not necessary that the agent speak English or have any kind of educational qualifications. It is also not necessary to include the agent's contact information or proof of identity when drafting the POA (though for practical purposes it may be useful to include the agent's address on the document).

When choosing an agent, an immigrant should consider:

- a person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible

- a person who can be trusted to act wisely and in accordance with the immigrant's wishes
- a person willing to expend the time and effort necessary to manage the immigrant's financial assets
- a person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues
- a person who resides in the same state where the POAs will be used, since different states may have different requirements for writing a valid POA

NOTE: An immigrant should take caution in choosing a spouse or intimate partner as his or her agent. Especially in abusive relationships, the immigrant's interests often become quickly opposed if there is a divorce or breakup. Many service providers have seen immigration status used as a means of control and coercion by abusive partners.

It is possible to draft several different POAs and to choose different agents to do specific things. For example, an immigrant could write one POA naming his business partner as agent and give that business partner the power to sell the immigrant's interest in the business or to run the business on his behalf. The same immigrant could then also write a second POA naming, for example, his sister and brother-in-law as agents to take care of his minor children.

If an immigrant has bank accounts or other property in several states, it may be necessary to write a POA for different agents who reside in each of those states.[3]

A NOTE TO AGENTS

➔ It is possible that a third party (like a bank or a school) will refuse to honor a POA, regardless of its legality or specificity. If an agent encounters this type of problem, he or she should contact a lawyer for advice. The agent may be able to bring a lawsuit against the third party to enforce the POA. While the rules surrounding such lawsuits vary from state to state, the case would likely focus on whether the third party is acting reasonably or unreasonably. One circumstance that is likely to be found unreasonable is if the third party refuses to honor the POA simply because it was not created on the exact form the third party typically uses. If the court determines that the third party is being unreasonable, the agent should be able to recover any fees he or she has paid the attorney to bring the action. That said, if the only reason the third party is not honoring the POA is because it is not on the proper form, it may be quicker and less expensive simply to fill out the new form and not bother with a court action. Additionally, to protect the agent's personal assets, the immigrant may want to write in the POA that if the agent has to bring a lawsuit to enforce the POA, the attorney's fees will be paid from the immigrant's money.

➔ An agent must keep the original POA, and the immigrant should keep a copy for his or her records.

➔ An agent is legally obligated to act in the immigrant's best interests. Among other duties:

- An agent must keep his or her money separate from the immigrant's money
- An agent must not stand to profit from any transaction where they are acting as the immigrant's agent
- An agent must not give or transfer the immigrant's money or property to the agent, unless the POA specifically allows the agent to do this
- An agent should keep clear records of his or her activities as agent under a POA.

How long does a POA last and can it be changed?

POAs can be created to end on a certain date or upon the happening of a certain event. If the POA does not say when it ends, it will naturally end when the immigrant dies or becomes physically or mentally incompetent.[4] A POA with a set ending point is usually considered more trustworthy than one without an ending point. However, if a person facing deportation decides to put a time limit on their POA, they should be sure to give their agent enough time to finish everything that needs to be done.

[3] Please also review the "How do you draft a POA?" section below for information on how to draft a POA granting authority to an agent that will be valid in most, if not all, of the states where it may be used.

One disadvantage to having a POA with no ending point is that POAs can be difficult to cancel. An immigrant principal can cancel a POA by signing a separate piece of paper that says the POA is cancelled, sending a copy of that signed paper to the agent and to anyone (such as a bank) that had dealings with the agent, and physically taking back the original POA and all copies that have been given to anyone. Despite the immigrant's best efforts, it is hard to tell everyone that a POA has been cancelled, and the results can be bad. For example, if the immigrant's property gets sold after the POA has been cancelled, but someone was not aware of the cancellation, it will be difficult to get the property back. For all of these reasons, it is usually best to have the POA on a certain date or when a certain event happens.

An immigrant principal can change a POA (for example to give an agent a new task or to take away one of the agent's tasks) by canceling the original POA and making a new one. This can be done with one document, as long as the new POA says that all previous POAs are cancelled. (Many statutory form POAs already contain this language. Statutory form POAs are discussed in further detail in the following section.) However, for the same reasons it is hard to cancel a POA, it is also hard to change POAs. It is hard to know whether anyone is still relying on the original POA.

If the immigrant wants to amend the POA from their home country, they should review the section below about drafting POAs after deportation. In addition to following these rules, once the new POA is created, the immigrant should have their agent in the United States collect and destroy all copies of the original POA to avoid any confusion.

How do you draft a POA?

➔ **For preparing and supervised immigrants**

Different states have different rules for how to properly execute a POA. In general, a POA must always be in writing, and may have to be witnessed by one or more persons, notarized, or recorded at the county courthouse, depending on where, and for what purpose, the POA is being used.

Some states, such as New York, have a "statutory form," which is a model POA form written in a statute created by the state legislature.[5] These forms often contain instructions on exactly what actions are required to make the POA valid. Statutory form POAs are often widely recognized and accepted at banks and other institutions within the state.

As noted above, if an immigrant has property in several states, it may be valuable to have separate POAs executed according to the rules of each relevant state. However, an individual facing deportation may not have the time or resources to make valid POAs for several states. In those circumstances, an individual may want to execute one POA that complies with the strictest requirements for POAs in the United States. This would require the immigrant's signature and the date, the signatures of two witnesses, the signature of a notary public, and acknowledgements by the agent(s).

For special POAs, the document should be as detailed as possible. For example, the POA should list all relevant bank account numbers over which the agent may have control, as well as the name of the bank(s) and the addresses of the immigrant's local United States branch. If the POA gives the agent authority to sell a house or car, the property for sale should be described in detail, including any identifying marks or numbers, such as serial and registration numbers. Other terms, such as a minimum selling price, that are important to the immigrant should also be included.

➔ **For detained immigrants**

It is possible for detained immigrants to prepare POAs while in detention, though it may be difficult to have the documents properly witnessed and notarized. A detained immigrant is advised to contact a lawyer to help with this process, preferably lawyers familiar with the regulations of the detention center where the individuals are being held (e.g., visiting hours, rules regarding making telephone calls and mailing letters, and other details about how a detention center is staffed and organized). If an attorney's help is not available, one option is to hire a notary who agrees to come to the detention facility. Such notaries can usually be found on the internet by searching for "notary" and "prison" or "detention." During visiting hours, the notary, the agents and any witnesses can execute the POA forms along with the immigrant.

[4] However, if the immigrant wants the POA to continue even after they become mentally or physically incompetent, they should call the POA a "durable POA." A "durable POA" continues to work even after the immigrant is incompetent.

[5] Statutory form POAs for California (CA Probate Code § 4401), New York (NY General Obligations Law § 5-1513), Texas (Texas Probate Code § 490), and Florida (Florida Statutes Annotated § 709.08) can be found at Appendices A, B, C and D respectively. These forms are valid as of October 2009. For subsequent years, go to a local law library and look for current versions of these statutes or try running searches on the internet for "statutory form power of attorney" and the relevant state.

➔ **For deported immigrants: the "Apostille" process**

It is also possible to prepare or amend a valid POA after an individual has been deported. The most straightforward way to do so is to have the POA drafted by the immigrant or if possible by a notary public (or similar official in the immigrant's home country), have the notary notarize the POA, and then have the POA "apostilled."

An "apostille" is way to authenticate or legalize documents so that they will be honored in another country. The process is recognized by every country, including the United States, that has signed the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 1961 (the "Convention"). Thus, a document, like a POA, that has been properly apostilled in Mexico will be recognized in the United States. To get a document apostilled, the immigrant must take it to one of the designated people in his or her home country for signature. The link below provides information about where to find those individuals in several countries:

A sample apostille form is available online here:
http://www.hcch.net/index_en.php?act=publications.details&pid=3198&dtid=28

If the POA and any accompanying documents, including the apostille, are not in English, it is recommended that an English translation be attached. If possible, the translation should be certified as true and correct. Generally, this can be done by having the translator sign a statement promising that he or she believes the translation is accurate and complete, then getting the statement notarized by a Notary Public. This signed, notarized statement, sometimes called a "Certificate of Accuracy," should be attached to the POA and the translation.

If an immigrant is removed to a country that is not a signatory to the Convention, he or she should seek the advice of local lawyers or the local United States embassy or consulate about how to properly authenticate locally-notarized POAs so that they will be valid in the United States.

COLLECTING UNPAID WAGES

Immigrants in the United States, both with and without work authorization, are legally entitled to overtime pay and the minimum wage. Despite these rights, immigrants working in the United States must often respond to employers' violations of labor law. In the face of deportation, an immigrant often must also take steps to recover their last paycheck. Often, simply sending an updated address to an employer will resolve this issue, but sometimes an immigrant may need to take further steps to protect his or her rights to a last paycheck. This section provides concrete advice for recovering a final paycheck during and after deportation. The section will answer these questions:

- **What are your rights to wages for work you perform?**
- **How long does an employer have to pay the last paycheck?**
- **How can you get your last paycheck if you are detained or deported?**
- **What if the employer does not pay the last paycheck?**
- **What if there are other wage problems beyond the last paycheck?**

As noted below, some wage laws are established by state law and vary from state to state. Please consult resources in your state and seek advice from a lawyer if possible.

What are your rights to wages for work you perform?

As an employee[6] in the United States, an immigrant has the right:

- To be paid for work that he or she has done. An employer cannot refuse to pay wages for work performed simply because an employee does not have a work permit or social security number.
- To be paid the amount of wages promised.
- To be paid at least the minimum wage.
- In many cases, to be paid overtime – equal to 1.5 times the normal wage – for each hour over 40 worked in a workweek.
- To be paid on time on the regular payday.

All employees in the United States have the right to be paid for the work they perform, regardless of whether the employee has work authorization or a social security number.

How long does an employer have to pay the last paycheck?

The amount of time within which an employer must pay a last paycheck is established by state laws and varies from state to state. The amount of time also depends on whether an employee is discharged (is fired or laid off) or leaves employment for another reason (such as quitting, detention or deportation).

If an employee is discharged, most states require the employer to pay the last paycheck immediately or within a few days of discharge. In Texas, for example, an employer must pay a discharged employee by the sixth day after discharge. California requires an employer to pay a discharged employee immediately upon discharge. New York requires that a discharged employee be paid on the next regular payday.

If an employee leaves employment for another reason, such as detention or deportation, most states, including Texas and New York, require the employer to pay the last paycheck on the next regularly scheduled payday. California requires an employer to pay within 72 hours in this situation.

A list of state final pay laws can be found at http://smallbusiness.findlaw.com/employment-employer/employment-employer-ending/employment-employer-ending-paycheck-final.html. Please verify any informa-

[6] These rights only apply to employees and not to independent contractors. Many employers incorrectly classify immigrant workers as "independent contractors." So even if an employer has treated an immigrant worker as an independent contractor, the immigrant may in fact be an employee. As an employee, the immigrant worker is entitled to all of the rights discussed in this section.

tion posted on the Web and consult a lawyer with any legal questions.

How can you get your last paycheck if you are detained or deported?

Most often, simply informing an employer of a change of address will be sufficient to receive a last paycheck. There is a sample letter in **Appendix E**.

In addition to requesting the last paycheck be sent to the new address, a detained or deported immigrant can ask the employer to send the last paycheck to another person chosen by the immigrant. This designation must be made in writing by the immigrant employee.

What if the employer does not pay the last paycheck?

If an employer does not pay the last paycheck, an immigrant may decide to send a letter demanding payment. There is a sample letter in **Appendix F**.

In addition to the demand letter, an immigrant may decide to make a complaint with the U.S. Department of Labor if the immigrant's work affects interstate commerce (most work does). Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the Department of Labor. A directory of Wage and Hour District Offices can be found on the Department of Labor website at http://www.dol.gov/dol/location.htm. The Wage and Hour Division's toll-free help line can be reached at 1-866-487-9243.

An immigrant may also decide to file complaints with their state governments. A list of state labor offices can be found on the Department of Labor website at http://www.dol.gov/whd/contacts/state_of.htm. The list is reproduced in **Appendix G**. There are often long delays in investigations by state labor offices.

It is illegal for an employer to retaliate against an immigrant employee for demanding his or her rights.

The Consulado de Mexico in the area where the work was performed or where the immigrant lived in the United States may also be able to help.

Many nonprofit organizations provide support for immigrant workers. Resources include:

National Immigration Law Center
http://www.nilc.org/index.htm

National Employment Law Project
http://www.nelp.org/

Equal Justice Center
http://www.equaljusticecenter.org/

Texas RioGrande Legal Aid
http://www.trla.org/

For Deported Immigrants in Mexico

Deported Mexican Immigrants can receive support for wage violations from the Centro de los Derechos del Migrante (http://www.cdmigrante.org/ or toll-free from the United States at 1-800-401-5901 or toll-free from Mexico at 01-800-590-1773) and the Global Workers Justice Alliance (http://www.globalworkers.org/GWDN.html).

What if there are other wage problems beyond the last paycheck?

Many immigrants experience violations of their employment rights beyond nonpayment of the last paycheck. A complaint made to the Department of Labor or state government agencies can also include complaints about other labor law violations, including unpaid overtime, workers' compensation abuses, and minimum wage violations.

Many of the groups listed above under "What if the employer does not pay the last paycheck?" can also assist in addressing other labor law violations.

Managing, Accessing & Closing a Bank Account

In the face of deportation, an immigrant can take steps to protect and manage money held in a bank account. This section lays out basic steps an immigrant can take both before and, if necessary, after deportation. The section will answer these questions:

- **Should you keep a bank account open after deportation?**
- **What POA will a bank accept?**
- **How do you close a bank account?**
- **What if you have a joint account?**
- **What do you do with a safety deposit box?**
- **What do you do with an account in a child's name?**

Specific banks and financial institutions may have different requirements with respect to the issues described below. Individuals should consult with their banks and, if possible, seek legal assistance for advice on specific situations.

Should you keep a bank account open after deportation?

Generally it is not necessary for a person facing deportation to close his or her bank account, especially if the person decides to maintain other property in this country. For example, a person facing deportation who decides not to sell his or her house may be able to use an open bank account to continue to make mortgage payments. Several major banks allow you to keep the account open but charge fees each time you access the account from another country. In such cases, while it is possible to keep the account open, it may be wiser to transfer the money to a bank in the person's home country and then close the account to avoid these fees. Certain other banks do not facilitate international banking at all, and thus, all accounts should be closed before the person leaves the country. A person facing deportation should call the customer service number for their bank or go to the local branch and ask whether it is possible to keep the accounts open when they move out of the United States. If it is possible to do so, the person should then ask what fees they will have to pay for using the account while living in another country.

Additionally, in deciding whether to keep an account open, the person facing deportation should consider how easy or hard it will be to manage the account from abroad. For example, what services does the bank provide over the telephone or the internet, and are those services easy to access in the immigrant's home country.

What POA will a bank accept?

Many banks prefer, and some require, that POAs governing their accounts be created using the bank's own forms (often available on the bank's website). If time allows, an immigrant facing deportation who wants to execute a POA for a bank account should call the customer service number for their bank or go to their local branch and ask what type of POA the bank will accept.

How do you close a bank account?

If a person facing deportation decides to close a bank account before leaving the United States, he or she should:

- Make sure all checks have cleared the account before closing it. This is often a requirement by the bank for closing an account.
- Request that the money in the account (the account balance) be paid at the time of closing. A person facing deportation may want to request that the account balance be paid in the form of a bank draft that can be deposited in an account in his or her home country. Alternatively, an individual may ask for the account balance in cash – however, carrying cash can have its own risks. (See chapter on carrying cash below).

➔ **For preparing and supervised immigrants**

Contact the bank ahead of time to find out the procedures for closing an account. Sometimes an account may be closed over the telephone. Other times, the immigrant or an agent under a POA may have to go to the bank in person. Also, some banks charge a fee to close accounts.

➔ **For detained or deported immigrants**

If possible, close the bank account over the telephone or through a letter from a detention center or from another country. To close an account from another country, an individual should send a signed letter to the bank's branch telling the bank to close the accounts. The following information is often required in the letter:

- Immigrant's name, address, and telephone number (if any) in the home country;
- The exact account number of the account to be closed;
- Written authority to cancel any direct debit instructions for payment to or from the account, along with alternative arrangements for future incoming payments; and
- Instructions for payment of any outstanding bills, if the immigrant was not able to clear all checks on the account before leaving the United States. (See **Appendix H**).

Any bank cards (cut in half), passbooks (with the last transaction page defaced by crossing it out and writing "Account Closed"), and checkbooks for the account should be included with this letter of instruction and mailed back to the bank branch.

Generally, the bank can send the account balance to the immigrant's new bank in his or her home country. There are a number of ways the bank can send the money, but two common and secure ways are through a bank draft or a wire transfer. A bank draft is a check from your bank that orders the bank in your home country to pay the person named on the check. The immigrant must have a bank account in his or her home country for this to work and it can take approximately three weeks for the immigrant to receive the money.

A wire transfer is faster than a bank draft (taking about one business day), but it is often expensive (costing approximately $65). The immigrant must have a bank account in his or her home country to receive the wire transfer. If the immigrant does not yet have a bank account in his or her home country, one option is to have the agent on the POA withdraw the money in cash from the U.S. bank account and take it to Western Union or a similar service for transfer to the immigrant.

What if you have a joint account?

If an immigrant has a joint account with a spouse or child or another person, both account holders may need to be present to close the account. In some cases, however, where only the immigrant is listed as the primary holder of the joint account, he or she will have the power to close the account without the other account holder being there. In that case, the immigrant may be able to close the account alone either before or after leaving the country. However, rules for closing a joint bank account vary from bank to bank and an individual should ask his or her bank to explain their rules about how to close a joint account.

What do you do with a safety deposit box?

If an immigrant has valuable things stored in a safety deposit box and wants someone else to be able to access the box when he or she leaves the United States, the immigrant should go to the bank and designate that other person as either a joint renter or a "deputy." A joint renter will have the same rights to access the box as the immigrant. A deputy has access to the box for as long as the immigrant allows and must be appointed at the bank in the presence of a bank employee.

The benefit of appointing a deputy or joint renter is that this chosen person can easily access the box after the immigrant leaves the country. If no one has been given access to the box and the immigrant leaves the United States, getting things out of a safety deposit box can be extremely difficult and expensive and may require court proceedings.

What do you do with an account in a child's name?

If an immigrant has placed a bank account in the name of a minor child but has also retained signing authority for the account, the immigrant should specify in a POA that the agent may access the account that is held in the child's name.

Taking Cash Across the Border

Taking cash across the border presents both legal and practical concerns. This section discusses these concerns, which are relevant to all people crossing the border, both in the deportation context and otherwise. The section will answer these questions:

- **What legal obligations does an individual have when taking cash across the border?**
- **What practical issues should an immigrant facing deportation consider?**

If possible, an individual interested in taking cash across the border should seek legal assistance, since particular situations may vary.

What legal obligations does an individual have when taking cash across the border?

If an immigrant takes more than $10,000 in cash, traveler's checks, checks made out to the immigrant, or money orders across the border at one time, he or she must fill out a "Report of International Transportation of Currency or Monetary Instruments." This form may be obtained from a customs officer at the point of departure from the U.S. or online at http://www.fincen.gov/forms/files/fin105_cmir.pdf. If a person facing deportation does not make this declaration, the currency may be seized.

What practical issues should an immigrant facing deportation consider?

There are clear risks associated with transporting large amounts of cash across the border. Cash and checks are generally not retrievable if lost or stolen while traveling. A person facing deportation should consider carefully whether he or she is willing to take this risk. There may be other options for removing cash assets from the United States upon deportation:

➔ **For Preparing and Supervised Immigrants**

Preparing and Supervised Immigrants who are able to go to the bank in person may request a bank draft made out to "payee." This is slightly safer than cash because the draft can be cancelled if lost or stolen. But the lost or stolen draft must be cancelled before another person finds the draft and cashes it, and it may be difficult to cancel the draft quickly (because a deported immigrant would have to contact the United States bank from the home country, taking into account business hours and time differences). Also, some banks charge fees to issue and cancel a bank draft, and banks in the immigrant's home country may charge a fee to cash the draft.

➔ **For Detained Immigrants**

For an individual who has been detained and who will not be released prior to deportation, it may be impossible to go to the bank in person. However, the immigrant can take certain steps so that he or she will have the cash when they arrive in their home country.

Withdrawing Cash While the Immigrant is Detained

An individual in detention who has cash in a bank account can withdraw that cash using a variety of methods. One option is for the person facing deportation to give his or her bank card to a trusted friend or family member and ask them to withdraw the cash. Later, this person can send the money to the immigrant via Western Union (or another similar service) once he or she reaches their home country. Keep in mind that the individual withdrawing the money will need to know the immigrant's PIN number to get the cash and will have access to all of the immigrant's money.

Another option is to have the bank card itself mailed to a trusted friend or family member in the immigrant's home country and then have the immigrant retrieve the card and withdraw the cash upon arrival.

Third, if the immigrant had a chance to set up a POA, their agent can authorize a bank draft or wire transfer of the money to the immigrant's account in their home country (assuming the immigrant has a bank account in their home country) or alternatively, the agent can send a check or money order directly to the immigrant in their home country.

Withdrawing Cash Outside of the United States

As discussed above, a United States bank account is accessible in many foreign countries through ATMs. Whether this is a useful or reliable method for extracting cash will depend on individual circumstances, including whether and to what extent ATMs are available. Note that this option also requires that the immigrant keep the United States bank account open after deportation. Nev-

Selling a Car

Whether detained, supervised, or preparing, an immigrant in the face of deportation can protect the value in his or her car by selling it for a fair price. This section discusses the issues an immigrant will need to address when selling a car in the United States, either before or after deportation. The section will answer these questions:

- **Can a POA be used to sell a car?**
- **How do you determine a fair price for the car?**
- **What if you still owe money on the car?**
- **How do you write a sale agreement?**
- **How do you transfer the car title?**
- **What should you do about your car insurance?**
- **Should you sell your car to a car dealership?**

Can a POA be used to sell a car?

Yes. Preparing and Supervised Immigrants can sell a car themselves or have an agent sell it for them under a POA. A Detained Immigrant will need to have his or her car sold by a another person, preferably under a POA. An agent with a properly drafted POA can arrange for the entire car-sale process, from making advertisements for the car to meeting with potential buyers, negotiating a price, and eventually closing the sale and delivering the car to the buyer. POAs are discussed in the first chapter of this manual.

How do you determine a fair price for the car?

When selling a car, it is important to be as accurate as possible in assessing the condition and value of the car, and in communicating that assessment to those interested in buying the vehicle. One good resource for determining this value is the Kelley Blue Book, which can be accessed online at www.kbb.com.

The price an individual is able to get for a car will depend on the specifics of the local market. Some thoughts on advertising, preparing a car for sale, and completing the sale are included in **Appendix I** of this manual.

What if you still owe money on the car?

If an immigrant still owes money on the car that is being sold, the immigrant will have to coordinate with the lien-holder(s) (*i.e.*, bank, lender, etc.) regarding the transfer of title and the ability to sell the vehicle. This could potentially slow down the process while the immigrant waits for approval from the party to whom money is owed. Such approval must be obtained to sell a vehicle and transfer title to the buyer. Thus, it is best to speak with the lien-holder(s) before obtaining a definite buyer in order to find out the necessary procedures for satisfying the liens and transferring the car and title to the buyer. Giving the lien-holder(s) prior notice and determining their expectations should help the process go as smoothly and quickly as possible. An immigrant selling a car should also contact the lien-holder(s) before attempting to sell the car to determine how much is still owed. This amount must be paid to the lien-holder(s) before the car may be sold.

1. If an immigrant does not have enough money to pay off the lien(s) before selling the car, then there are two options: When the buyer delivers payment to the seller, have them accompany the immigrant to the lien-holder's offices (usually a local branch of the bank that holds the lien) and remit payment to the lien-holder in exchange for letters or forms certifying the discharge of the liens; or

2. Use the payment to discharge the lien(s), and then deliver proof of such discharge to the buyer at a later time. (This option is often not acceptable to buyers because actual title to the car is not transferred until all liens are discharged. Therefore, the buyer does not technically own the car until receipt of clear title from the lien-holder(s).)

How do you write a sale agreement?

Once the buyer and seller have decided a price, it can be helpful to write a sale agreement. This does not need to be a sophisticated contract, but it should list all the important terms of the sale, including:

- the price;
- the date;
- the buyer's and the seller's full names;
- that the buyer has had a chance to inspect the car and is satisfied with the condition of the vehicle;
- that the car is being sold "as is" and with no warranties by the seller; and
- the miles from the odometer reading.

How do you transfer the car title?

Most states have forms that must be filed with the department of motor vehicles when a car is sold, which the immigrant selling the car should obtain prior to completing the sale. These forms cover the sales tax and title transfer issues in a car sale.

The buyer will be responsible for paying the sales tax on the purchase of the car, but in most states the seller also has responsibilities for filling out the appropriate forms.

To avoid penalties, the seller should remove the vehicle plates, the windshield registration stickers and inspection stickers, and should not allow the new owner to use the vehicle plates or stickers. The seller should surrender the vehicle plates to a department of motor vehicle office, and should not keep the vehicle plates.

What should you do about your car insurance?

The immigrant selling the car should remember to notify his or her car insurance company to cancel the auto insurance policy as soon as the car is sold. By doing this, the immigrant will not have to pay to insure the car after it is sold. This will also end any connection to the car, which will prevent any liability for future car accidents.

What other options are there for selling your car?

Selling a car to another person will generally bring the highest price for the car, but it can be time consuming and costly. Selling the car to a car dealership may be easier, though the immigrant is likely to get a much lower price for the car.

WARNING:

DO NOT ACCEPT A PERSONAL CHECK

To protect against fraud, an immigrant facing deportation should make sure to receive payment in the form of either cash or a bank-certified check (*i.e.*, check for which a bank guarantees payment) or money order (*i.e.*, a financial document that can be easily converted into cash by the person who is named on the document). Personal checks may be written from bank accounts without enough money. Although an immigrant facing deportation would technically have the right to sue the buyer for the bad check, these situations are best avoided by ensuring that full payment in cash, certified check, or money order are made at the time of sale.

If either the immigrant selling the car or the buyer is uncomfortable handling large amounts of cash, they should consider meeting at the bank so that the seller can immediately deposit the money. If the seller intends to accept cash from the buyer, it is usually a good idea to make sure that the seller has a second person with them to accompany them to the bank.

If the buyer is paying by certified check, an immigrant selling a car should also consider meeting the buyer at the buyer's bank so that the seller is assured that the check is legitimate.

Residential Leases

An immigrant facing deportation may need to break a residential lease and recover personal property in the house or apartment. These concerns are most pressing for detained or supervised immigrants who face definite deportation. This section answers these questions:

- **What are the consequences of breaking a lease?**
- **Do you have a right to reenter the property and recover your belongings?**
- **What if your family wants to stay in the home?**

Immigrants should consider seeking legal advice for their residential leases. In many areas, various organizations provide free legal services to individuals and families who meet certain criteria. In New York City, Housing Conservation Coordinators (www.hcc-nyc.org) and Eviction Intervention Services (www.eisny.org) both provide these services. Immigrants may want to seek out such organizations and find out whether they can benefit from pro bono legal services related to housing.

What are the consequences of breaking a lease?

Tenants who break the lease for their apartment or house by moving out and no longer paying rent before the end of the time period provided by their rental agreement will be deemed to have abandoned the premises. The tenants' liability for any remaining rent due under the lease will be determined by the written lease agreements and local law.

Leases that are not in writing (oral leases) will generally be considered periodic tenancies or tenancies-at-will and are usually considered to run from month-to-month. The obligations of any tenant who does not have a written lease agreement will be governed solely by local law, and will depend upon whether the tenancy is classified a periodic tenancy.

A "**periodic tenancy**" is a continuing agreement for certain periods of time that automatically renews for a similar subsequent period unless terminated by the landlord or tenant-resident (e.g., year-to-year, month-to-month or week-to-week). The period of time in the periodic tenancy is fixed by the payment of the rent (e.g., monthly or weekly). A "**tenancy-at-will**" is an agreement where the tenant occupies property with the permission of the owner for an unspecified time (*i.e.*, the tenant or resident pays the landlord to occupy the property, but the parties do not set a time for the next payment or when the tenant must vacate the property).

In a periodic tenancy, tenants who break their leases generally must pay one additional rent payment after the period in which they leave or abandon the property because they are required to give landlords one full period of notice of intent to quit or leave the property. If the tenancy is at-will, generally, notice need not be given to terminate, and tenants will not be liable for any future rent beyond the period in which they abandon the property.

Generally, landlords have three options if tenants for a predetermined period (*i.e.*, a tenant with a written lease or an oral agreement for a periodic tenancy) abandon the premises. First, the landlord may choose to sue the tenant for each installment of unpaid rent as it comes due. Second, the landlord may take possession and lease the property to another person, holding the original tenant liable for any difference between the rent due under the original agreement and the rent under a new lease (plus any expenses incurred with finding a new tenant). Finally, the landlord may simply accept the abandonment and treat the lease as terminated, choosing not to hold the tenant liable for any unpaid rent.

Landlords generally may not attempt to recover unpaid rent by seizing belongings left in the property or by seizing bank accounts. Rather, the landlord must take the tenant to court in order to obtain such relief. If a landlord chooses to seize a tenant's belongings, the landlord must pursue detailed "distress for rent" procedures which require the landlord to inventory or list the belongings seized. Landlords rarely follow this path because local laws generally provide for a large portion of the personal property to be considered exempt from such seizure. On the other hand, if the landlord is successful in court (*i.e.*, obtains a judgment against the tenant), there are numerous ways to collect on that judgment, including locating and freezing bank accounts, garnishing wages, and obtaining liens against property.

Do you have a right to reenter the property and recover your belongings?

In general, tenants will not lose their property by failing to remove it after the termination of a lease. Tenants have the right to enter the premises to remove their property within a reasonable time after a lease is terminated. Furthermore, tenants generally will not lose the right to their property even if they fail to remove it from the property within a reasonable time after the end of the lease. However, some locales hold that tenants may forfeit the right to recover their property by not removing it within a reasonable time. In a majority of jurisdictions, unless the lease provides otherwise, a landlord's refusal to permit tenants to enter the premises to remove their property generally amounts to conversion of the tenants' property; tenants whose property is so converted can sue the landlords to recover the property.

However, tenants should try to remove property from a former apartment or dwelling within a reasonable period of time, because the tenant may have to pay storage expenses (if the tenants seek to reclaim that property) or disposal costs (if the tenants abandon the property) for failing to do so. There is no set definition of "reasonable time." What is reasonable depends on the circumstances. For instance, it may be "reasonable" to expect someone to remove a closet full of clothes in just a few hours. But a longer period may be warranted to remove heavy pieces of furniture or appliances, because the person removing those items may need extra time.

Tenants should arrange to remove their property from the leased premises either before leaving the property or as soon as possible thereafter. If immigrants are detained or removed to their home countries before they are able to take their possessions out of their apartments, the immigrants can ask friends to do this for them. The friend may need a POA to be allowed into the apartment if the immigrant-tenant is not there. For further information about POAs, see the first chapter of this manual. For Mexican immigrants, the law allows the importation of one-time household goods duty free.

What if your family wants to stay in the home?

If the family members of the immigrant-tenant want to remain in the leased premises after the tenant is deported, they may have the following options: (i) if the landlord allows, they can continue to occupy the premises under the original lease; (ii) they can terminate the original lease and enter into a new lease with the landlord; or (iii) the family members may succeed to the lease through an assignment or sublease from the original immigrant-tenant. The first two options require the consent of the landlord at their full discretion, while a landlord's consent to an assignment may only be withheld if it is reasonable under the circumstances, as described below. In order to avoid complications, married immigrants should consider having the lease in both their own and their spouse's name so that the spouse may remain in the property.

Absent an agreement to the contrary, tenants are free to assign, sublease, or otherwise transfer their interests in rented property. However, most leases limit a tenant's right to transfer the lease. For example, a lease may state that: "Tenant may not assign, sublease or otherwise transfer his/her interests under this Lease without the express written approval of Landlord." As a result, for tenants to assign the lease to their family members, the landlord's consent is usually required. Leases vary concerning the level of discretion landlords have in refusing an assignment. In some cases, the landlord may refuse for any reason or for no reason at all. In other cases, however, the landlord will have to act reasonably in granting or denying the consent. In assessing whether an assignment to an immigrant's family is reasonable, the landlord will probably be most concerned about whether the family will be able to pay rent.

If the landlord consents to assignment of the lease, the tenant's family members will assume all the rights and obligations that the immigrant-tenant had under the lease. They will be primarily responsible to the landlord for paying rent as well as any other obligations under the lease, although the immigrant-tenant may remain liable under the lease.

HOME OWNERSHIP

This section describes issues facing immigrants regarding home ownership including whether to transfer ownership of the home by making a gift of the home to another person and how to sell a home. Please see Appendix J for more detailed information on the process of arranging a sale of a home.

Most of the information in this section is applicable to individuals in all three general situations. Preparing Immigrants and Supervised Immigrants can transfer, gift or sell a home themselves, or they can arrange to do so through their Agents, pursuant to a POA. Detained Immigrants must arrange to have the house transferred, gifted or sold pursuant to a POA. For further information on POAs, see the first chapter of this manual. This section answers these questions:

- **What are the general considerations involved in selling a home?**
- **If a home is owned jointly, are there any special considerations involved in selling a home?**
- **What if there is a risk of foreclosure?**
- **What are the general considerations involved in transferring a home?**
- **How is a home transferred through a gift?**
- **Moving to Mexico? What is Menage de Casa?**

What are the general considerations involved in selling a home?

Immigrants in all three general situations should consider seeking legal advice about selling a home. In many areas, various organizations provide free legal services to individuals and families who meet certain requirements. In New York City, Housing Conservation Coordinators (www.hcc-nyc.org) provides these services. Immigrants should contact these or similar organizations and ask if they can benefit from free legal services related to housing.

It is often difficult to predict how long a house will be on the market before it is sold. Thus Supervised Immigrants cannot be certain they will have enough time to complete a house sale before voluntary departure. Therefore it is prudent for Supervised Immigrants and Detained Immigrants to prepare a POA giving their Agents authority to sell their house. A POA for a home sale could be either a "general" or "special" POA, although state laws usually do not require a special type of POA for real estate transactions. For further information on POAs, see Section A of this manual.

If a home is owned jointly, are there any special considerations involved in selling a home?

If the immigrants and their spouses jointly own the property, and the spouses are not subject to deportation, immigrants may consider transferring their interests in the property to their spouses. This will allow the immigrants' families to keep the homes. Immigrants may also own homes jointly with third parties other than their spouses. If the immigrant and the co-owner are the co-mortgagors of jointly-owned property, the immigrant should obtain the mortgagee's consent for transferring the immigrant's share in the property to the co-owner or any third party. For more information about mortgages, see the discussion on mortgages below. In addition, a transfer of interest in jointly-owned property may incur tax or other consequences under federal and/or state law.

As a general matter, "joint tenants" or "tenants-in-common" may break a tenancy and transfer their interests without the consent of all tenants. Special rules apply to "tenancies by the entirety", which is the concurrent ownership with survivorship by husband and wife. A tenancy by the entirety cannot be broken by a sale by one party. Both the husband and wife must join on (*i.e.*, sign) any document that transfers ownership.

What if there is a risk of foreclosure?

➔ **Introduction**

The slowing economy will cause an increase in actual or potential foreclosures. Undocumented immigrants may have a harder time accessing government foreclosure assistance programs because such programs are often available only to United States citizens—but immigrants should still check if they qualify for any such programs.

There are severe consequences to borrowers who default on a mortgage. Most obvious is the borrowers will lose their homes. Also, borrowers will lose whatever equity

they have built up in the home. This could be a significant amount depending on the down payment and previous payments made to the lender. In addition, most foreclosure sales will not equal the unpaid mortgage balance and borrowers may be liable for the difference between the foreclosure sales price received and the mortgage's outstanding balance. Further, borrowers could still be liable for unpaid property taxes. Finally, a foreclosure has serious adverse effects on a borrower's credit rating; making it harder and more expensive for borrowers to obtain future loans or other forms of credit. Because of these consequences, borrowers may be forced into bankruptcy.

Some of the general tools described in this chapter will also be helpful to immigrants facing foreclosure. Supervised Immigrants and Detained Immigrants, who face an upcoming deportation, may want to consider granting trusted individuals a POA to negotiate with lenders or pursue one of the alternatives discussed below.

➔ **Dealing With Potential Foreclosure**

The most important step in preventing foreclosure is communicating with lenders. Borrowers should speak with their lenders as soon as they think they will have trouble meeting their mortgage obligations, preferably even before a payment is missed. Lenders are much more willing to assist borrowers when they see the borrowers' willingness to make every effort to save their homes. Because the foreclosure process is costly and time-consuming for the lenders, it is often in the lenders' best interest to work with borrowers to try to overcome the hardship that a borrower is facing.

Immigrant borrowers should keep copies of all mail correspondence with lenders and use only registered and certified mail. If immigrant borrowers correspond by telephone, they should take careful notes of all calls with lenders. The notes should detail the call's date and time, the representative with whom they spoke, the issues discussed, and any negotiated resolutions. Before calling, borrowers should have their current income and expenses available to provide to the lenders. Borrowers should explain the efforts that they have made to reduce their spending and provide a realistic idea of what they can afford to pay.

Borrowers should always offer to make partial payments as a gesture of good faith. Even if lenders refuse to accept these partial payments at the time, borrowers should set aside that money to help later negotiations with the lender or a court.

Once it is apparent that borrowers will have trouble making their mortgage payments, they should contact a housing counseling agency. A list of HUD-approved housing counseling agencies is available at www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. These agencies will help develop strategies for borrowers to keep their homes and work with lenders.

Borrowers should find out if they are eligible for assistance programs offered by the federal government or other foundations. The federal government homeowner assistance programs include, among others, the HOPE for Homeowners and FHA-Secure (both of which can be accessed through the HUD website at www.hud.gov/foreclosure). Borrowers may be able to get low interest loans or new mortgages through these programs. Housing counseling agencies can help determine eligibility and guide borrowers through the application process.

➔ **Alternatives to Foreclosure that may be Available to Borrowers**

There are several alternatives to foreclosure that borrowers can discuss with lenders These alternatives include:

- Special forbearance;
- Refinance mortgage;
- Privately sell house before foreclosures;
- "Short sale" of the home to the lender; and
- Turn over house deed to lender.

Through a special forbearance, borrowers may be able to negotiate with lenders for a temporary reduction or suspension of mortgage payments. This is usually available if borrowers can show that the hardship is temporary (such as a layoff or injury) and will end soon. Other possibilities would be to refinance your mortgage to a longer term, seek a lower interest rate, or modify other terms that could lower your monthly payments to an affordable level.

Another possibility for avoiding foreclosure would be to sell the house privately before lenders foreclose on the property. Such a sale will usually get a higher sales price than the foreclosure auction. This is because buyers will probably be unaware that the seller has to sell the house. At a foreclosure sale, it is clear the house must be sold and thus the selling price is lower. The private sale is a way for borrowers to possibly avoid deficiency judgments or get back some of the equity that they have built up in the home.

Immigrants facing foreclosure may also consider negotiating a "short sale" of the home with the lender. A "short sale" is a transaction where the lender agrees to accept the proceeds of a sale in full satisfaction of the mortgage even if the proceeds are less than the amount that is owed. Similarly, borrowers could ask the lenders to accept the property deed in full satisfaction of the mortgage and instead of foreclosure. In both alternatives, the borrowers lose the house and any equity they had in it, but they can walk away from the situation and avoid deficiency judgments. Tax consequences should also be considered when thinking about a short sale or deed in lieu of foreclosure. Both alternatives could result in discharge of indebtedness income to the borrower, which may result in federal tax liability on the amount of debt that the lenders forgive.

What are the general considerations involved in transferring a home?

The immigrants should understand that transferring a house is a complicated process. The following four basic steps are required to transfer a home: (i) executing a deed, (ii) preparing tax forms, (iii) resolving mortgage issues, and (iv) transferring utilities, insurance, and other services. Also, it requires compliance with rules, regulations, and laws of the city, county, state, the federal government, and of their home country. Also, immigrants should remember that they will have no legal rights to the properties once the properties are in the name of the recipients.

Immigrants in all three general situations should consider seeking legal advice about transferring a home. In many areas, various organizations provide free legal services to individuals and families who meet certain criteria. In New York City, for example, Housing Conservation Coordinators (www.hcc-nyc.org) provide these services. Immigrants facing deportation should contact these or similar organizations and ask if they can benefit from free legal services related to housing.

How is a home transferred through a gift?

Immigrants' decisions about whether to gift a home to someone require serious consideration. Immigrants facing deportation should be especially aware that gifting a home results in significant consequences both for the immigrant gifting the house and for the recipient of the gift. The follow basic steps, noted above, are required when gifting a home:

➔ **Executing a Deed**

A deed is a document that records proof of ownership of real property. Immigrants facing deportation can transfer ownership of real property, such as a house, to other persons by executing and recording new deeds in the recipients' names. If the real property's deed is in both the immigrant's and the spouse's names, and the immigrant wants to transfer the home to the spouse, the immigrant will still have to execute a new deed in the spouse's name only. For example, if the spouse will stay in the United States after the immigrant returns to their home country, then the immigrant may want the real property's deed to only be in the spouse's name. Immigrants should contact their city or county register's or clerk's offices and a title company about the required content and form of the new deeds. In addition, the immigrants should ask the organizations if there is any other paperwork that must be filed with the new deeds.

Before the deeds can be recorded, the immigrants must pay their counties' recording or filing fees, which vary by county. The immigrants also must comply with laws governing the delivery of the deeds to the recipients.

➔ **Deed Warranties**

The immigrants should also ask what "warranties" are contained in the deeds. That is, the deeds will contain promises, assurances, or guarantees (known as "warranties"). The immigrants should verify that they can make those guarantees to the recipients. Deeds have different names depending on what warranties they contain. For instance, grant deeds guarantee that another person does not have title to a house and the real property is not, except as stated in the deed, encumbered in any way. Warranty deeds guarantee that the immigrants have good title to the real properties and, if the immigrants are wrong, they promise to pay for not satisfying the guarantee. If the immigrants can choose the type of deed to grant, the immigrants may want to grant quitclaim deeds. Quitclaim deeds provide no warranties and merely promise that the immigrants are transferring whatever interests they have in the real property. Thus a quitclaim deed may be the best option for the immigrant since it does not provide any warranties and thus limits immigrants liability regarding the deed transfer.

➔ **Tax Forms**

The immigrants will be subject to a tax for the transfers of real property, unless an exemption exists or their state does not tax real property transfers. Even though the immigrants are gifting their real property and not receiving money from the recipients, the immigrants' state will probably require them to fill out a state income tax filing

form. In addition, local counties and cities may charge an additional tax. In some states, such as New Jersey, the immigrants must fill out residency certification agreements to determine whether the immigrants have to fill out a state income tax filing form.

➔ **Mortgage Issues**

An aspect to consider when gifting real property, such as a house, is the mortgage financing the immigrants may have on the property. Typically, a mortgage or deed of trust includes a provision detailing whether another person may take on (*i.e.*, assume) the mortgage. Many mortgages state that the borrower is in default if the borrower transfers ownership of the real property without the lender's consent. This default allows the lender to accelerate the mortgage and make the entire mortgage balance due immediately. Other mortgages simply prohibit transferring a mortgage to a third party.

Immigrants should contact their mortgage providers to determine whether their mortgages are transferable (*i.e.*, assumable), and, if so, what forms must be completed to transfer their mortgages. Once the immigrants complete the forms, the mortgage providers will decide whether to permit a transfer of the mortgages based on whether the potential recipients would ordinarily qualify for a mortgage.

If they successfully transfer the mortgages to the recipients, the immigrants may have to record forms for the transfer of the mortgages in their county or city and pay fees associated with the transfer. Alternatively, if the immigrants pay off their mortgages before the transfers, the lenders will need to record mortgage satisfaction forms.

➔ **Utilities, Insurance, and Other Services**

After the immigrants transfer their homes, they should take the necessary steps to put the utility bills, insurance, and other services and liabilities in the recipients' names.

MOVING TO MEXICO? WHAT IS MENAGE DE CASA?

Immigrants who are moving to Mexico should be sure to comply with the "menage de casa" requirements for moving their household goods into Mexico. Menage de casa is a list of items to be imported into Mexico. Mexican Customs is very strict about what you can and cannot bring into the country. For example, you cannot label a box with clothes and shoes in it "Shoes and Clothes." Your label must be specific, such as "5 pairs of shoes, 15 shirts." Also, for electronics you must write down the model number next to the product description. In addition, you must submit your list (in Spanish) to your consulate for approval. For a list of what can be imported, visit your local Mexican consulate. For additional information, please visit the following website:

http://portal.sre.gob.mx/consulados/popups/articleswindow.php?id=57.

Dissolving or Selling a Business

Selling or dissolving a business may pose many legal complexities depending on a number of factors, such as the form of business, whether the business is jointly owned and the need to address the tax matters and licenses associated with the business. This section answers the questions:

- **What are some common forms of business organization?**
- **What are the characteristics of a sole proprietorship?**
- **How should you start a sole proprietorship?**
- **What are the considerations when selling or dissolving a sole proprietorship?**
- **What are the considerations when selling a jointly owned business?**

What are some common forms of business organization?

Businesses are governed by both state and federal laws, and there are various forms of business organizations. For purposes of federal law, the most common types of business entities are: (1) the sole proprietorship; (2) the partnership; and (3) the corporation.

The sole proprietorship is a business run and owned by one individual, and although the owner may employ others in the day-to-day operations of the business, the owner faces unlimited liability for all debts incurred by the business.

In a partnership, two or more individuals run and operate a business, and each partner has unlimited liability for the debts and obligations of the partnership. There are three types of partnerships: the general partnership, limited partnership and limited liability partnership.

In contrast, a corporation is a business entity that has separate legal standing from its members. The defining characteristic of a corporation is that it has limited liability for its members – specifically, that its members are not personally liable for the debts and obligations of the corporation.

What are the characteristics of a sole proprietorship?

The majority of small businesses begin as sole proprietorships. There are several advantages of sole proprietorships. There is relatively little paperwork that must be filed in order to start and dissolve a sole proprietorship. As an additional advantage, all income derived from the business flows directly to the owner and is reflected on the owner's personal tax returns. The owner also possesses complete control and autonomy over all business decisions.

However, there are also several disadvantages to sole proprietorships. The primary disadvantage is that sole proprietors face unlimited personal liability for all debts and obligations of the business. Moreover, an owner may face difficulty when attempting to raise funds for business operations. Because sole proprietors are personally liable for the assets and obligations of the entity, they must be careful to correctly file tax forms associated with running the business. A sole proprietor may need to file several tax forms, including but not limited to:

1. Form 1040 (an Individual Income Tax Return);
2. Schedule C or Schedule C-EZ (Profit or Loss from Business);
3. Schedule SE (Self-Employment Tax);
4. Form 1040-ES (Estimated Tax for Individuals);
5. Form 4562 (Depreciation and Amortization);
6. Form 8829 (Expenses for Business Use of Home; and
7. employment tax forms.

To shield him or herself from the legal risks of sole proprietorships, an owner may wish to form a corporation.

How should you start a sole proprietorship?

There is no uniformity in the regulations and filings governing the sole proprietorship. Rather, the owner must consult with the Secretary of State, County, City and Small Business Administration in order to precisely determine how to successfully start a sole proprietorship. For instance, under New York, Delaware, California and

Texas law, an Assumed Name Certificate or Fictitious Name Certificate must be filed with the relevant county if the sole proprietor plans to operate under any name other than his or her own name.

The owner should also contact the state government or a local trade association for advice on which licenses are required. For instance, for food and alcohol-related businesses, states and localities will likely require owners to obtain licenses in order to operate. Federal licenses are unnecessary unless the business is subject to oversight by federal agencies. The sole proprietor may also need to apply for a zoning permit and fill out a form for employees (e.g., in Florida this form is called a "New Hire Reporting Form"). However, generally speaking, no formation documents are required to be filed for sole proprietorships.

For tax purposes, an individual must obtain a federal Employee Identification Number ("EIN") in order to conduct the business. A EIN serves as a marker for the business. A business owner may apply for a new EIN through several means. Most easily, an individual can apply for an EIN online (at https://sal.www4.irs.gov/modiein/individual/index.jsp) or by telephone (1-800-829-4933). Alternatively, the new owner can fill out a Form SS-4 and either mail or fax it to the IRS. (The downloadable form and directions are available at https://sal.www4.irs.gov/modiein/individual/index.jsp).

What are the considerations when selling or dissolving a sole proprietorship?

An individual must take into account several considerations when he or she wishes to sell or dissolve a sole proprietorship. All states and localities have different requirements for terminating sole proprietorships and it is wise to check with the Secretary of State, County, City and Small Business Administration in order to determine what steps must be taken to dissolve the business. It is strongly advised that a business owner also get the help of an attorney to dissolve the business. Because the sole proprietorship is not a legally distinct entity from the owner, the business naturally dissolves upon the death or retirement of the sole proprietor.

➔ **Closing the Business – General Guidelines**

When closing a sole proprietorship, the owner must notify: (1) the Secretary of State; (2) the County and City Clerk's office; (3) local and federal tax authorities; (3) licensing entities and trade associations; (4) creditors and suppliers; and (5) customers. Unlike other business entities, there is generally no need to officially register the dissolution of a sole proprietorship. However, the owner must complete final orders for customers, notify customers of the dissolution through website or signs, pay all of the outstanding bills and debts, ensure that suppliers are aware that the owner is no longer in business, sell the existing equipment and materials, notify insurers of the closure, and notify creditors and debtors of the impending closing and ask for final bills or payments. In addition, it is extremely important for the sole owner to keep careful records of all transactions prior to the closing for tax purposes. It is also highly recommended that the owner set aside a reserve in case of unexpected taxes or creditors.

A business owner may also wish to sell a sole proprietorship to another individual. The process for selling a sole proprietorship may be complicated and it is recommended that an owner who wishes to sell the business obtain the advice of an attorney and business broker. An owner must first consider the valuation of the business and must take into account the licenses, leases, and other assets of the business in the valuation process. As a procedural matter, an individual who sells a business must reflect the sale on all tax forms. For federal purposes, the seller must document the sale on the Form 8594 (Asset Acquisition Statement). In some states, such as Texas, an individual can dissolve, and a new owner can register the business on sales tax forms. And in Wisconsin, if the business name is not the new owner's full legal name, the new owner must file a "doing business as" application which is available online.

If the owner has a mortgage or lease on the business property or on equipment used for the business, he or she should also transfer these to the new owner. Failure to do so could result in the individual being responsible for payments or injuries long after he or she has left the country and is no longer running the business.

What are the considerations when selling a jointly owned business?

Although the vast majority of small businesses are sole proprietorships, an individual may jointly own a business with other people. In this case, the individual or co-owner should consider the following issues:

➔ **Co-owner's Right of First Refusal**

Before selling his or her interest in the business, a co-owner should check to see whether the contract between the business owners includes a right of first refusal. In general, a right of first refusal is the right of a person to buy something before the offer is made available to oth-

ers. A right of first refusal is often stated in a contract between the business owners. If an individual's contract with his or her co-owners contains a right of first refusal provision, he or she must offer to sell their shares in the business to the co-owners before offering it to anyone else.

➔ **Co-owner's Consent or Notification**

Even if the co-owners do not have, or decide not to pursue, a right of first refusal, they may still want to have some control over who gets the individual's share of the business. Before selling his or her interest, an owner should check to see if the contract between the business owners requires a seller to get the other co-owners' consent or, at a minimum, requires the seller to tell the co-owners about the sale. If provisions like this exist in the contract, an individual must abide by them.

➔ **Change of Control**

If the business is jointly owned by an individual and others, the seller, before selling his or her interest, should determine whether any contracts related to the business require notification to anyone upon a "change of control." A "change of control" can occur (but does not always occur) when a business owner sells his or her portion of the business. For example, some contracts require that upon a change of control, a business owner, before selling his or her interest, notify the bank that lent money to the business, the bank that holds the business's mortgage, or any entity that gave a license to the business. If the owner's contract contains a "change of control" provision that is triggered by the sale of his or her interest, then he or she must abide by the terms of that proviso.

Credit Card Debt

In the face of deportation, an immigrant can take steps to manage outstanding credit card debt. This section will answer these questions:

- **What happens to your credit debt after you leave the country?**
- **What steps should you take to avoid missing a credit card payment?**

What happens to your credit debt after you leave the country?

Credit card debt exists regardless of where the immigrant lives. The obligation to repay the debt does not disappear when a person leaves the country. If an immigrant misses a credit card payment, the immigrant will likely incur fines and penalties on his or her debt. Debt collectors have a limited time during which they can sue debtors for nonpayment of credit card bills. Such time limits differ by state and are set by each state's statute of limitations.

What steps should you take to avoid missing a credit card payment?

➔ **For Supervised Immigrants**

Immigrants who have some time before they must leave the United States should (1) contact each of their credit card companies, (2) tell each company about their situation, and (3) provide a forwarding address in their home country in a letter sent with a certified return receipt requested. This reduces the chance that the immigrant will miss a credit card payment.

➔ **For Detained Immigrants**

Detained Immigrants may not have enough time during the transition from one location to another to inform their credit card companies that they are leaving. This increases the risk that the immigrant will miss payments which will likely result in fines and penalties on his or her debt. An immigrant who is subject to immediate removal from the United States may wish to keep a record of his or her credit card company's contact numbers and addresses on their person or in a readily accessible place (e.g., in a secure email account or with a close friend or relative). Upon arriving in his or her home country, the immigrant should contact the credit card company and, if necessary, send in any payments that are owed.

Social Security & Veterans Benefits

For immigrants who have qualified for benefits in the past but have since had their legal status revoked and face deportation, there are steps they can take to determine their eligibility for United States social security or Veterans Affairs benefits. The section, which is only relevant to a small subset of immigrants facing deportation, addresses both the legal and practical considerations. This section will answer these questions:

- **Which immigrants facing deportation may be eligible for United States social security or Veterans Affairs benefits?**
- **When can qualified immigrants make benefit claims?**
- **What should Preparing Immigrants and Supervised Immigrants do before leaving the United States?**
- **What can Detained Immigrants do after deportation?**

Which immigrants facing deportation are eligible for United States social security or Veterans Affairs benefits?

Only those immigrants who have been classified "qualified non-citizens" in the past and qualified for benefits, but who have since had their legal status revoked and face deportation, *may* be eligible to make claims for United States social security or Veterans Affairs benefits.

When can qualified immigrants make benefit claims?

Qualified non-citizens can be eligible for social security benefits if they were:

1. lawfully admitted for permanent residence; and
2. granted non-citizen classification within the last seven years through a withholding of deportation or removal.

If immigrants were not lawfully admitted for permanent residence, but their deportations or removals were withheld, they can still receive social security benefits if they fulfill any of the following:

1. they are veterans, active duty members of the United States military or spouses or dependent children of a veteran or member of the United States military;
2. they were lawfully residing in the United States on August 22, 1996, and are blind or disabled;
3. they were lawfully residing in the United States and were receiving social security benefits on August 22, 1996; or
4. their deportations or removals were withheld within the last seven years.

If non-citizens meet one of these criteria, they are eligible to receive social security benefits, provided their non-citizen statuses remain legal and they are not deported.

If non-citizens receiving social security benefits are deported, they cannot receive any benefits for any month after the SSA receives notice of their deportation from the Secretary of Homeland Security or the Attorney General, unless they are subsequently readmitted as lawful permanent residents.

Dependents of immigrant wage-earners can continue to receive benefits if they are United States citizens, even after the immigrant wage earners have been removed to their home countries; however, if the dependents are non-citizens, they are not entitled to receive benefits during any period where they (the dependents) are not present in the United States.

If the immigrant facing deportation is a dependent of a wage-earner, but the wage-earner remains in the United States, the dependent may continue to receive benefits after deportation. Finally, if an immigrant wage-earner dies during or after the month the SSA receives notice of the immigrant's deportation or removal, the wage-earner's dependents cannot receive the standard lump-sum death payment based on their earnings, unless they were subsequently admitted for permanent residence.

Generally, immigrant veterans are eligible to receive vet-

erans benefits so long as the veterans are in the United States legally, served in the United States military, and received an honorable discharge. Some additional special benefits apply to certain World War II veterans who meet special eligibility requirements.

In 2006, the SSA clarified what veterans who receive benefits must report to the SSA. Among other things, veterans must inform the SSA if they are removed or deported from the United States. If the veterans are removed or deported, the veterans can no longer receive veterans benefits, unless and until they are lawfully readmitted to the United States and granted permanent residence. However, if veterans are deported, their dependents can receive benefits if (i) they are United States citizens, or (ii) they are non-citizens but they remain in the United States for the entire month for which each benefit is paid.

What should Preparing and Supervised Immigrants do before leaving the United States?

If immigrant wage earners, including both Preparing and Supervised Immigrants, who have dependents are to be removed (or face the possibility of future removal) from the United States, they should take measures to obtain United States citizenship for their dependents. If their dependents cannot obtain United States citizenship, the dependents should understand that if they leave the United States for any period of time after the wage-earner is deported, the dependents waive their rights to social security benefits for the period of absence.
If dependents of Preparing and Supervised Immigrants are deported but the wage-earners are not, the wage-earners will continue to receive benefits for the dependents who have been deported. The wage-earners should arrange for the means to wire or otherwise transfer the dependents' benefits to their home countries, if necessary.

What can Detained Immigrants do after deportation?

If Detained Immigrant wage-earners are removed from the United States but their dependents remain in the United States, their dependents should confirm to the Detained Immigrants that they understand that they waive their dependent benefits if they leave the United States for any period of time for the duration of the period of absence.

If Detained Immigrant wage-earners are World War II veterans receiving special benefits, they must inform the SSA of their deportation/removal.

Tax Filing Issues

Filing taxes is a necessary part of earning income in the United States and receiving a tax refund if an immigrant has overpaid taxes. Under the "substantial presence" test, most immigrants are classified as resident aliens for tax purposes and must file the standard Form 1040. This section answers the questions:

- **Are you required to file a tax return? Should you anyway?**
- **Are you a resident alien or non-resident alien for tax filing purposes?**
- **What if your spouse is deported and you remain in the country?**
- **When do you receive your tax refund if one is owed to you?**
- **What are the penalties for failure to file tax returns?**
- **Where can you obtain the necessary forms to file taxes?**

Are you required to file a tax return? Should you anyway?

Even if an individual is not required to file taxes, he or she may choose to file in order to receive a refund of any overpaid taxes or to receive tax credits such as the Earned Income Tax Credit.

A person must file a tax return if his or her income is above a certain level. The amount varies depending on filing status, age and the type of income earned. For example, for 2009 a married couple both under age 65 generally is not required to file until their joint income reaches $17,900. However, self-employed individuals generally must file a tax return if their net income from self employment was at least $400. Tax issues are covered by the Internal Revenue Code (the "Code") and regulations.

There are no special laws or regulations for immigrants facing deportation.

Are you a resident or non-resident alien for tax filing purposes?

An immigrant that is not a lawful permanent resident for immigration law purposes may, and probably often will be, a resident alien for tax purposes. Section 7701(b) of the Code includes as a resident alien anyone who maintains a "substantial presence" in the United States, which requires (i) 31 days of presence in the year in question and (ii) a weighted rolling average of 183 days of presence over the present and prior two years (with days from the present year weighted as one, days from the prior year weighted one-third, and days from the second preceding year weighted one-sixth). Thus, immigrants living in the United States full time are probably considered resident aliens for tax purposes. Resident aliens are required to file the normal Form 1040 while they are here, and when back in their home country, may continue to be treated as resident aliens as long as the substantial presences test is satisfied.

What if your spouse is deported and you remain in the country?

Once the immigrant spouse that was deported fails the "substantial presence" test and is considered for tax purposes to be a nonresident alien, the resident spouse may still file a joint return if the deported spouse chooses to be treated as a resident alien for tax purposes. In other words, even though your spouse is out of the country and no longer a resident of the United States, the spouse who remains in the country may choose to file a married filing joint tax return with the deported spouse. This may be beneficial to the resident because of the favorable tax treatment of couples filing jointly. If a joint return is filed, however, the nonresident alien spouse must declare his or her worldwide income on the U.S. tax return.

When do you receive your tax refund if one is owed to you?

Refunds will not be paid at the time of an immigrant's departure. If non-resident aliens are owed tax refunds, they must complete Form 1040NR or Form 1040NR-EZ at the end of the tax year to receive their refunds. Immigrants classified as resident aliens for tax purposes must complete Form 1040. A claim for refund must be made within three years of the due date of the return, or you lose your right to that refund.

Individuals living abroad should send a copy of Form 1040 or 1040NR to:

Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301-0215
U.S.A.

What are the penalties for failure to file tax returns?

If an immigrant fails to file tax returns, the immigrant may be subject to civil and criminal penalties. While criminal penalties may not be enforceable on the immigrant once they have left the United States, civil penalties could potentially be enforceable on property owned by the immigrant that is left behind in the United States. There are different civil penalties for filing late, fraud, paying the tax late, and accuracy problems. The civil penalty for filing late is based on the tax not paid by the due date. The penalty is usually 5% for each month or part of a month that a return is late, but not more than 25%. In addition, if the immigrant owes income tax, the IRS has ten years from the date the tax is assessed to collect the tax. But if the immigrant fails to file a tax return, the ten-year period for collection does not start running. In this case, the IRS has an indefinite time period to collect the owed taxes.

Where can you find the necessary forms to file taxes?

All necessary forms are available on the IRS website at http://www.irs.gov. On the website, one can either download the forms and print them or request the forms to be mailed. Alternatively, one can call toll free, 1-800-829-3676, to request delivery of a form. There are also four embassies at which full-time IRS staff are stationed: Frankfurt, London, Paris, and Puerto Rico. A deported immigrant can request the appropriate forms from these locations as well.

Assets & Benefits of Minor Children

Immigrants often hold assets in the name of a child who is a U.S. citizen ("citizen child") in the hopes that the citizen child will have a greater ability to protect the assets under U.S. law. An immigrant parent may also serve as custodian or trustee over assets owned by a citizen child. Confronted with deportation, immigrant families face special issues in managing these assets held in the name of a citizen child. This section offers guidance for managing these issues both when the child is remaining in the United States and when the child is leaving with the deported parent. This section answers the questions:

- **How does deportation affect your child's assets?**
- **How to protect the following assets for your child:**
  - **Bank accounts**
  - **Credit cards**
  - **Car**
  - **Other expensive property**
  - **Land, house, or condo**
  - **Government benefits**
  - **Child support**
  - **Lawsuit settlements**
  - **Investments**
  - **Inheritance**
  - **Education savings plan**
  - **Assets held in trusts**
- **Should your child seek "emancipation"?**

If possible, an immigrant should consult an attorney for specific advice on managing assets held in a child's name.

How does deportation affect your child's assets?

Generally speaking, minors (children under 18 or 21 years of age, depending on the state) cannot own property, because they are not old enough to enter into legal contracts. Property in a minor's possession is actually owned by their parent or guardian. The deportation of a parent can thus disrupt possession of the child's assets.

Similarly, there are situations – such as trusts, co-signed accounts or title documents, guardianships, or conservatorships – where an adult has "legal title" to the property while the minor has "equitable title" to the property. This means that the child gets the benefits of the property but cannot sell or mortgage the property until the minor becomes a legal adult. If a parent with "legal title" over a child's property is deported, this might also disrupt the child's benefits from that property.

To determine if a parent facing deportation should take action before leaving the United States, it may be necessary to look at specific state laws and regulations. Below are examples of property in which a minor may have "equitable rights" that need to be protected.

How to protect assets for your child:

➔ **Bank accounts**

State laws vary on whether a minor can independently own a bank account, or whether such an account must be jointly owned with an adult. If the parent facing deportation is a co-signer on a minor's bank account, he or she should consider transferring the funds to a different account, or have another adult serve as the co-signer on the account. The bank will likely have a special form used to switch co-signers.

In many instances, bank accounts for minors bear titles such as "(the adult) as custodian for (the minor) under UTMA or UGMA". Although these accounts have properties of trusts, they are not trusts. The bank account is immediately the property of the minor and the custodian must automatically turn over the property to the minor upon reaching adulthood. Further, since the account is immediately the property of the minor, the adult may use the proceeds of the account only for the benefit of the minor. Most state laws hold that an account under UGMA (Uniform Gift to Minors Act) must be turned over to the minor when the minor reaches the age of 18 and an account under UTMA (Uniform Transfer to Minors Act) must be turned over to the minor when the minor reaches the age of 21. However, the age limit is a matter of state law, and can vary. The UTMA/UGMA account, once created, cannot be "undone" – the account automatically belongs to the minor. The only issue is the timing, i.e. when the minor can access the account. There is no right of "return" once the account is created.

➔ **Credit Cards**

Generally speaking, U.S. credit card companies do not issue credit cards to minors as primary account holders. However, credit card companies will issue credit cards to

minors as additional cardholders on an adult's credit card account. Here, the adult is the primary account holder and is legally responsible for making all payments for the account. If the minor is staying behind, the minor should consider setting up a new credit card account with a different adult primary account holder.

➔ **Car**

State laws vary on the age at which a person can legally own a motor vehicle. Generally, a minor cannot be the sole owner of a car. Some states allow minors to register a car at age 16, while others require a parent or guardian to sign the legal documents (e.g. the registration or car loan) on behalf of the minor. Insurance companies may also dictate when a minor may register a car in order to qualify for insurance coverage. If a parent facing deportation is a co-signer on a minor's car registration, car loan, or insurance policy, he or she may wish to have a different adult serve as the adult co-signer.

➔ **Other expensive property**

A minor may acquire other expensive personal property, such as jewelry, consumer products, or fine art. Legally, this type of property is owned by the minor's parent or guardian. If that parent or guardian is facing deportation, he or she should consider legally transferring this property to another adult or setting up an "equitable UTMA" or "UGMA transfer" of property to another adult for the benefit of the minor.

As discussed above, many states have their own UTMA (Uniform Transfers to Minors Act) or UGMA (Uniform Gifts to Minors Act) statutes, which allow assets and property to be held in an adult custodian's name for the benefit of a minor, without having to set up a special trust fund. The assets/property are set aside for the minor's benefit. The minor gets full control of the assets/property when he or she reaches the age of 18 or 21 (depending upon the state). UTMA and UGMA accounts are popular because they often can be set up without the aid of an attorney.

➔ **Land, house, or condo**

Ownership of land, a house, or a condo is governed by state law. In many states, a minor may own this property but cannot directly purchase, sell or make contracts relating to the property. This would instead have to be done indirectly through a trust, guardianship, or conservatorship. If a parent facing deportation is the trustee, guardian or conservator of a minor's property, he or she should consider transferring title to another adult for the benefit of the minor.

➔ **Government benefits**

Children of immigrant parents may be receiving benefits, grants, or financial aid from federal, state, county and local governmental programs. Eligibility for these programs might be adversely affected by the deportation of the child's parent or guardian. The requirements and regulations for any such programs should be investigated to determine if action is necessary to continue receiving such benefits after the parent/guardian leaves the country. In addition, a citizen child staying behind may qualify for new additional benefits and assistance, for example through programs that provide benefits to "unaccompanied" youths or minors.

➔ **Child support**

Family courts (dealing with issues such as divorce and child support) operate separately from immigration courts (dealing with issues such as deportation). In most cases, there is little communication between family and immigration courts. Because of this, if a parent facing deportation is subject to a child support order, the support order will not automatically be modified due to the deportation. Therefore, any parent who owes child support and is facing deportation should notify the family court that created the child support. The notification should include a request to modify that child support order.

If an immigrant parent that is facing deportation has an order from a family court about where the children spend their time, it is again very important to contact the family court. This is especially true when the parent that may be deported has full time custody of the children. The court must typically give permission for the children to leave the country.

Child support is often still allowed when the children are not inside the United States. The amount of support may be adjusted based on the "cost of living" where the children live, as determined by the court. If the parent who is paying child support stops making the payments, the family court must be petitioned to force that parent to continue paying. This can be difficult when the parent receiving the payments has been deported. In these circumstances, the court should be contacted by any means available, or an attorney with specific knowledge in this area should be consulted.

Additionally, numerous countries have reciprocal child support agreements with the United States. This means that a parent owing child support in the U.S. can be pursued even when they live and work outside of the U.S. This also means that if the children are living outside the

U.S., and receive an order for support from a non-U.S. court where the children live, the order may be enforceable by U.S. courts. The countries that currently have these agreements with the U.S. include: Australia, Canada, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and The United Kingdom of Great Britain and Northern Ireland.

➔ **Lawsuit settlements**

If a minor is the recipient of property or money from a legal judgment, a guardian or conservator is usually appointed to receive and manage those assets on behalf of the minor. If a parent facing deportation is the guardian or conservator for these assets, a new guardian or conservator should be appointed to assume that role.

➔ **Investments**

In most states, minors cannot own stocks, bonds, mutual funds, annuities, life insurance policies, patents or royalties. These assets would either be owned by the parent or guardian, or placed into a UTMA or UGMA account. If a parent facing deportation owns or controls such assets for the benefit of a minor, they should consider transferring that control before leaving the country.

➔ **Inheritance**

If a minor receives property or money due to inheritance, the assets will either be placed in trust (for the benefit of the minor) or a court may supervise the administration of the assets. Either way, if a parent is the trustee or otherwise involved in the administration of the assets, they should consider transferring that role to another adult before the leaving the country.

➔ **Education savings plans**

Educational savings plans are special types of assets that are subject to special rules, depending on the type of plan used. A normal bank account that has been created for the purpose of savings, but with no special plan attached, is simply treated as a normal asset of the parent or guardian. The following types of plans, however, have very different treatment:

Education Savings Accounts (ESAs)

A current type of special Education Savings Account, renamed the Coverdell Education Savings Account in 2002, is a plan that allows savings for education expenses with certain tax benefits. The rules for these types of accounts have changed several times over the past few years, and are expected to change again in the near future. If a parent facing deportation has created one of these accounts for their dependent child, or a friend or family member has created one, they should know that in 2004, this account changed from being considered an asset of the minor to being considered an asset of the minor's parent or guardian. The account creator may also have attached special conditions to the account. Usually the creator allows funds to be used for family members other than the specific minor designated at the creation of the account. This type of account does not, however, allow the account creator to maintain control of the funds unless the creator is the parent or guardian of the designated minor.

For a minor leaving the country with the deported parent, the account may generally be "liquidated" – that is, turned to cash – if this is not specifically prohibited by the account creation conditions. The funds may be used for non-educational purposes, but there may be an associated penalty. A professional should be consulted to insure that the rules have not changed and are being followed appropriately.

For a minor child remaining in the country, care should be taken to insure that the remaining parent or guardian is aware of the account. A financial consultant from the firm hosting the account should be able to insure a smooth transition of account control.

529 savings plans

529 savings plans allow tax benefits for parties designating funds for a minor's education. In contrast to the Coverdell ESA, a 529 plan remains in the control of the party creating the account. Because of this, the funds may not be considered an asset of either the minor or the minor's guardian, and the funds may become unavailable to the minor unexpectedly if the controlling party decides to remove them or change the beneficiary of the 529 plan. If a 529 plan designating the minor exists, a parent facing deportation or another parent or guardian may wish to discuss the minor's future educational plans with the party who created the 529 savings plan. This may prevent miscommunication, and will allow the minor to know if they may rely on the funds in the future in spite of any changed circumstances.

➔ **Assets held in trust**

Legal trusts and custodianships can be created for the benefit of a minor, where the trustee or custodian controls assets and property for the benefit of a minor until the terms of the trust/custodianship require the assets/property be turned over to the minor. When assets are held in the name of a minor (such as a trust account), the assets are considered the minor's, even if there is a different understanding held within the family. There are ad-

ditional tax rules for assets held by minors. A tax and/or legal professional should be consulted to insure that appropriate taxes are being paid and to avoid potential penalties, and to abide by complex legal requirements for trusts (some of which are described below).

Court-created trusts

If no specific trust structure was created when the assets were originally transferred to the minor, the courts may become involved in creating a structure for the assets. For amounts less than a few thousand dollars, courts will usually not intervene. The likelihood of intervention grows larger as the amounts grow larger, but there remains a chance that courts will not get involved depending on the specific circumstances.

If courts have become involved, there are numerous actions they may take, such as:

- creating a guardianship and/or conservatorship giving control of the assets to a guardian,
- investing the money with the local county for return at a later time,
- creating a special blocked account where withdrawals are allowed only by court order, or
- allowing the assets to be turned over to a custodian under the terms of the state's Uniform Transfers to Minor's Act.

If courts have become involved with any of the above legal structures, and the minor is leaving the country with the parent, the parent should seek assistance from the court. This could involve asking the court directly for assistance, or by creating a power of attorney as described in the first chapter of this manual in order to allow another party to interact with the court. This will help protect the assets for the benefit of the minor who is leaving or has already left the country.

If the minor is remaining in the United States, the court should be notified that a parent or guardian of the minor is leaving the country. The parent may need to execute documents or have the court make changes to the asset structure before leaving the country.

When the departing parent is the custodian or trustee

Because court-supervised trusts can be very expensive and time consuming, it may be helpful to create a trust or custodianship for the benefit of the minor child. For the simplest of these, such as a basic trust of less than a few thousand dollars, all that may be required is a receipt for the original transfer to the minor, along with a statement of the value of the property. For transfers of property under local statutes such as a Uniform Transfers to Minors Act, a form including the following language may be all that is required:

I, _____, hereby transfer to _____ (name of adult custodian), as custodian for _____ (name of child) [until age _____] under the [state] Uniform Transfers to Minors Act, the following: _____ (describe your gift).

If _____ (name of adult custodian) is not able to serve as custodian, I appoint _____ (name of alternate adult custodian) to serve in his/her place.

If the parent facing deportation is the trustee or custodian of the minor's property, and the minor is remaining behind, the parent should have an alternate custodian named to control and protect the assets. When an alternate custodian was named in the original document, the alternate may simply step into the role of custodian. In California, if the minor has reached the age of 14, the minor may appoint a new custodian that is a member of the minor's family. Other states may have similar or additional rules. For other situations, the court may need to approve the new custodian or trustee, depending on the assets and the nature of the trust or custodial property.

If the minor is leaving with the departing parent and the parent is the trustee of the minor's property, the parent should confer with an attorney experienced in this area before cashing-out the assets and taking them out of the country. The trustee or custodian is obligated to protect the assets for the minor, and the specific requirements for protection will vary depending on the specifics of the original arrangement. In California, the sale of a minor's property under the California Uniform Transfers to Minors Act must be approved by a court if the value of the property is over $10,000. The specific rules of other states may vary.

Protecting the minor's assets held in trust or custodianship

There are a number of rules in place to protect the assets of the minor held in trust or custodianship of which the minor's parent or guardian should be aware . For example, in California, the specific rule for a custodian is that "a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another". In other words, the custodian must treat the property like they would treat a friend's property. In addition, the custodian can be personally liable and responsible for losses of the minor's property, even if the custodian is not paid to act as custodian.

One way that a determination of losses to the property occurs is by an accounting. This is one way for a parent to help protect their children's assets, even if they live in different countries. A minor or a family member of the minor may ask for an accounting from the custodian or trustee. This means that the custodian or trustee must provide documents to allow the minor or the minor's family to see what has happened to the minor's property. The minor can also usually request this sort of accounting even after the minor is no longer a minor, and has received the property, but this sort of accounting can only be requested for a reasonable, fairly short amount of time after the minor receives the property. If the accounting shows that the custodian or trustee has been careless or mismanaged the property, the minor's trust may be able to collect damages.

Taxes

If the minor's assets produce an income or a capital gain over a certain amount, taxes must be paid. The tax rates change regularly. In some circumstances a minor will be taxed at the parent's or guardian's tax rate, and in other circumstances, special exclusions and tax rates may apply. Because of these special rules, a tax specialist should be consulted if the minor's assets produce such an income, to make sure that the appropriate taxes are being paid and to avoid potential penalties.

Should your child seek emancipation?

Most states have "emancipation" statutes for minors over a certain age (often 16), which allow minors to petition the court for an "order of emancipation." This allows a minor to be treated as an adult for some legal purposes. An order of emancipation allows a minor to fully own all property and to enter into legally-binding contracts. In order to be emancipated, the minor will need to show the court that he or she is sufficiently mature to handle his or her own financial and health-related affairs. If a parent facing deportation has a minor child who is staying behind in the U.S., and that minor could qualify for emancipation, this legal avenue should be considered.

CHILD CUSTODY

In the face of deportation, an immigrant may face wrenching decisions about child custody. This section outlines the basic custody issues facing immigrant parents and offers guidance on protecting parental rights before, during, and after deportation. This section answers the questions:

- **What are the different kinds of child custody?**
- **Who can seek custody and how does a court determine it?**
- **What is a Temporary Guardian and how can they care for your child?**
- **What should you do if your child is placed in foster care while you are detained?**
- **How can you bring your child with you if you are deported?**
- **How can you change custody of your child after you are deported?**
- **What if you want your child to stay in the U.S. after you are deported?**
- **What barriers might you, as an immigrant family, face in the court?**
- **What important legal documents should you gather?**

It is important to note that the information in this chapter should be used only as a starting reference and cannot take the place of legal representation. Section VIII (b) below describes how you might find legal representation in your area.

What are the different kinds of child custody?

Child custody is the legal right to care for a child and make major decisions about that child's life. Custody is actually a collection of various legal rights – physical custody, legal custody, joint custody, sole custody – which are described below. A court will grant these rights to parents or custodians as the court determines is appropriate.

A detained or deported immigrant who is already the legal custodian of a child does not need to seek custody – instead, that individual needs to determine how to exercise his or her existing rights as legal guardian. Exercising these rights can be very difficult while detained or after deportation. Therefore, it may be in the individual's best interest, and the best interest of the child, to grant temporary legal custody to a trusted individual to deal with these difficult situations.

What is the difference between physical custody and legal custody?

"**Physical Custody**" is the parent or custodian's right to have a child live with him or her. The person with physical custody may make decisions about the routine day-to-day activities of the child.

"**Legal Custody**" is the right to make decisions about the child's upbringing. A person with legal custody may make decisions about how to raise the child, including decisions about schooling, religion or medical care.

What is the difference between sole custody and joint custody?

"**Sole Custody**" is when one parent has all the custodial rights. This could be sole physical custody, sole legal custody or both. In a number of states, courts will not award sole custody to one parent unless the court deems that the other parent is "unfit," meaning the parent is not capable of caring for the child. Examples of being "unfit" include a parent's alcohol or drug dependency or history of child abuse. Also, even if a court awards sole physical custody to one parent, it may still grant visitation rights to the other parent.

"**Joint Custody**" is an arrangement where both parents share custodial rights of their child. It may be joint physical custody, joint legal custody or both. Courts in some states regularly award joint legal custody, which means that both parents share the right to make decisions about a child's upbringing.

What is the difference between custody and visitation?

Like custody, "**visitation**" or "**parenting time**" is a legal right that a court can order. Visitation gives a parent the right to spend a short period of time with the child. When a court determines visitation rights, all parents and custodians are bound by the court's order. Unlike custody, a person granted visitation rights does not have the right to make major decisions about the child's well-

being or upbringing.
Once a court grants visitation rights, the visitation rights can only be changed by a new court order. So, even if an individual is the sole custodian of a child, he or she will need to petition the court to change any existing visitation orders.

Some specific examples of visitation rules are as follows:

➔ **California**: In California, courts have the discretion to grant reasonable visitation rights to anyone who has an interest in a child's welfare, provided that it would be in the best interest of the child. This may include a parent, pursuant to a custody order. It also may include a child's grandparents or, if one of the child's parents is deceased, the children, siblings, parents and grandparents of the deceased parent.

➔ **New York**: In addition to provisions for visitation by parents and grandparents, New York law contains a procedure for brothers and sisters of minor children to petition the court for visitation rights.

➔ **Texas**: Texas's visitation statutes are not as broad. Other than a parent, a grandparent is the only family member specifically identified as someone who may petition a court for visitation rights.

Who can seek custody and how does a court determine it?

If one parent's name is the only name on the child's birth certificate or if that parent has been granted sole custody rights in a divorce or other legal proceeding, then he or she is typically the sole custodian of the child. However, for example, if a father is not named on the birth certificate but there has been a court determination of paternity and/or the father has always been regularly involved in the child's life, a court may determine that the father has equal custody rights. If both parents are named on the child's birth certificate, then they both will be joint custodians. If a parent is divorced, then child custody rights are determined in the divorce documents. As explained below, a court can change these custody rights under certain circumstances.

The child's parents, other adult family members, or other adult individuals designated by a child's parents may initiate child custody proceedings in court. Family members who can initiate a custody proceeding may include siblings, grandparents, aunts, uncles or cousins. When a court orders custody to a person other than the child's parent, the court is granting legal guardianship status to that person.
If a parent objects to another family member or other person having custody of a child, a court will grant custody to the non-parent only if the court finds that the parents are "unfit." Examples of being "unfit" are when a parent has abused, abandoned or neglected a child.

➔ **The "best interests of the child" standard**
Regardless of who seeks custody of a child, a court will determine custody (and visitation rights) by using the "best interests of the child" standard. The "best interest" of the child will be the most important factor in the determination of custody. In determining the best interests of the child the court will consider:

- the preference of the child, considered in light of the child's age and understanding;
- the physical, emotional or educational needs of the child;
- the length of time that the child has lived in a certain environment and the likely effect a change will have on the child;
- the age, sex, background or other relevant characteristics of the child;
- the likelihood of harm that may be suffered by the child;
- the capability and willingness of the parent, or other person asking for custody, to meet the child's needs and to put the child's needs before his or her own; and
- the moral fitness of the person asking for custody.

➔ **When do courts grant legal guardianship status to someone other than a child's parent?**
Courts grant legal guardianship status to adults, usually relatives or family friends, when the child's parents cannot or will not take care of their child. Once the court grants the legal guardianship, the legal guardian acts as the child's parent and has the formal authority to provide for the child's needs.

When parents are unable to take care of their child, it may be necessary to grant legal guardianship status to another adult for the care of the child for many reasons:

- Some health insurance companies will not insure a child that is living with a caretaker who is not the child's parent or legal guardian;
- Many schools require that a child enroll through the

child's parent or legal guardian or the current caregiver if the child would be homeless if not living with the current caregiver. Some states permit the use of a "school affidavit," which allows another person to enroll the child in school.

- It is difficult to obtain medical care for a child without the signature of the child's parent or legal guardian; and
- A child may not obtain a US passport without the consent of the child's parent or legal guardian.

Depending on the facts and circumstances regarding the petition for legal guardianship, it is also possible to petition a court to change legal guardian status without showing that such legal guardianship is against the parent's will. However, courts are unlikely to grant legal guardian status to a person who is not a child's parent without some indication that this appointment is not desired by the child's parents.

When a non-parent asks to be appointed as the child's legal guardian, it is helpful to have a sworn affidavit from both parents stating that the parents' wish to have the person appointed as the legal guardian of their child. If there is only one parent listed on the child's birth certificate that parent alone will sign the sworn affidavit. If both parents are on the child's birth certificate, or if the parents previously divorced and were granted joint legal or physical custody, then both parents should provide such an affidavit. Without the affidavit from both parents it is likely that courts would require a showing of a serious attempt to locate the missing parent and that obtaining the affidavit would be practically impossible.

Under most state laws, a request for custody made by someone who is not the child's parent must be filed in the "home state" of the child. The "home state" is the state where the child lived for at least six consecutive months before the child custody proceeding. If the non-parent seeking custody lives in the same state as the child, the request for custody can be filed in the county where he or she lives or the county where the child resides.

When will a court determine custody or guardianship?

The time it takes, from start to finish, for a court to determine custody or guardianship is highly variable and may take anywhere from several months to over a year. Many factors will affect the amount of time a custody or guardianship case will take before the court makes its final decision. These factors include, among other things, whether the custody or guardianship petition is contested, the specific procedure for determining custody or guardianship in the jurisdiction and how busy the court is.

Each state has a specific procedure for petitioning a court to have a legal guardian appointed for a minor child. Generally, these procedures are described in detail in the state's domestic/family relations statutes or in the state's probate statutes. The person interested in becoming guardian must file a petition with the appropriate court. Then, the court will set a date for a hearing and decide whether it would be in the best interest of the child to have this person appointed as the child's legal guardian.

For example, in California, a relative or other person may file a court petition for the appointment of a guardian of the person and/or property of a minor. The petition must include certain information about the child and the proposed guardian, which is listed in detail in the California Probate Code, Section 1510. After the petition is filed, the court will schedule a hearing. In addition, at least 15 days before the hearing, the court will give notice of the hearing to all interested persons (typically the child's relatives or other individuals interested in the child's welfare). Once a guardian has been appointed, the guardian may begin to take care of the child and will be required to file an annual status report with the court. The status report includes such information as where the child is living and attending school.

What is a Temporary Guardian and how can they care for your child?

If a detained individual is the sole custodian of a child, or if the non-detained custodian is also unable to care for the child, he or she should consider appointing a "temporary" guardian to temporarily care for the child. The person appointed as a temporary guardian should be a person that the detained individual completely trusts to care for the child.

An individual may appoint a guardian by filling out and notarizing a "guardianship election form." (There is a sample guardian election form in **Appendix K**) This document authorities who may care for the child and make important decisions for the child, such as:

- decisions about medical and dental care;
- decisions about education and any special needs; and
- decisions about travel.

For preparing immigrants

This form may also be prepared at any time as a precautionary measure in the event the parent cannot care for the child. The person appointed as guardian in the document will not be considered the guardian unless something happens to prevents the parent from caring for the child.

Selecting a temporary guardian for the child in the event of an unforeseen circumstance does not put the parent's rights at risk. Neither parent will lose any parental rights as a result of designating a temporary guardian. A temporary guardian has the authority to act on the parent's behalf only when the parent is unable to act. In addition, at any time a parent may revoke the temporary guardianship and select someone else as temporary guardian for the child. To do this, the parent completes and notarizes a new guardian election form.

It is important to remember that filling out and notarizing a guardianship election form is different from the court custody process described above. A notarized guardianship election form may or may not be legally binding. The legal weight given to a notarized guardianship form is determined on a state to state basis. (There is more information about this in the discussion of important legal documents at the end of this section.)

Practically speaking, if an individual is detained and is the sole custodian of a child, he or she should ask the deportation officer for release to care for the child. While such a request may not be granted, it is worth asking.

What should you do if your child is placed in foster care while you are detained?

The review process for foster care cases differs from state to state, but generally cases of children placed into foster care are reviewed by a court, most likely a family or juvenile court. The court will notify a parent of all the hearings.

➔ **Foster Care Court Hearings**

A parent may participate in the court process and the court will usually issue a "writ" to bring the parent to the court if he or she is detained. However, a parent may not be able to participate in the hearing if he or she is detained in a different state or at a federal facility. If the court does not know that the parent is detained it may not send notice of the court hearing to the correct place. The hearing will take place even if the parent does not receive the notice or is not present for the hearing.

➔ **Protecting a Parent's Rights**

A parent needs to make sure that as many people as possible know where he or she is and how to contact him or her. A parent should be proactive in protecting his or her rights by doing the following:

- Inform the caseworker assigned to you and your child on behalf of the court that you are detained. Provide your alien number, the name of your deportation officer, the location of where you are being detained and a phone number to make sure you receive notices about court hearings. If you miss a hearing, the court will make a decision about your child without you being there to tell the court your wishes.

- If you cannot afford a lawyer to represent you in the court hearings, you can request that a lawyer be provided for you. To request a lawyer, you will have to fill out forms provided by the court. Also, be prepared to show the court proof of your income and any property you may own. You can also talk to non-profit legal aid providers. There are many local providers of legal services that can help you at no cost. To find these providers, look in the phone book under "legal aid" for providers in your area. (There is more information about this in the Section VIII below.)

- If your native language is not English, request to be provided with an interpreter at your hearing. You will be able to inform the court of your wishes better if you are able to speak freely.

- Tell your deportation officer and the immigration judge that your child is in foster care and your wishes for how your child should be cared for if you are deported. They may or may not be able to help you, but it is best that they are aware of the situation and that it is documented in the court record.

- Tell your immigration attorney that your child has been placed in foster care. Again, if you cannot afford an immigration attorney, you should look for a legal aid provider in your area.

- Contact your consulate. Your consulate may be able to provide you with information or possibly advocate on your behalf.

How can you bring your child with you if you are deported?

If a parent is in detention and wishes to bring a child with him or her after deportation, he or she should make sure the deportation officer and immigration judge know this. A parent's ability to bring a child with him or her depends on many factors. An immigrant facing deportation should do the following to protect parental rights:

Foster Care

If your child is in foster care, read the section above about foster care. Make sure that the family court judge, your case worker, your child's case worker and any other official or attorney involved in the case knows that you wish to bring your child with you upon deportation. You should ask to be reunited with your child at the airport before leaving the country.

Custody

If you share custody of your child with another person or if you have visitation rights but do not have custody of your child, your ability to bring your child with you upon deportation will depend on either an agreement with the other parent or guardian or winning a custody modification petition in court while you are in detention. Each case depends greatly upon the specific facts involved, and you should contact a family law attorney to help you with this.

Children Traveling on Airlines

Special documentation may be necessary for a minor child traveling with only one custodial parent. You should contact the airline for details on what may be needed to travel with your child. It is likely that you must show either: (i) the child's birth certificate showing that you are the sole custodian, (ii) a court order showing that you are sole custodian, or (iii) a notarized letter of permission from the child's other parent. Similarly, if your child will be traveling with a guardian, that guardian will likely need to show either: (i) a court order granting that person legal guardianship or (ii) a notarized letter giving your permission for the guardian to travel with your child. In addition, if you are traveling internationally, you will need to show the child's passport.

Whether a child is allowed to travel alone depends on the child's age and the airline. Under no circumstance can a child under the age of five travel alone. For children between the ages of five and eighteen, contact the airline for details on the airline's rules regarding child passengers. It is likely that the child will be able to fly alone only on certain flights, under certain circumstances and only with a notarized letter from the child's legal custodian.

Special Considerations

If your child was born in the U.S., make sure he or she has important documents like a birth certificate, social security card and passport before he or she leaves the country.

Instructions on how to obtain a birth certificate can be found at:
http://www.cdc.gov/nchs/howto/w2w/w2welcom.htm

Social security card applications can be found at:
www.socialsecurity.gov/onlin/SS-5.htm

➔ **How to get a U.S Passport for a child**

If the child was born in the United States, a parent can apply for a U.S. passport for the child. In general, the U.S. Passport Office is strict about who may and may not get passports for minor children. The passport application for a minor child must be submitted at a U.S. Post Office by both parents of the minor child. The only exceptions are: (i) if there is only one parent named on the child's birth certificate, (ii) if there is a court order granting sole legal and physical custody to one parent, (iii) if the parent has a special notarized letter, called a "Notarized Statement of Consent or Special Circumstances" (DS-3053), from the other parent who consents to getting a passport for the child, (iv) if one of the child's parents has died, or (v) if there is a court order naming a legal guardian for the child.

A Notarized Statement of Consent or Special Circumstances (DS-3053) can be found online at:

http://www.state.gov/documents/organization/80106.pdf

The purpose of this form is to explain to the U.S. Passport officials why a child's parents did not apply for the

A passport application can be found online at:
http://travel.state.gov/passport/get/minors/minors_834.html

A parent will be asked to present proof that the child is a U.S. citizen, which can be shown by presenting the child's U.S. birth certificate. The parent will also be asked to present proof that he or she is the custodian of the child. The parent can do this by presenting the child's birth certificate or with a court custody order that states that the parent is the sole custodian. If one parent has died, the surviving parent may present the death certificate to show that he or she is now the sole custodian of the child. The surviving parent will also be asked to provide his or her own valid picture identification.

Since a detained parent will not be able to apply for that passport in person as required, he or she must complete the Notarized Statement of Consent or Special Circumstances (DS-3053) and have the document notarized. If the parent does not have an attorney he or she should be able to request a notary in detention. The child should go with the non-detained parent to apply for the passport in person with the Notarized Statement of Consent or Special Circumstances.

If a detained parent does not have sole custody of the child, and the child's non-detained parent is unavailable, the non-detained parent must also fill out the Notarized Statement of Consent or Special Circumstances (DS-3053). The detained parent does not have sole custody of the child when the non-detained parent is named on the child's birth certificate or was granted legal or physical custody by a court order.

➔ **How to get a non-U.S. passport for a child**

If a child is not a U.S. citizen and does not have a passport, the parent must contact the consulate of the country where the child is a citizen to determine how to apply for a passport for the child.

How can you change custody of your child after you are deported?

If a deported parent is the legal custodian of a child it may be helpful for that parent to grant legal guardianship status to a trusted friend or relative. There is information about how to grant temporary guardianship in the section above on "What is a Temporary Guardian?" Depending on the weight the child's home state gives to a notarized temporary guardianship form, the temporary guardian may have to petition a court for an order of guardianship in order to act as legal guardian of the child. Once this trusted friend or relative is the legal guardian of the child in the U.S., he or she will be able to obtain all of the documentation necessary to help the child travel out of the country and meet the parent.

If a parent wants to change a custody order after deportation, he or she will need to go through the U.S. court system. If both parents are outside of the United States, someone inside the country could petition to be appointed as guardian, and the absent parent(s) could consent. If only one parent is outside of the United States and is agreeable to the other parent having custody, that parent could file a modification action to which the absent parent could consent from outside of the United States.

What if you want your child to stay in the U.S. after you are deported?

If a parent wants a child to stay in the U.S., it is important that the parent complete a notarized guardianship form. Minor children need legal guardians to make decisions on matters such as medical care, education and travel decisions. There is more information about this in the section above on "What is a Temporary Guardian?"

What barriers might you, as an immigrant family, face in the court?

➔ **Lack of interpretation and/or translation -- How to find an interpreter and/or a translator**

In some cases, one of the greatest challenges in ensuring the proper care of a child is effective communication with authorities. If a parent does not speak English, it is important to find someone to interpret for them and/or translate documents. If the parent is having difficulty finding someone to interpret and/or translate, it may be possible to find an interpreter/translator through a community organization that provides outreach to immigrants or possibly through the parent's church.

An immigrant preparing for what he or she may face in immigration or family court should consider making these contacts now to know who to contact for interpretation or if translation assistance is needed.

Some states will provide interpretation and translation services for parents who are dealing with child services or the court system. For example, in the New York City area, an immigrant dealing with the Administration of Children's Services or any related office or facility will be provided free language assistance. Also, if an immigrant appears in court he or she has the right to an interpreter provided by the Office of Court Interpreting Services.

➔ **How to find legal service providers or other family law advocates**

In every state there are organizations that provide free

legal services to low-income individuals. In some cities there are organizations which focus specifically on legal issues for immigrants. If an immigrant is unable to pay for a lawyer it is possible to find an attorney or representative through these organizations, either through direct representation or through a referral. Typically, it is not a legal requirement for a parent to have a lawyer during a family court proceeding, but it is strongly recommended that an immigrant parent work with a lawyer if possible.

Some specific examples of free legal service providers who represent any individual regardless of immigration status are:

New York City, New York
Legal Services NYC
Several offices throughout Manhattan, Brooklyn, Bronx, Queens, and Staten Island
(212) 431-7200
www.legalservicesnyc.org

New York Legal Assistance Group
Several intake cites throughout Manhattan, Brooklyn, Bronx, Queens, Staten Island and Long Island
(212) 613-5000
www.nylag.org

Los Angeles, California
Legal Aid Foundation of Los Angeles
Several offices throughout the Los Angeles area
800-399-4529
www.lafla.org

Los Angeles Center for Law & Justice
1241 S. Soto Street, Suite 102
Los Angeles, CA 90023
323-980-3500
www.laclj.org

➔ **Unfavorable immigrant policies in legal services and custody hearings**

Immigrants may face barriers in obtaining access to legal and other assistance in some areas of the country. For example, some legal service providers clearly state on their websites and in their promotional materials that they will not help undocumented immigrants due to federal regulatory requirements. However, in some cases, there are exceptions for immigrants who are victims of domestic violence. Accordingly, in approaching a legal service provider, an immigrant should ask whether they require proof of legal residence.

In addition, immigration status may be taken into account when a court is considering the best interests of a child. It is possible that a court will consider a potential guardian's undocumented immigration status as a factor against the child's best interests and may refuse to grant custody to that individual. An immigrant parent should be mindful of this problem when determining who to name as the child's guardian in a guardian designation form, as discussed above, or in a will, as discussed below.

What important legal documents should you gather?

It is important to be organized and know where to find all legal documents relevant to the care of a child. Several of these documents are discussed below. A parent should keep these documents and any other important papers in a safe place. The parent should also inform someone else where to find the documents in case the parent is detained or otherwise unable to care for the child.

➔ **Child's birth certificate, social security card and passport**

If a child was born in the United States, he or she should have a U.S. birth certificate and a social security card. These are very important documents and should be kept together in a safe location. In addition, if a parent has obtained a U.S. passport, or any other passport for the child, it should be kept with the birth certificate and social security card. If a parent has not obtained a passport for the child, he or she should do so now. The child will need the passport to visit the parent in the home country if the parent is deported and chooses to have the child remain in the United States.

➔ **Current custody orders and/or agreements**

If the detained parent is divorced from the non-detained parent, it is likely that there is already a child custody agreement in place. This agreement, and any court orders regarding custody, should be kept with the child's birth certificate, social security card, and passport. It is especially important to maintain these records if the non-detained parent was abusive to the child or was otherwise determined unfit to care for the child. A parent should ensure that all relevant information is provided to the court in case a temporary or permanent guardian must be appointed for the child.

➔ **Designation of temporary guardian**

As discussed above, a parent may sign a form that names someone to serve as the temporary guardian of the child if the parent is unable to care for the child. If a parent signs this form, he or she should keep the original with

the other important papers. The parent should also give a copy of the form to the person named in the document as the temporary guardian. This person also should know where to find the original document in case something happens to the parent.

A court is not *required* to honor the temporary guardian form if it becomes necessary to appoint a permanent guardian for the child. Although the temporary guardian form is one factor the court will consider, the court's final decision will be based on the child's best interests. Accordingly, a parent should think carefully about who to name as guardian in the document. Selecting someone a court will consider fit to care for the child will increase the chances that the court will follow the parent's request.

In some states, it is possible to place the designation of guardian on file with the court. For example, in Florida, parents may sign a written statement in which they name a "preneed" guardian for their child. The parents then file the statement with the court for the county in which they reside. If something happens to the parents and the child needs a guardian, the court will pull the parents' statement from the court's files and consider it in the guardianship proceeding. The parents' statement is considered a "rebuttable presumption" that the person named in the statement should be the guardian. This means that the court will appoint that person as guardian unless the court determines that the person is not qualified to be the guardian.

➔ **Last Will and Testament with provision naming a guardian**

Although the focus of this chapter has been on child custody issues arising during a deportation proceeding, it is also extremely important that a parent plan for the care of a child upon the parent's death. This is essential if the non-detained parent is not alive or has no custody rights.

In a Last Will and Testament, an individual says who should receive his or her property upon death. A Last Will and Testament should also name someone to care for any minor children upon the parent's death. If an individual is married and shares physical custody with a spouse, the guardian named in the will does not take care of the children until both spouses have died. Alternatively, if an individual is the sole custodian the guardian will take care of the children as soon as the individual passes away.

After the parent's death, the person named as guardian in the will must petition the appropriate court to be formally appointed as guardian. The will is a guide for the court as it decides who should be appointed as the child's guardian. However, the court's final decision will be based on the best interests of the child.

The requirements for a valid will vary on a state-by-state basis, therefore, it is advisable to consult with a lawyer to make sure that the document is prepared properly. Many free legal clinics provide this service.

APPENDIX A: CALIFORNIA STATUTORY FORM POA

UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, _____

(your name and address)

appoint _____

(name and address of the person appointed, or of each

person appointed if you want to designate more than one)

as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

___ (A) Real property transactions.

___ (B) Tangible personal property transactions.

___ (C) Stock and bond transactions.

___ (D) Commodity and option transactions.

___ (E) Banking and other financial institution transactions.

___ (F) Business operating transactions.

___ (G) Insurance and annuity transactions.

___ (H) Estate, trust, and other beneficiary transactions.

___ (I) Claims and litigation.

___ (J) Personal and family maintenance.

___ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service.

___ (L) Retirement plan transactions.

___ (M) Tax matters.

___ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____

_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act_____.

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY", THEN ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. A third party may seek identification. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ___ day of _____, 20___

_____

(your signature)

State of _____ County of _____

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Certificate of Acknowledgement of Notary Public:

State of California)

County of _____)

On _____
before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

APPENDIX B: NEW YORK STATUTORY FORM POA

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.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney by executing this Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, www.senate.state.ny.us or www.assembly.state.ny.us.

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

(b) DESIGNATION OF AGENT(S):

I, ..., hereby appoint:
name and address of principal

..... as my agent(s)
name(s) and address(es) of agent(s)

If you designate more than one agent above, they must act together unless you initial the statement below.

( ) My agents may act SEPARATELY.

(c) DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)

If every agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

.....
name(s) and address(es) of successor agent(s)

Successor agents designated above must act together unless you initial the statement below.

( ) My successor agents may act SEPARATELY.

(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under "Modifications".

(e) This POWER OF ATTORNEY REVOKES any and all prior Powers of Attorney executed by me unless I have stated otherwise below, under "Modifications."

If you are NOT revoking your prior Powers of Attorney, and if you are granting the same authority in two or more Powers of Attorney, you must also indicate under "Modifications" whether the agents given these powers are to act together or separately.

(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 on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A 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;
[ ] (E) business operating transactions;
[ ] (F) insurance transactions;
[ ] (G) estate transactions;
[ ] (H) claims and litigation;
[ ] (I) personal and family maintenance;
[ ] (J) benefits from governmental programs or civil or military service;
[ ] (K) health care billing and payment matters; records, reports, and statements;
[ ] (L) retirement benefit transactions;
[ ] (M) tax matters;
[ ] (N) all other matters;
[ ] (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
[ ] (P) EACH of the matters identified by the following letters_____

You need not initial the other lines if you initial line (P).

(g) MODIFICATIONS: (OPTIONAL)

In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent.

However, you cannot use this Modifications section to grant your agent authority to make major gifts or changes to interests in your

property. If you wish to grant your agent such authority, you MUST complete the Statutory Major Gifts Rider.

(h) MAJOR GIFTS AND OTHER TRANSFERS: STATUTORY MAJOR GIFTS RIDER (OPTIONAL)

In order to authorize your agent to make major gifts and other transfers of your property, you must initial the statement below and execute a Statutory Major Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make major gifts and other transfers. The preparation of the Statutory Major Gifts Rider should be supervised by a lawyer.

( ) (SMGR) I grant my agent authority to make major gifts and other transfers of my property, in accordance with the terms and conditions of the Statutory Major Gifts Rider that supplements this Power of Attorney.

(i) DESIGNATION OF MONITOR(S): (OPTIONAL)

I wish to designate ....., whose address(es) is (are) ..... as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) COMPENSATION OF AGENT(S): (OPTIONAL)

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define "reasonable compensation", you may do so above, under "Modifications".

[ ] My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

(l) TERMINATION: This Power of Attorney continues until I revoke it or it is terminated by my death or other event described in section 5-1511 of the General Obligations Law.

Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) SIGNATURE AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on .....……….., 20....

PRINCIPAL signs here: ==> .....
(acknowledgment)

(n) IMPORTANT INFORMATION FOR THE AGENT:

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

(1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;

(4) keep a record or all receipts, payments, and transactions conducted for the principal; and

(5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or give major gifts to yourself or anyone else unless the principal has specifically granted you that authority in this Power of Attorney or in a Statutory Major Gifts Rider attached to this Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent:

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

(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, ..., 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(s) sign(s) here: ==> .....
(acknowledgment(s))"

APPENDIX C: TEXAS STATUTORY POA

(effective until January 1, 2014)

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;

Tangible personal property transactions;

Stock and bond transactions;

Commodity and option transactions;

Banking and other financial institution transactions;

Business operating transactions;

Insurance and annuity transactions;

Estate, trust, and other beneficiary transactions;

Claims and litigation;

Personal and family maintenance;

Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

Retirement plan transactions;

Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this _____ day of _____, 20___

_____
(your signature)

State of _____

County of _____

This document was acknowledged before me on
_____(date) by _____
(name of principal)

_____
(signature of notarial officer)

(Seal, if any, of notary)

_____
(printed name)

My commission expires: _____

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(b) A statutory durable power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with Subsection (a) of this section, the form is properly completed, and the signature of the principal is acknowledged.

APPENDIX D: FLORIDA STATUTORY POA

(1) **Creation of durable power of attorney.--**A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in s. 709.08, Florida Statutes"; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity, except as otherwise provided by this section. The durable power of attorney is exercisable as of the date of execution; however, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in s. 744.102(12)(a), the durable power of attorney is exercisable upon the delivery of affidavits in paragraphs (4)(c) and (d) to the third party.

(2) Who may serve as attorney in fact.--The attorney in fact must be a natural person who is 18 years of age or older and is of sound mind, or a financial institution, as defined in chapter 655, with trust powers, having a place of business in this state and authorized to conduct trust business in this state. A not-for-profit corporation, organized for charitable or religious purposes in this state, which has qualified as a court-appointed guardian prior to January 1, 1996, and which is a tax-exempt organization under 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact. Notwithstanding any contrary clause in the written power of attorney, no assets of the principal may be used for the benefit of the corporate attorney in fact, or its officers or directors.

(3) Effect of delegation, revocation, or filing of petition to determine incapacity.--

(a) A durable power of attorney is nondelegable except as permitted in subparagraph (7)(a)1.

(b) The attorney in fact may exercise the authority granted under a durable power of attorney until the principal dies, revokes the power, or is adjudicated totally or partially incapacitated by a court of competent jurisdiction, unless the court determines that certain authority granted by the durable power of attorney is to remain exercisable by the attorney in fact.

(c)1. If any person or entity initiates proceedings in any court of competent jurisdiction to determine the principal's incapacity, the authority granted under the durable power of attorney is suspended until the petition is dismissed or withdrawn. Notice of the petition must be served upon all attorneys in fact named in any power of attorney which is known to the petitioner.

2. If an emergency arises after initiation of proceedings to determine incapacity and before adjudication regarding the principal's capacity, the attorney in fact may petition the court in which the proceeding is pending for authorization to exercise a power granted under the durable power of attorney. The petition must set forth the nature of the emergency, the property or matter involved, and the power to be exercised by the attorney in fact.

3. Notwithstanding the provisions of this section, a proceeding to determine incapacity must not affect any authority of the attorney in fact to make health care decisions for the principal, including, but not limited to, those defined in chapter 765, unless otherwise ordered by the court. If the principal has executed a health care advance directive designating a health care surrogate pursuant to chapter 765, the terms of the directive will control if the two documents are in conflict unless the durable power of attorney is later executed and expressly states otherwise.

(4) Protection without notice; good faith acts; affidavits.--

(a) Any third party may rely upon the authority granted in a durable power of attorney that is not conditioned on the principal's lack of capacity to manage property until the third party has received notice as provided in subsection (5). A third party may, but need not, require the attorney in fact to execute an affidavit pursuant to paragraph (c).

(b) Any third party may rely upon the authority granted in a durable power of attorney that is conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)(a) only after receiving the affidavits provided in paragraphs (c) and (d), and such reliance shall end when the third party has received notice as provided in subsection (5).

(c) An affidavit executed by the attorney in fact must state where the principal is domiciled, that the principal is not deceased, and that there has been no revocation, partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the durable power of attorney, or suspension by initiation of proceedings to determine incapacity or to appoint a guardian of the durable power of attorney at the time the power of attorney is exercised. A written affidavit executed by the attorney in fact under

this paragraph may, but need not, be in the following form:
STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared (attorney in fact) ("Affiant"), who swore or affirmed that:

1. Affiant is the attorney in fact named in the Durable Power of Attorney executed by (principal) ("Principal") on (date) .

2. This Durable Power of Attorney is currently exercisable by Affiant. The principal is domiciled in (insert name of state, territory, or foreign country) .

3. To the best of the Affiant's knowledge after diligent search and inquiry:

a. The Principal is not deceased; and

b. There has been no revocation, partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the durable power of attorney, or suspension by initiation of proceedings to determine incapacity or to appoint a guardian.

4. Affiant agrees not to exercise any powers granted by the Durable Power of Attorney if Affiant attains knowledge that it has been revoked, partially or completely terminated, suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

_____
(Affiant)

Sworn to (or affirmed) and subscribed before me this ____ day of (month) , (year) , by (name of person making statement)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification (Type of Identification Produced)

(d) A determination that a principal lacks the capacity to manage property as defined in s. 744.102(12)(a) must be made and evidenced by the affidavit of a physician licensed to practice medicine pursuant to chapters 458 and 459 as of the date of the affidavit. A judicial determination that the principal lacks the capacity to manage property pursuant to chapter 744 is not required prior to the determination by the physician and the execution of the affidavit. For purposes of this section, the physician executing the affidavit must be the primary physician who has responsibility for the treatment and care of the principal. The affidavit executed by a physician must state where the physician is licensed to practice medicine, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property as defined in s. 744.102(12)(a). The affidavit may, but need not, be in the following form:

STATE OF_____

COUNTY OF_____

Before me, the undersigned authority, personally appeared (name of physician) , Affiant, who swore or affirmed that:

1. Affiant is a physician licensed to practice medicine in (name of state, territory, or foreign country) .
2. Affiant is the primary physician who has responsibility for the treatment and care of (principal's name) .

3. To the best of Affiant's knowledge after reasonable inquiry, Affiant believes that the principal lacks the capacity to manage property, including taking those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

_____
(Affiant)

Sworn to (or affirmed) and subscribed before me this (day of) (month) , (year) , by (name of person making statement)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

(Type of Identification Produced)

(e) A physician who makes a determination of incapacity to manage property under paragraph (d) is not subject to criminal prosecution or civil liability and is not considered to have engaged in unprofessional conduct as a result of making such determination, unless it is shown by a preponderance of the evidence that the physician making the determination did not comply in good faith with the provisions of this section.

(f) A third party may not rely on the authority granted in a durable power of attorney conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)(a) when any affidavit presented has been executed more than 6 months prior to the first presentation of the durable power of attorney to the third party.

(g) Third parties who act in reliance upon the authority granted to the attorney in fact under the durable power of attorney and in accordance with the instructions of the attorney in fact must be held harmless by the principal from any loss suffered or liability incurred as a result of actions taken prior to receipt of written notice pursuant to subsection (5). A person who acts in good faith upon any representation, direction, decision, or act of the attorney in fact is not liable to the principal or the principal's estate, beneficiaries, or joint owners for those acts.

(h) A durable power of attorney may provide that the attorney in fact is not liable for any acts or decisions made by the attorney in fact in good faith and under the terms of the durable power of attorney.

(5) Notice.--

(a) A notice, including, but not limited to, a notice of revocation, notice of partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the durable power of attorney, notice of death of the principal, notice of suspension by initiation of proceedings to determine incapacity or to appoint a guardian, or other notice, is not effective until written notice is served upon the attorney in fact or any third persons relying upon a durable power of attorney.

(b) Notice must be in writing and served on the person or entity to be bound by the notice. Service may be by any form of mail that requires a signed receipt or by personal delivery as provided for service of process. Service is complete when received by interested persons or entities specified in this section and in chapter 48, where applicable. In the case of a financial institution as defined in chapter 655, notice, when not mailed, must be served during regular business hours upon an officer or manager of the financial institution at the financial institution's principal place of business in Florida and its office where the power of attorney or account was presented, handled, or administered. Notice by mail to a financial institution must be mailed to the financial institution's principal place of business in this state and its office where the power of attorney or account was presented, handled, or administered. Except for service of court orders, a third party served with notice must be given 14 calendar days after service to act upon that notice. In the case of a fi-

nancial institution, notice must be served before the occurrence of any of the events described in s. 674.303.
(6) Property subject to durable power of attorney.--Unless otherwise stated in the durable power of attorney, the durable power of attorney applies to any interest in property owned by the principal, including, without limitation, the principal's interest in all real property, including homestead real property; all personal property, tangible or intangible; all property held in any type of joint tenancy, including a tenancy in common, joint tenancy with right of survivorship, or a tenancy by the entirety; all property over which the principal holds a general, limited, or special power of appointment; choses in action; and all other contractual or statutory rights or elections, including, but not limited to, any rights or elections in any probate or similar proceeding to which the principal is or may become entitled.

(7) Powers of the attorney in fact and limitations.--

(a) Except as otherwise limited by this section, by other applicable law, or by the durable power of attorney, the attorney in fact has full authority to perform, without prior court approval, every act authorized and specifically enumerated in the durable power of attorney. Such authorization may include, except as otherwise limited in this section:

1. The authority to execute stock powers or similar documents on behalf of the principal and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities either into or out of the principal's or nominee's name.

2. The authority to convey or mortgage homestead property. If the principal is married, the attorney in fact may not mortgage or convey homestead property without joinder of the spouse of the principal or the spouse's legal guardian. Joinder by a spouse may be accomplished by the exercise of authority in a durable power of attorney executed by the joining spouse, and either spouse may appoint the other as his or her attorney in fact.

(b) Notwithstanding the provisions of this section, an attorney in fact may not:

1. Perform duties under a contract that requires the exercise of personal services of the principal;

2. Make any affidavit as to the personal knowledge of the principal;

3. Vote in any public election on behalf of the principal;

4. Execute or revoke any will or codicil for the principal;

5. Create, amend, modify, or revoke any document or other disposition effective at the principal's death or transfer assets to an existing trust created by the principal unless expressly authorized by the power of attorney; or

6. Exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary.

(c) If such authority is specifically granted in the durable power of attorney, the attorney in fact may make all health care decisions on behalf of the principal, including, but not limited to, those set forth in chapter 765.

(8) Standard of care.--Except as otherwise provided in paragraph (4)(e), an attorney in fact is a fiduciary who must observe the standards of care applicable to trustees as described in s. 736.0901. The attorney in fact is not liable to third parties for any act pursuant to the durable power of attorney if the act was authorized at the time. If the exercise of the power is improper, the attorney in fact is liable to interested persons as described in s. 731.201 for damage or loss resulting from a breach of fiduciary duty by the attorney in fact to the same extent as the trustee of an express trust.

(9) Multiple attorneys in fact; when joint action required.--Unless the durable power of attorney provides otherwise:

(a) If a durable power of attorney is vested jointly in two attorneys in fact by the same instrument, concurrence of both is required on all acts in the exercise of the power.

(b) If a durable power of attorney is vested jointly in three or more attorneys in fact by the same instrument, concurrence of a majority is required in all acts in the exercise of the power.

(c) An attorney in fact who has not concurred in the exercise of authority is not liable to the principal or any other person for the consequences of the exercise. A dissenting attorney in fact is not liable for the consequences of an act in which the attorney in fact joins at the direction of the majority of the joint attorneys in fact if the attorney in fact expresses such dissent in writing to any of the other

joint attorneys in fact at or before the time of the joinder.
(d) If the attorney in fact has accepted appointment either expressly in writing or by acting under the power, this section does not excuse the attorney in fact from liability for failure either to participate in the administration of assets subject to the power or for failure to attempt to prevent a breach of fiduciary obligations thereunder.

(10) Powers of remaining attorney in fact.--Unless the durable power of attorney provides otherwise, all authority vested in multiple attorneys in fact may be exercised by the one or more that remain after the death, resignation, or incapacity of one or more of the multiple attorneys in fact.

(11) Damages and costs.--In any judicial action under this section, including, but not limited to, the unreasonable refusal of a third party to allow an attorney in fact to act pursuant to the power, and challenges to the proper exercise of authority by the attorney in fact, the prevailing party is entitled to damages and costs, including reasonable attorney's fees.

(12) Application.--This section applies to only those durable powers of attorney executed on or after October 1, 1995.

(13) Partial invalidity.--If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

APPENDIX E: SAMPLE LETTER
DESIGNATING METHOD OF RECEIVING LAST PAYCHECK[7]

[Date]

[Employer Name
Employer Address
City, State, Zip code]

Dear [Employer],

Please deliver all of the remaining wages that I am owed to the following address:

[Worker's Name]
Care of [Relative's or Friend's Name
Address
City, State, Zip code]

OR

I hereby designate [Name of Relative or Friend] to receive all of the remaining wages that I am owed. Please deliver my wages to [Designee] in person at my regular place of work during working hours, no later than the next regularly scheduled payday.

I would also remind you that state law requires that you deliver my last paycheck to me no later than the next regularly scheduled payday.[8]

Thank you for your assistance.

Sincerely,

[Signature
Employee Name]

[7] [***This sample letter conforms to Texas law. Check your state's laws to determine your employer's obligations to deliver paychecks to employees in the manners listed in this letter.***]

[8] [***Most states require the employer to pay the last paycheck on the next regularly scheduled payday. Check your state's laws to determine your rights in your specific situation. A list of state final pay laws can be found at http://smallbusiness.findlaw.com/employment-employer/employment-employer-ending/employment-employer-ending-paycheck-final.html. Please verify any information posted on the Web and consult a lawyer with any legal questions.***]

Appendix F: Sample Demand Letter For Wages Owed

[Date]

[Employer Name
Employer Address
City, State, Zip code]

Dear [Employer],

My name is [Employee's name] and I was employed by you from approximately [date] until [date].

I am owed [$amount] for [type of work, i.e.- gardening, landscaping, hauling] work I performed for you at [location] from [date] until [date]. Due to your failure to pay me for the work that I performed for you, you are in breach of contract, and could be in violation of federal and state minimum wage laws.

I would prefer to resolve this dispute through friendly negotiation. To resolve this matter immediately, please send a check or money order for [$amount] made payable to [Employee's Name] to: [Employee's Address]. If you have questions or would like to discuss this matter, please contact me immediately at: [Telephone number: (123) 452-8888].

If the [$amount] owed for my work is not paid in full before [date], an administrative complaint and/or lawsuit may be filed and you could become liable for additional damages available under law and costs of suit.

I would also remind you that it is against the law to retaliate against me for assertion of my claims and any retaliatory action could result in the assessment of additional damages.

Sincerely,

[Signature
Employee Name]

APPENDIX G: LIST OF STATE LABOR OFFICES

STATE	NAME/ADDRESS	PHONE	WEBSITE
ALABAMA	Jim Bennett Commissioner Alabama Department of Labor P.O. Box 303500 Montgomery, AL 36130-3500	(334) 242-3460	http://www.Alalabor.state.al.us/
ALASKA	Click Bishop Commissioner Dept. of Labor and Workforce Development P.O. Box 11149 Juneau, AK 99811-114	(907) 465-2700	http://www.labor.state.AK.us/
ARIZONA	Brian C. Delfs Chairman Arizona Industrial Commission 800 West Washington Street Phoenix, AZ 85007	(602) 542-4515	http://www.ica.state.AZ.us/
ARKANSAS	James Salkeld Director Department of Labor 10421 West Markham Little Rock, AR 72205	(501) 682-4500	www.Arkansas.gov/labor
CALIFORNIA	John Duncan Director Department of Industrial Relations 455 Golden Gate Ave., 10th FL San Francisco, CA 94102	(415) 703-4810	www.labor.CA.gov
	Angela Bradstreet Labor Commissioner Division of Labor Standards Enforcement 455 Golden Gate Ave., 9th Flr. San Francisco, CA 94101	(415) 703-4810	www.dir.CA.gov/dlse

STATE	NAME/ADDRESS	PHONE	WEBSITE
COLORADO	Donald J. Mares Executive Director Dept. of Labor and Employment 633 17th St., 2nd FL Denver, CO 80202-3660	(888) 390-7936 Ext. 4	www.COworkforce.com
CONNECTICUT	Patricia H. Mayfield Commissioner Department of Labor 200 Folly Brook Blvd. Wethersfield, CT 06109-1114	(860) 263-6000	www.CT.gov/dol
DISTRICT OF COLUMBIA	Tene Dolphin Interim Director Employment Services Department 64 New York Ave., NE, Suite 3000 Washington, DC 20002	(202) 671-1900	www.DOES.DC.gov
FLORIDA	Cynthia R. Lorenzo Director Agency for Workforce Innovation The Caldwell Building 107 East Madison St. Suite 100 Tallahassee, Florida 32399-4137	(800) 342-3450	www.Floridajobs.org/
GEORGIA	Michael Thurmond Commissioner Department of Labor Sussex Place, Room 600 148 Andrew Young International Blvd., NE Atlanta, GA 30303	(404) 656-3011	commissioner@dol.state.GA.us www.dol.state.GA.us/
HAWAII	Darwin Cling Director Dept. of Labor & Industrial Relations 830 Punchbowl Street Honolulu, HI 96813	(808) 586-8842	www.Hawaii.gov/labor/
IDAHO	Robert B. Madsen Director Department of Labor 317 W. Main St. Boise, ID 83735-0001	(208) 332-3579 (800) 843-3193	www.labor.Idaho.gov

STATE	NAME/ADDRESS	PHONE	WEBSITE
ILLINOIS	Catherine M. Shannon Director Department of Labor 160 N. LaSalle Street 13th Fl, Suite C-1300 Chicago, IL 60601	(312) 793-2800	www.state.IL.us/agency/idol
INDIANA	Lori Torres Commissioner Department of Labor Indiana Government Center South 402 W. Washington Street Room W195 Indianapolis, IN46204	(317) 232-2655	www.IN.gov/labor
IOWA	David Neil Labor Commissioner Iowa Workforce Development 1000 East Grand Avenue Des Moines, IA 50319-0209	(515) 281-5387 (800) JOB-IOWA	www.Iowaworkforce.org/labor
KANSAS	Jim Garner Secretary Department of Labor 401 S.W. Topeka Blvd. Topeka, KS 66603-3182	(785) 296-5000	www.dol.KS.gov
KENTUCKY	J. R. Gray Secretary Kentucky Labor Cabinet 1047 U.S. Hwy 127 South, Suite 4 Frankfort, KY 40601-4381	(502) 564-3070	http://www.labor.KY.gov/
LOUISIANA	Tim Barfield Executive Director Louisiana Workforce Commission P.O. Box 94094 Baton Rouge, LA 70804-9094	(225) 342-3011	http://www.LAworks.net/
MAINE	Laura Fortman Commissioner Department of Labor 45 Commerce Street Augusta, ME 04330	(207) 623-7900	www.state.ME.us/labor

STATE	NAME/ADDRESS	NUMBER	WEBSITE
MARYLAND	Tom Perez Secretary Department of Labor and Industry 500 N. Calvert Street, Suite 401 Baltimore, MD 21202	(410) 767-2357	www.dllr.state.MD.us/
MASSACHUSETTS	Suzanne M. Bump Secretary Dept. of Labor & Work Force Dev. One Ashburton Place, Rm 2112 Boston, MA 02108	(617) 626-7100	www.Mass.gov/eolwd www.state.ma.us/
MICHIGAN	Stanley Pruss Director Dept. of Labor & Economic Growth P.O. Box 30004 Lansing, MI 48909	(517) 373-1820	www.Michigan.gov/cis
MINNESOTA	Steven A. Sviggum Commissioner Dept of Labor and Industry 443 Lafayette Road North St. Paul, MN 55155	(651) 284-5070	www.doli.state.MN.us/
MISSISSIPPI	Tommye Dale Favre Executive Director Dept of Employment Security P.O. Box 1699 Jackson, MS 39215-1699	(601) 321-6000	www.mdes.MS.gov/
MISSOURI	Todd Smith Director Labor and Industrial Relations P.O. Box 504 421 E. Dunklin Jefferson City, MO 65102-0504	(573) 751-7500	www.dolir.MO.gov/lirc
MONTANA	Keith Kelly Commissioner Dept of Labor and Industry P.O. Box 1728 Helena, MT 59624-1728	(402) 471-9000	www.Nebraskaworkforce.com/

STATE	NAME/ADDRESS	PHONE	WEBSITE
NEBRASKA	Catherine D. Lang Commissioner Department of Labor 550 South 16th Street Box 94600 Lincoln, NE 68509-4600	(402) 471-9000	www.Nebraskaworkforce.com/
NEVADA	Michael Tanchek Commissioner Dept of Business and Industry 555 E. Washington Ave., Suite 4100 Las Vegas, NV 89101-1050	(702) 486-2650	www.laborcommissioner.com/ www.NV.gov
NEW HAMPSHIRE	George N. Copadis Commissioner Department of Labor State Office Park South 95 Pleasant Street Concord, NH 03301	(603) 271-3176	www.labor.state.NH.us/
NEW JERSEY	David Socolow Commissioner Department of Labor #1 John Fitch Plaza, 13th Fl, Suite D P.O. Box 110 Trenton, NJ 08625-0110	(609) 777-3200	http://lwd.dol.state.nj.us/labor/index.shtm
NEW MEXICO	Ken Ortiz Secretary Department of Work Force Solutions P.O. Box 1928 401 Broadway, N.E. Albuquerque, NM 87103-1928	(505) 841-8450	www.dol.state.NM.us/
NEW YORK	M. Patricia Smith Commissioner Department of Labor State Office Bldg. # 12, W.A. Harriman Campus Albany, NY 12240	(212) 775-3880	www.labor.state.NY.us/

STATE	NAME/ADDRESS	NUMBER	WEBSITE
NORTH CAROLINA	Cherie K. Berry Commissioner Department of Labor 4 West Edenton Street Raleigh, NC 27601-1092	(919) 733-7166	http://www.nclabor.com/
NORTH DAKOTA	Lisa Fair McEvers Commissioner Department of Labor State Capitol Building 600 East Boulevard, Dept 406 Bismark, ND 58505-0340	(701) 328-2660	http://www.nd.gov/labor/
OHIO	Kimberly A. Zurz Director Department of Commerce 77 South High Street, 22nd Floor Columbus, OH 43215	(614) 644-2239	www.com.state.OH.us/
OKLAHOMA	Lloyd Fields Commissioner Department of Labor 4001 N. Lincoln Blvd. Oklahoma City, OK 73105-5212	(405) 521-6100	www.state.ok.us
OREGON	Brad Avakian Commissioner Bureau of Labor and Industries 800 NE Oregon St., #1045 Portland, OR 97232	(971) 673-0761	www.Oregon.gov/boli
PENNSYLVANIA	Sandi Vito Acting Secretary Dept. of Labor and Industry 1700 Labor and Industry Bldg 7th and Forster Streets Harrisburg, PA 17120	(717) 787-5279	www.dli.state.PA.us
RHODE ISLAND	Sandra Powell Director Department of Labor and Training 1511 Pontiac Avenue Cranston, RI 02920	(401) 462-8000	www.dlt.state.RI.us

STATE	NAME/ADDRESS	NUMBER	WEBSITE
SOUTH CAROLINA	Adrienne R. Youmans Director Dept of Labor, Licensing & Regulations P.O. Box 11329 Columbia, SC 29211-1329	(803) 896-4300	www.llr.state.SC.us
SOUTH DAKOTA	Pamela S. Roberts Secretary Department of Labor 700 Governors Drive Pierre, SD 57501-2291	(605) 773-3101	www.state.SD.us
TENNESSEE	James G. Neeley Commissioner Department of Labor & Workforce Development 220 French Landing Drive Nashville, TN 37243	(615) 741-6642	www.state.TN.us/labor-wfd
TEXAS	Ronald Congleton Labor Commissioner Texas Workforce Commission 101 East 15th St. Austin, TX 78778	(512) 475-2670	www.twc.state.TX.us
UTAH	Sherrie Hayashi Commissioner Utah Labor Commission 160 E. 300 S., Suite 300 Salt Lake City, UT 84114-6610	(801) 530-6800	Laborcommission.Utah.gov
VERMONT	Patricia Moulton Powden Commissioner Department of Labor 5 Green Mountain Drive P.O. Box 488 Montpelier, VT 05601-0488	(802) 828-4000	www.labor.vermont.gov/
VIRGINIA	C. Ray Davenport Commissioner Dept. of Labor and Industry Powers-Taylor Building 13 S. 13th Street Richmond, VA 23219	(804) 786-2377	www.doli.Virginia.gov/

STATE	NAME/ADDRESS	NUMBER	WEBSITE
WASHINGTON	Judy Schurke Acting Director Dept. of Labor and Industries P.O. Box 44000 Olympia, WA 98504-4001	(360) 902-4200	www.lni.WA.gov/
WEST VIRGINIA	David Mullens Commissioner Division of Labor State Capitol Complex Building #6, 1900 Kanawha Blvd. Charleston, WV 25305	(304) 558-7890	www.wvlabor.org
WISCONSIN	Roberta Gassman Secretary Dept of Workforce Development 201 E. Washington Ave., #A400 P.O. Box 7946 Madison, WI 53707-7946	(608) 266-3131	www.dwd.state.wi.us/
WYOMING	Charles Rando Administrator, Labor Standards Department of Employment 1510 East Pershing Blvd. Cheyenne, WY 82002	(307) 777-7261	www.doe.state.wy.us/
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PUERTO RICO	Roman Velasco Secretary, Dept of Labor and Human Resources Edificio Prudencio Rivera Martinez 505 Munoz Rivera Avenue G.P.O. Box 3088 Hato Rey, PR 00918	(787) 754-2120	www.dtrh.gobierno.PR/
VIRGIN ISLANDS	Albert Bryan, Jr. Commissioner Department of Labor 2203 Church Street St. Croix, U.S. VI 00802-4612	St. Thomas (340) 776-3700 St. Croix (340) 692-9689	www.VIdol.gov/

Appendix H: Sample Letter Closing Bank Account

CONFIDENTIAL

[Date]
[Name of Bank]
[Address of Bank]

RE: Closing Bank Account

Dear Sir or Madam:

I currently have a checking account with [Bank Name] (Account # [Account Number]). I will no longer be living in the United States and would like to close this account. My new contact information is as follows:

[Your Name]
[Your New Address]
[Your New Telephone Number]

Please cancel all direct debit instructions associated with this account immediately. I have opened a new checking account with [Name of New Bank] (Account # [Account Number]). Please send the balance in my [Old Bank Name] account to my [Name of New Bank] account via a bank draft as soon as possible.

If any payments arrive for deposit into my [Old Bank Name] account, I authorize you to send them to my [Name of New Bank] account. Similarly, if any outstanding bills arrive to be paid from my [Old Bank Name] account, please notify me so that I can have them paid from my [Name of New Bank] account.

I have enclosed my ATM card (cut in half), my checkbooks, and my passbook (with the last transaction page defaced by crossing it out and writing "Account Closed"). Thank you for your assistance with this matter.

Sincerely,

[Your Name]

APPENDIX I: PROCESS FOR SELLING A VEHICLE

Advertising
Making fliers is a good method to advertise cars for sale. Immigrants can hang these fliers on bulletin boards at grocery stores, community centers, libraries, etc. Immigrants should be sure to include at least the following basic information on the fliers:

- Make, model and year of the car;
- Mileage;
- Asking price. (Make sure to build in a cushion when listing the price for the car. Most sales of a used car will involve negotiation of the price, and deportees will want to be able to accept a lower price than that which they have advertised.); and
- Contact information for the seller (This will usually include a phone number of the person selling the car. In addition, another popular way to communicate with potential buyers may be through email if the deportee has access to the internet. Most email providers allow subscribers to set up free email accounts in available usernames. Setting up a separate account is usually preferable so as to not advertise the deportee's own personal email account to the public.).

Immigrants should also include any other information that they think would attract buyers, but remember to be honest in their description. Buyers will most certainly be able to discover any untrue statements regarding the condition of the car, especially if they take it to a mechanic, and this will make them suspicious and unwilling to buy the car.

Preparing the Car for Sale
The extent of the effort that an immigrant should spend cleaning and making repairs depends greatly on the overall condition of the car and the amount that the immigrant anticipates being able to get from the sale. At a minimum, the immigrant should always wash the exterior and vacuum the interior to make the car presentable. If the individual decides that it is worth the expense, the car professionally detailed.

Deciding what repairs to make is another judgment call that depends on the anticipated proceeds from the sale as well as time constraints, if deportation is imminent. The immigrant must decide if the cost of the repairs will be recouped through an increase in the amount for which the car can be sold. For instance, a tune-up may be worthwhile if a car is idling rough or having trouble starting, but rebuilding the transmission would be too costly if the deportee is only selling the car for a couple thousand dollars. At a minimum, immigrants should have the oil changed and top off all fluids, as well as wiping down any oil or grease buildup and filling the tires to the proper pressure. Some scratches can be buffed out with rubbing compound, but trying to cover them up with less than a professional paint-job may give the impression that the immigrant is trying to hide something. Any dents or scratches should be factored into the condition of the car and asking price, because they will be immediately apparent to prospective buyers.

Completing the Sale
When immigrants decide to meet with potential buyers, they should consider meeting at a public place such as a mall or grocery store parking lot. This is important for their own safety, and will be reassuring to the buyers. Immigrants should make sure to get a buyer's name and phone number so that they can contact a buyer in case they need to cancel the meeting, or if a buyer does not show up. Also, immigrants should consider bringing a friend along for safety.

Test Drive: Most buyers will want to test drive a car if they are interested in purchasing it. Most insurance policies will allow for these situations, but make sure to check the individual policy to ensure that the car is covered during the test drive by a prospective buyer. Have a predetermined route that will allow a driver to test the car on both streets and the highway. It is usually a good idea for the seller to accompany the buyer on the test drive in order to answer any questions that the buyer may have regarding the car and its performance. But if the seller feels uncomfortable about accom-

panying the buyer, the seller should make sure to see the buyers' drivers' licenses and record the full name and license number before letting the buyer drive the cars.

Inspection: Most buyers will also want to have a mechanic check the car before purchase. Immigrants should make sure that the buyer is seriously considering the purchase before agreeing to take the car to the buyer's mechanic and decide beforehand who will pay for a mechanic's inspection. The immigrant could also seek to have a mechanic inspect the vehicle and issue a certification as to its good condition, but some buyers may be leery of accepting such certification if it is not performed by a mechanic that they trust.

Negotiation: Immigrants should have a bottom-line price that they are willing to accept. The custom in most United States localities for selling a used car will involve some degree of negotiation of price. Immigrants should be reasonable as to what they are willing to accept, and be ready to walk away if a buyer is not willing to meet those expectations.

APPENDIX J: HOME SALE

Arranging the Sale

There are several ways to arrange the sale of a home using a Power of Attorney (POA).

First, the immigrants could hire real estate agents to sell the houses. Advantages to using real estate agents include:

- Agents know the market, the process and the documents involved.
- Agents can handle administrative details, such as arranging an open house, filtering interested buyers, preparing listing for a website or newspaper.
- If the immigrants do not want to negotiate directly with interested buyers, they can communicate their desires to the real estate agents, who can negotiate on their behalves.

To find a real estate agent, visit the National Realtors' Association website (www.realtor.org). The immigrants can also ask friends for recommendations.

Immigrants facing deportation may decide to sell their homes without using real estate agents (a "**Sale by Owner**"). Advantages to doing a Sale by Owner include not having to pay real estate agents' commissions. However, homeowners may be unfamiliar with the housing market and unable to identify risks or "red flags" that arise in the home sales. Also, selling a home involves a lot of administrative work that can be tedious and confusing for homeowners.

Using a Real Estate Lawyer

Whether the immigrants are selling the home themselves or through real estate agents, it may be beneficial to hire lawyers.

An easy way to find a real estate lawyer is to log onto an industry website, such as www.legalwiz.com/escrow.htm or www.lawyers.com, which lists real estate attorneys. In addition, the immigrant can call local bar associations, title insurers, mortgage lenders, or escrow agents for referrals.

Advantages to hiring real estate lawyers to assist with the home sale include the lawyers' familiarity with: real estate sales contracts; other legal documents; title searches; property transfers; and related filings. Also, real estate lawyers can advise the immigrants on how to minimize the risk of being sued by the home buyer for failure to disclose certain information. However, hiring a lawyer will increase the cost associated with selling the home.

Setting a Price

1. Check online, for instance at www.housevalues.com or www.zillow.com.
2. Check local home sale listings in newspapers or attend open houses.
3. Ask real estate agents for advice.

Disclosure—State and Federal Laws

Today, the federal government requires home sellers to disclose to buyers the existence of lead-based paint or other lead-based hazards in the house.

According to the National Association of Realtors, at least 32 states require some type of formal seller disclosure. The states are: Alaska, Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky,

Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin.

All disclosure forms generally cover in great detail the legal, structural, and environmental condition of the property prior to sale. Also the required disclosures vary by state and region. For example, California requires earthquake hazard disclosure and many western states require wildfire hazard disclosure. However, New York and most Midwest states do not require these disclosures. Also, some states, such as South Carolina, ask about nuisances (*e.g.*, noise, smoke, odors) associated with living in the house that the buyer may not discover before purchasing the house.

If the state does not have a disclosure requirement, here are some customary items the immigrant might want to disclose to potential buyers:

- defects in the roof;
- defects in the electrical system;
- defects in plumbing, water heaters, or septic tanks;
- defects in heating or air conditioning;
- defects in the swimming pool;
- defects such as cracks, bulges, or water seepage in the foundation or basement;
- disputes over boundary lines, liens, or other encroachments;
- presence of asbestos, lead paint, radon, toxic wastes, underground tanks, or other environmental hazards;
- infestations by termites or other pests;
- location in a floodplain, wetland, or shoreline;
- defects in any mechanical equipment or appliances being sold with the property; and
- awareness of pending changes in zoning, property tax assessments, or special assessments.

Sales

➔ **Negotiation**

The natural focal point for real estate purchase contracts is the selling price of the homes, but the price is not the only important factor for the buyers and sellers. Before sellers decide to accept a price, here are five other important points to consider:

1. What are the estimated transaction costs of the home sale and who will pay for each cost?
2. How much money is the buyer putting into escrow and how soon? Escrow is an account opened for the buyer to deposit a down payment (*i.e.*, earnest money) after the buyer and seller sign a purchase agreement. Either the buyer or the seller can open escrow. Escrow is opened by taking the purchase agreement and deposit to an escrow company, title company, real estate broker, or attorney for safe keeping and processing.
3. Is there a mortgage financing contingency (*i.e.*, mortgage escape clause) and how specific is it? Buyer will usually require a mortgage escape clause in the real estate purchase agreement, unless they are paying all cash for the home. Without this contingency, buyers can be legally required to purchase homes even if they cannot obtain the necessary financing.
4. What furniture, fixtures, and appliances, if any, are being sold with the property?
5. What will happen if either side violates the contract?

➔ **Contract**

A home sales contract is a complex legal document and the immigrant should carefully read it, focusing on the following points:

1. What are the cut-off dates for home inspections and for approvals of the home inspection reports?
2. Who is responsible for making repairs, if any, as a result of the home inspections?
3. Is the immigrant making any representations or warranties regarding the condition of the property?
4. Will a home warranty plan be purchased?
5. When is escrow scheduled to close?

➔ **Home Inspection**

A home sales contract typically provides an opportunity for buyers to hire home inspectors to check out the condition of the homes. The buyers usually cover the cost of the general home inspection. However, before listing a home for sale, sellers may consider having a home inspection to discover major defects in the home. Repairing these major defects or adjusting the initial home list price may improve the home sale process.

Even though buyers may require home inspections, sellers are not obligated to make repairs or modifications resulting from those inspections. In reality, however, inspection reports often are used to negotiate repairs or adjustments to the house price. The purchase contract should provide some guidance for these negotiations.

➔ **Mechanics of Sale**

The nuts and bolts of closing home sales differ depending on what state the immigrants live in. For example, in Alabama, attorneys handle closings, conveyance is by warranty deed, and mortgages are the customary security instruments. Buyers and sellers negotiate who is going to pay the closing costs and usually split them equally. In Louisiana, either attorneys or corporate title agents may conduct closings, but a notary must authenticate the documentation. Buyers generally pay the title insurance and closing costs. In California, escrow procedures related to selling a home differ across the state. Thus immigrants are strongly encouraged to seek legal advice regarding how to close the sale of their homes according to state and local laws.

➔ **Documentation**

The main documents required for a home sale are:

- Offer to Purchase;
- Real Estate Sales Contract; and
- Residential Property Disclosure Statement (including Lead-Based Paint Disclosure).

According to the specific needs of the home sale, other documents may include:

- Standard Conditions and Acceptance of Escrow
- Mechanic's Lien Affidavit
- Deeds
- Mortgage Deed
- Signature/Name Affidavit
- Flood Insurance Authorization
- Occupancy Affidavit and Financial Status
- Compliance/Document Correction Agreement
- Notice of Assignment, Sale, or Transfer of Servicing Rights

The forms of these documents vary across jurisdictions. State-specific forms of these documents can be obtained for a cost from websites such as www.uslegalforms.com, www.findlegalforms.com, and www.nationallawforms.com, and www.nationallawforms.comwww.nationallawforms.com

[OPTIONAL PROVISION: **In addition, upon the first to occur of (i) the death of the survivor of _____ and _____, (ii) such time as both of _____ and _____, if both are living, or the survivor of _____ and _____, if only one of them is living, becomes incapacitated (as such term is defined for purposes of [YOUR STATE] guardianship law), or (iii) such time as both of _____ and _____, if both are living, or the survivor of _____ and _____, if only one of them is living, is otherwise unavailable to care for _____ and consents in writing, before two witnesses, to the appointment of a legal guardian, I agree to serve as the legal Guardian of the person and property of _____.**]

WITNESS:

_____ _____

Print Name: _____ Print Name: _____

Date: _____ Date: _____

_____

Print Name: _____

Date: _____

APPENDIX K: SAMPLE GUARDIAN ELECTION FORM

Please be advised that this is a sample based on the laws of the State of Maryland. The requirements for electing a guardian may vary considerably from state to state. Please consult an attorney licensed to practice law in your state to make certain that your guardianship election form meets the applicable requirements.

POWER OF ATTORNEY
AND
DESIGNATION OF TEMPORARY
GUARDIAN FOR MINOR CHILD

We, _____ and _____, the father and mother of our child, _____ ("our child"), appoint and authorize _____ to serve as the Guardian of the person and property of our child at any time neither of us is available to exercise the authority provided for herein.

If _____ is not able or willing to serve as our child's Guardian, we appoint _____ to serve as our child's Guardian instead.

We hereby authorize the Guardian to exercise any and all rights and responsibilities and do any and all acts appropriate for a legal Guardian of a minor child including, but not limited to, the following:

1. **Education**. To enroll our child in the appropriate educational institutions, obtain access to our child's academic records, authorize our child's participation in school activities and make any and all other decisions related to our child's education.

2. **Travel**. To make travel arrangements on behalf of our child for destinations both inside and outside of the United States of America by air and/or ground transportation; to accompany our child on any such trips; and to make any and all related arrangements on behalf of my child including, but not limited to, hotel accommodations.

3. **Health Care**. To inspect and disclose any information relating to the physical and mental health of our child; to make any and all health care decisions; to sign documents, waivers and releases required by a hospital or physician; to authorize our child's admission to or discharge from any hospital or other medical care facility (including transfer to another facility); to consult with any provider of health care; to consent to the provision, withholding, modification or withdrawal of any health care procedure; and to make any and all other decisions related to our child's health care needs.

The Guardian may exercise any of these powers at any time that neither of us is available to exercise such authority. Any person may deal with the Guardian in full reliance that this Power of Attorney and Designation of Temporary Guardian for Minor Child has not been revoked and that neither of us is available to exercise the authority provided for herein, if the Guardian submits a written statement to that effect.

STATEMENT OF ADDITIONAL DESIRES,
SPECIAL PROVISIONS AND LIMITATIONS

_____

_____

_____

This Power of Attorney and Designation of Temporary Guardian for Minor Child shall not be affected by our disability or incapacity. The authority granted herein shall continue during any period while we may be disabled, incapacitated or unavailable.

We are emotionally and mentally competent to make this Power of Attorney and Designation of Temporary Guardian for Minor Child, and we understand its purpose and effect.

[OPTIONAL PARAGRAPH: **It is our intent and desire that, upon the first to occur of (i) the death of the survivor of the two of us, (ii) such time as both of us, if we both are living, or the survivor of us, if only one of us is living, becomes incapacitated (as such term is defined for purposes of [YOUR STATE] guardianship law), or (iii) such time as both of us, if we both are living, or the survivor of us, if only one of us is living, is otherwise unavailable to care for our child and consents in writing, before two witnesses, to the appointment of a legal guardian, _____ (or, if he/she is unable to serve, _____) be appointed to serve as the Guardian of our child's person and property, without bond, by the Court having appropriate jurisdiction.]**

Notwithstanding the foregoing, this Power of Attorney and Designation of Temporary Guardian for Minor Child shall not be construed as a waiver of our parental rights, and we retain the right to revoke this Power of Attorney and Designation of Temporary Guardian for Minor Child at any time.

WITNESS:

_____ _____
Print Name: _____ Print Name: _____
Date: _____ Date: _____

_____ _____
Print Name: _____ Print Name: _____
Date: _____ Date: _____

STATE OF [_____]: TO WIT
I hereby certify that on this _____ day of _____, 2009, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared _____ and _____ and acknowledged the foregoing Power of Attorney and Designation of Temporary Guardian for Minor Child to be their act and deed.

As witness my hand and notarial seal.

_____
Notary Public
My Commission Expires: _____

ACCEPTANCE OF DESIGNATION AS GUARDIAN FOR MINOR CHILD

I, _____, hereby acknowledge that I have been designated to serve as the Guardian of the person and property of _____ by his/her parents, _____ and _____, pursuant to the foregoing Power of Attorney and Designation of Temporary Guardian for Minor Child. I hereby accept said designation as the Guardian of the person and property of _____ and agree to begin serving in such capacity at any time neither of _____ and _____ is available to exercise the authority provided for therein.

APPENDIX L: GLOSSARY

GLOSSARY TERMS	DEFINITIONS
Abandonment	The act of giving up, surrendering or disclaiming property or rights, with the intention of not reclaiming the property or rights back
Agent	A person authorized to conduct certain business on behalf of a Principal who has executed a Power of Attorney authorizing the Agent to do so
Apostille	The legalization of a document for international use under the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents; generally a document notarized by a notary public and then certified with a conformant apostille is accepted for legal use in any country that is a member of the Hague Convention.
Assign	To transfer property or rights to another person
Bank-Certified Check	A check for which a bank guarantees payment
Bests Interests of the Child	The standard by which a court determines who should have custody of a child. It also includes various criteria such as the child's physical, mental and emotional needs and the adult's ability to care for the child and meet the child's needs.
Closing	The final transaction between a buyer and seller of property
Contingency Plan	A plan devised for a specific situation when things could go wrong
Creditor	Bank, organization, or person to whom money is owned
Deed	A document recording proof of ownership of real property
Deficiency Judgments	A personal judgment or assessment of liability against the mortgagor or borrower for the remaining balance of outstanding debt on a property, including a house or a car
Disclosure Forms	Forms that generally cover in great detail the legal, structural, and environmental condition of a property prior to sale
Disposition of Property	Sale or transfer of property to another
Employer Identification Number	A number, also called the Federal Tax Identification Number, that is used to identify a business entity
Escrow	An account opened for the buyer to deposit a down payment (or earnest money) after the buyer and seller sign a purchase agreement; either the buyer or the seller can open escrow.

GLOSSARY TERMS	DEFINITIONS
Execution of (Executing)	The signing of a contract to create a legal obligation
Federal Taxpayer Identification Number	A number, also called the Employer Identification Number, that is used to identify a business entity
Fiduciary	One who is legally responsible for acting in the best interests of the Principal; for example, an Agent is a fiduciary of the Principal who assigns to them the Power of Attorney.
Fixtures	Objects that are so attached to property that they cannot be removed; they are regarded as part of the property.
Foreclosure	Legal proceeding by a creditor or creditors to take back or reclaim or repossess property because of default
Foster Care	A temporary arrangement in which a child lives with another family while the court determines who will have legal custody of the child; government authorities have legal responsibility for the child while he or she is in foster care.
General Power of Attorney	Power of attorney that authorizes an agent to act on one's behalf in a variety of situations
Grant Deeds	Promises that another person does not have title to a house and a property is not, except as stated in the deed, encumbered in any way
Individual Taxpayer Identification Number	A number obtained from the IRS if a social security number is not obtainable, which can be used to file tax returns and in other contexts in place of a social security number, such as in obtaining mortgages
Installment Debt	Debt to be paid in installments or parts
Joint Custody	An arrangement where both parents share custodial rights of their child
Last Will and Testament	A document in which an individual states who should receive property and act as guardian of any minor children upon death
Legal Custody	The right to make decisions about a child's upbringing
Legal Recourse	An action that can be taken by a person to attempt to remedy a legal difficulty
Lien (Lien Holder)	Creditor's conditional right of ownership against a debtor's property that bars its sale or transfer without first paying off the creditor
Mechanics Lien Affidavit	A sworn, notarized statement that exists to secure payment for labor and services on property
Money Order	A financial document that can be easily converted into cash by the person who is named on the document

GLOSSARY TERMS	DEFINITIONS
Mortgage	A temporary pledge of property to a creditor for the exchange of a promise to pay back debt
Mortgage Financing Contingency (Mortgage Escape Clause)	A clause which frees buyers from the legal obligation of buying a home even if they cannot obtain the necessary financing
Notary	A public official who is legally authorized to certify documents
Periodic Tenancy	A continuing arrangement for certain periods of time that automatically renews for a similar subsequent period unless terminated by the landlord or tenant (e.g. a month-to-month or week-to-week tenancies); the period of time in the periodic tenancy is fixed by the payment of the rent (e.g. monthly or weekly)
Physical Custody	The right of a parent or custodian to have a child live with him or her
Power of Attorney	A written document that allows individuals (Principals) to authorize other persons (Agents) to conduct certain business or personal transactions on their behalf
Power of Attorney and Designation of Temporary Guardian	A document naming a person to care and make important decisions for your child on a temporary basis, such as medical and educational decisions, if you are unable to do so
Principal	A person who authorizes other persons, here by Power of Attorney, to conduct certain business on their behalf
Pro Bono Legal Services	Legal services that are performed for free, without compensation
Qualified Non-Citizens	Immigrants who qualified for benefits in the past, but who have had their legal status revoked and now face deportation
Quitclaim Deed	A deed which promises that the immigrant selling the house is transferring his or her interests in the property whatever that may be, with no warranties whatsoever
Real Property	Land and anything fixed, immovable, or permanently attached to it
Refinancing	A process which provides new financing for a property, by repaying an existing mortgage with the proceeds from a new mortgage (often obtained at a lower interest rate)
Representations or Warranties	Statements by which one party gives certain assurances or makes pledges to the other, and on which the other party may rely; representations are generally declarations of specific facts that can be verified to be true and warranties may be more of an assurance.

GLOSSARY TERMS	DEFINITIONS
Retail Installment Debt	Loans and other debt issued with the condition of regular payments, also called installments, by the debtor, until the principal and interest of the debt are paid in full
Revoke	To annul, cancel or take back
Sale by Owner	Procedure where an immigrant may decide to sell his or her home without real estate agents
Seize	To take into custody
Short Sale	A transaction where the lender agrees to accept the proceeds of a sale of real property in full satisfaction of the mortgage even if that is less than the amount that is owed
Social Security Benefits	A U.S. federal benefits program which provides, among others, retirement benefits, disability income, veterans pension, public housing and the food stamp program
Sole Custody	An arrangement where one parent has all the custodial rights.
Special Power of Attorney	Power of attorney that authorizes an agent to act on one's behalf only in specific situations
Statutory Form POA	A model form of power of attorney written in a statute created by the state's legislature
Sublease	To lease or rent all or part of a property to another person
Tenancy by the Entirety	The joint ownership of real property with survivorship rights by husband and wife; a tenancy by the entirety cannot be severed by sale by one party. Both the husband and wife must join on any document that transfers ownership.
Tenancy-at-Will	An arrangement where the tenant occupies property with the permission of the owner for an unspecified time (i.e. tenant pays the landlord to occupy the property, but the parties do not fix a time for the next payment or when the tenant must vacate the property)
Title Documents	A formal document that confers or proves ownership and allows its holder to receive, retain, sell or otherwise dispose of property
Unilaterally	Done or undertaken by one person or party
Visitation	A court-ordered right which allows a parent or, in some cases, other relatives to spend time with a child; visitation does not allow the person to make major decisions about the child's well-being or upbringing.
Warranty Deed	A deed that guarantees that the immigrant selling the property has good title to the properties; this deed is backed by a promise to pay if the immigrant is wrong and does not have good title.

Resumen Lista de Verificación de los Elementos Financieros Clave

- ☐ Haga una lista de todos sus activos (por ejemplo sus activos son: sus cuentas bancarias, rentas, coche, casa, y propiedades de la empresa) y haga una lista de los contactos clave de cada uno en caso de que necesite cerrar tus asuntos.

- ☐ Por cada activo, desarrolle un plan de acción de que haría o como quiere tratar cada activo en caso de que tenga que salir de los Estados Unidos. Algunos activos comunes y consideraciones a tomar en cuenta se listan a continuación:

  - **Cuenta bancaria**: determine si puede tener acceso a su cuenta bancaria desde su país de origen o nuevo país de residencia o si seria más fácil cerrar su cuenta bancaria. Siga los procedimientos específicos requeridos por el banco.

  - **Efectivo**: para evitar problemas al cruzar la frontera con el efectivo, debe planear por adelantado buscando un banco en EE.UU. que tenga cajeros automáticos en países extranjeros e investiga las tarifas asociadas para tener acceso a la cuenta en otro país. En este caso, debe considerar enviarle un duplicado de su tarjeta de débito a un miembro de su familia que sea de confiar en el extranjero como una medida de apoyo para asegurar que tenga acceso a los fondos. Otra opción sería obtener un giro bancario (un cheque certificado es un cheque de su banco en Estados Unidos que ordena al banco en su país de origen o nuevo país de residencia pagarle al beneficiario de ese cheque). Este cheque esta hecho para beneficio de una persona especifica. Un giro bancario puede ser ventajoso ya que se puede cancelar si se pierde.

  - **Coche**: Si vende su coche, recuerde poner por escrito los términos de la venta, solicite que el comprador pague en efectivo o con un cheque certificado, se debe de informar de la operación de venta tanto con el titulo de propiedad y formas de impuestos al departamento de automóviles, y comunicar la venta a su compañía de seguros de automóvil. Si usted todavía debe dinero de su préstamo de coche, asegúrese de obtener los pagos de su préstamo de su prestamista para saber la cantidad mínima de dinero que necesita para realizar la venta completa.

  - **Arrendamiento o renta residencial**: Debe comprender los términos de su contrato de arrendamiento – Debe saber su responsabilidad por las rentas no pagadas y si puede ceder o subarrendar a otra persona. Asegúrese de retirar sus bienes o pertenencias personales de la vivienda en un plazo razonable de tiempo después de salir o entregar esa casa.

  - **Hogar o Casa propia**: Su casa propia debe ser su más activo valioso activo, entonces es importante que la venta de su casa cumpla con todas las leyes. Un agente de bienes raíces puede ser muy útil, y lo mejor será ponerse en contacto con uno si no estas familiarizado con el proceso de venta. Si quiere regalarle su casa a alguien, de cualquier forma se deben hacer los siguientes trámites (i) otorgar y realizar una escritura; (ii) preparar las formas locales de impuestos correspondientes; (iii) resolver las cuestiones de la hipoteca; y (iv) registrar las diversas responsabilidades, tales como pagos de servicios y seguro.

  - **Negocio**: transferir o vender un negocio es un proceso complejo que se fija por las reglas y regulaciones locales. Por lo tanto, usted debe consultar con el local de la ciudad, condado, y las agencias estatales para que le brinden orientación adicional sobre el proceso.

  - **Seguridad social y beneficios para veteranos**: Si usted es un asalariado, y sus dependientes (por ejemplo, sus hijos) son ciudadanos de EE.UU., sus dependientes pueden continuar recibiendo beneficios. Sin embargo, si sus

dependientes no tienen estatus legal en los EE.UU., no podrán recibir beneficios.

- ☐ Considere si desea escribir un poder a alguien de confianza. Un poder notarial es un documento legal que permite a otra persona para que actúe en su nombre. Un poder notarial, se puede utilizar para que alguien de su confianza pueda encargarse o manejar sus asuntos después de que usted salga de los EE.UU.

- ☐ Organice todo el papeleo financiero que sea relevante en una sola carpeta para que estén disponibles en caso de que necesites cerrar sus asuntos en poco tiempo. Lo mejor será incluir la documentación relativa a su cuenta bancaria, coche, departamento o casa, seguro, impuestos, su negocio o empresa, préstamos y otras deudas pendientes.

- ☐ Notifique a su empleador de su nueva dirección, si usted es detenido o deportado y pídale a su empleador para enviar su último sueldo a esa dirección. Usted tiene derecho de recibir su salario prometido por cualquier trabajo realizado, sin importar si no tiene autorización para trabajar o número de seguro social.

- ☐ Si tiene una deuda pendiente, deberá contactar a tu prestamista o a su compañía de tarjeta de crédito para que te proporcione la información actualizada de contacto o para hacer los arreglos para resolver la deuda. La mayoría de los bancos y de las compañías de tarjetas de crédito son multinacionales y van a tratar de recolectar la deuda afuera de los EE.UU. si la deuda no se paga.

- ☐ Puede que tenga que presentar una declaración de impuestos ante el IRS antes de salir de EE.UU. Usted también debe estar preparado para presentar una declaración de impuestos de EE.UU. para el año, incluso una vez que han abandonado el país.

Lista de Verificación para Poderes Notariales

- ☐ Considere otorgar un poder notarial a una persona de su entera confianza que se quede en los EE.UU. para encargarse de sus asuntos en calidad de su agente. Un poder notarial es un documento legal que permite a otra persona actuar en su nombre. Puede usar un poder general notarial para darle a alguien de confianza el poder para encargarse de sus asuntos después de que usted salga de los EE.UU.

- ☐ Puede otorgarle un poder general notarial a un agente o persona de su confianza para que pueda encargarse de todos sus asuntos, pero tal vez quiera otorgar poderes separados a diferentes personas para propósitos diferentes. Por ejemplo, le podría otorgar un poder notarial a su tía para tomar decisiones acerca de sus hijos y otro diferente a su hermano para encargarse de los asuntos financieros tales como administrar su cuenta bancaria o vender su coche.

- ☐ Tenga cuidado al escoger a un agente, especialmente si él o ella van a tener acceso a su cuenta bancaria. El o ella debe ser mayor de edad, y debe confiar en que él o ella va a actuar cuidadosamente al llevar a cabo sus deseos.

- ☐ Realice un listado de todos los asuntos financieros que necesitas que el agente le ayude a gestionar.

- ☐ Escriba un documento en donde otorgue el poder notarial. Considere lo siguiente cuando lo esté escribiendo:

  A) Considere cuanto tiempo debe durar el poder notarial.

  B) Trate de proporcionar todos los detalles que pueda acerca de los activos. Por ejemplo, lista de nombres de los bancos, números de cuentas, los números de registro del coche y la ubicación de los activos.

  C) Debe investigar los requisitos legales para el poder notarial en su estado. Si ya dejó los EE.UU., un poder notarial puede hacerse desde el extranjero, sin embargo, esto puede requerir un proceso de legalización dependiendo en que país se haga.

- ☐ Entregue el poder original al agente que haya elegido. Conserve una copia de ese poder para sus archivos.

- ☐ Pida al agente que guarde los registros claros de todas las acciones que él o ella tome como su agente apoderado. Si otra persona se niega a aceptar el poder de su agente, deberá llamar a un abogado.

Clave para llevar

➔ **Dado que puede ser agobiante pensar en sus activos financieros ante una posible deportación, debe considerar si hay alguien de confianza a quien se le pueda otorgar un poder notarial para encargarse de sus asuntos financieros por usted. Si es el caso, deberá obtener la documentación apropiada y llenarla por adelantado.**

Lista de Verificación para Recolectar los Sueldos que No se han Pagado

- ☐ Tiene derecho a recibir un sueldo por cualquier trabajo que haya realizado. Tiene derecho a su compensación como trabajador. No importa que no tenga permiso de trabajo o un número de seguridad social.

- ☐ Si ha cambiado de dirección por que se encuentras detenido o deportado, notifique a su patrón o empleador su nueva dirección y pida a su patrón o empleador que le mande su pago final a su nueva dirección.

- ☐ Si su patrón no le paga su último sueldo, se puede poner una queja en el departamento del trabajo o en la oficina del trabajo de su estado, también hay varias organizaciones sin fines de lucro que le pueden dar asistencia. El Consulado de su país también puede ayudarle.

- ☐ Es ilegal que su patrón intente tomar represiones contra usted por el hecho de buscar proteger su derecho a los sueldos que debe recibir por el trabajo realizado.

Clave para llevar

➔ **Notifique a su patrón su nueva dirección. Si su patrón ha violado su derecho a recibir un salario, puede poner una queja con la oficina del trabajo de su estado o ante el departamento federal del trabajo. Una organización sin fines de lucro puede asesorarlo.**

Lista de Verificación para Cruzar la Frontera con Efectivo

- ☐ Si lleva más de $10,000 US en efectivo, cheques de viajero, cheques expedidos a su nombre u órdenes de pago al cruzar la frontera, debe llenar un "reporte de transportación internacional de moneda o de instrumentos monetarios", que puede conseguirla de un oficial de aduanas en el momento en que vaya a despegar o en la siguiente liga: http://www.fincen.gov/forms/files/fin105_cmir.pdf. Si no hace esta declaración, la moneda podrá ser incautada.

- ☐ Tenga cuidado cuando transporte el efectivo ya que no se podrá rescatar si se pierde.

- ☐ Si lo detienen, podrá tener opciones limitadas para tener acceso a sus fondos:

  - Tal vez quiera escoger a un amigo confiable o miembro de su familia para que le de su tarjeta de debito para que pueda retirar el efectivo por usted. Su amigo puede darle el efectivo o mandárselo por medio de una transferencia electrónica una vez que haya llegado a su país de origen o de nueva residencia.

  - Si ha tenido la oportunidad de otorgar un poder notarial, su agente puede autorizar un giro bancario o una transferencia electrónica de dinero a una cuenta en su país origen o de nueva residencia o mandarle un cheque o una orden de pago ahí.

Clave para llevar

➔ **Dado que hay riesgos asociados con cada opción para transportar efectivo o cosas como efectivo por la frontera, en la medida de lo posible, es mejor planear por adelantado y evaluar los pros y contras de cada una de estas opciones.**

Lista de Verificación para Administrar, Tener acceso, y Cerrar una Cuenta Bancaria

☐ Decida si va a cerrar su cuenta(s) bancaria(s) o si las va a dejar abiertas.

☐ Si quiere dejar su cuenta bancaria abierta, investigue si vas a poder administrar su cuenta desde el extranjero o si sería más fácil darle a alguien de confianza, un poder notarial que administre su cuenta en su nombre.

A) Si quiere administrar su cuenta bancaria usted mismo, investigue si puede tener acceso a su cuenta desde el extranjero ya sea por medio de una cadena local o por cajeros automáticos, por teléfono o Internet.

B) Si va a otorgar un poder notarial, pregúntale al banco si éste pide requisitos especiales para aceptar un poder de este tipo.

☐ Si quiere cerrar su cuenta bancaria, comuníquese con el banco y averigüe los procedimientos del banco. El banco puede tener instrucciones especiales si tiene una cuenta abierta en conjunto con otra persona. Si el banco le permite cerrar su cuenta desde el extranjero, normalmente debe enviar una carta firmada con la información específica a la cadena local de su banco. El Apéndice [-] tiene una carta muestra.

A) Asegúrese de que todos los cheques se han cobrado antes de cerrar su cuenta bancaria.

B) Decida como quiere que el saldo sobrante de su cuenta bancaria se le transfiera. Generalmente, el banco puede mandarle su saldo a su nuevo lugar de residencia por medio de un giro bancario o una transferencia electrónica. Puede hacer que su agente con poder notarial lleve a cabo este proceso por usted.

☐ Si rentaste una caja de seguridad en algún banco y que permanezca abierta, considera:

A) Agregar a otra persona a la cuenta como arrendatario conjunto, o

B) Señalar a un oficial que pueda tener acceso la caja de seguridad. Un banco normalmente no va a reconocer el poder notarial por la naturaleza confidencial de las cajas de seguridad.

Clave para llevar

➔ **Estar deportado no significa que tienes que dejar su dinero que ha ahorrado con mucho esfuerzo. Debe considerar cudadosamente si puede tener acceso a su cuenta bancaria en su lugar de residencia o si sería más fácil cerrar su cuenta bancaria.**

Lista de Verificación para Vender un Coche

- ☐ Si decide vender su coche, asegúrese de poner los términos de la venta por escrito y de recibir el pago del vendedor en efectivo o con un cheque certificado para limitar las posibilidades de fraude.

- ☐ Si todavía debe dinero del coche, comuníquese con todos los prestamistas con el objetivo de coordinar la venta del coche:

  - Comuníquese con los prestamistas que tengan derechos sobre su coche antes de llevar a cabo el proceso para determinar cuanto va a tener que pagar para obtener la aprobación de la venta y así poder transferir la propiedad al posible comprador. Si no tiene suficiente dinero para liquidar los préstamos del coche antes de encontrar a un comprador, puedes usar el pago del comprador para liquidar los préstamos.

- ☐ Hay recursos en las bibliotecas y paginas de Internet, incluyendo el "Kelley Blue Book" (disponible en www.kbb.com), que le va a ayudar a determinar el precio de venta promedio en el que está su coche en esa área.

- ☐ Antes de permitir que un posible comprador haga una prueba de manejo con su coche, verifique su póliza de seguros para asegurarse que cubre las pruebas de manejo.

- ☐ Cuando venda su coche, debes notificarle inmediatamente a su compañía de seguros de su coche para dar por terminada la póliza.

- ☐ Asegúrese de remover las placas, estampa de registro, y la estampa de inspección del coche; cuanto antes, regrese las placas al departamento de automóviles.

  - Recuerde llenar ante el departamento de automóviles todas las formas necesarias para transferir el titulo de propiedad y para efectos de los impuestos de la venta.

Clave para Llevar

➔ **Debe guardar todos los documentos importantes, como los documentos de registro y la información del seguro del coche juntos, para que los pueda encontrar rápidamente, coméntele a alguien más donde están en caso de que se necesiten. Antes de empezar con el proceso de venta, determine el valor de mercado del coche y el precio más bajo que esta dispuesto a aceptar. Si vende su coche asegúrese de poner los términos de la venta por escrito y de recibir el pago del comprador en efectivo o con un cheque certificado.**

Lista de Verificación para los Contratos de Arrendamiento o Renta Residencial

- ☐ Deberá investigar si va a tener que pagar el resto de la renta pendiente de su contrato de arrendamiento o renta. Su responsabilidad se va a determinar por el contrato de renta y por la legislación local, entonces tal vez debería considerar buscar asesoría legal respecto a su renta; esta asesoría puede ser de una organización que brinde asesoría legal gratuita.

- ☐ Recuerde que tienes derecho de entrar a su casa para retirar las cosas de su propiedad dentro de un periodo de tiempo razonable- probablemente tres días o menos- después de que el contrato de arrendamiento haya terminado. Si no puede retirar su pertenecías o las cosas de su propiedad en un tiempo razonable, podrá ser responsable de indemnizar al propietario por los gastos de almacenamiento y disposición de la propiedad.

- ☐ Familiares que deseen continuar con su renta tienen tres opciones:

  1. Continuar con el contrato de arrendamiento original con el consentimiento del propietario;
  2. Dar por terminado el contrato de arrendamiento original y celebrar un nuevo contrato de arrendamiento con el consentimiento del propietario; o
  3. "Concluir" con la renta por medio de una asignación o subarrendamiento suyo.

- ☐ Debe investigar si su contrato de arrendamiento o renta permite una asignación o un subarrendamiento y si el contrato de arrendamiento especifica qué puede hacer el propietario si abandonas la propiedad.

- ☐ Debe organizar que una persona de confianza tenga llaves para asegurar que alguien pueda retirar las cosas de su propiedad dentro de un tiempo razonable en caso de que lo detengan o deporten.

Clave para Llevar

➔ **Analizar su contrato de arrendamiento para verificar si será responsable por la renta que se debe y si podrá asignar o subarrendar a los miembros de su familia. Asegúrese de retirar tus pertenencias dentro de un periodo razonable de tiempo.**

Lista para Propiedad de Vivienda

- ☐ Si vende su casa propia o a la sede como un regalo, va a necesitar expedir una escritura pública, que es un documento que registra una prueba de propiedad de una casa o un terreno.

  - Debe ponerse en contacto con el registro del condado o la oficina del secretario, así como con una compañía de titulo, y pregúntales acerca del contenido y forma que requiere una escritura pública, así como cualquier otro trámite o papeleo que se necesite presentar al mismo tiempo que la escritura publica.
  - Tal vez quiera considerar otorgar una escritura conocida como "quitclaim", que le permite la transferencia de la propiedad sin crear ningún tipo de promesa que el comprador puede hacer valer en su contra.

- ☐ Si regala su casa, va a necesitar presentar las formas de impuestos adecuadas.

  - Generalmente, un impuesto para la transferencia de la propiedad se le impondrá a su regalo, a menos que exista una exención o que en su estado no se cobre impuestos por transferencias de casas. Además, los condados locales y ciudades pueden cobrar un impuesto adicional.
  - A pesar de que le está dando a la propiedad como un regalo y no está recibiendo dinero por esta transferencia de la propiedad de la casa, su estado seguramente va a necesitar que llene una forma de declaración de impuesto sobre la renta estatal.
  - Determine si tu hipoteca se puede transferir al comprador y, en caso de que se pueda, que formas se deben llenar para llevar a cabo la trasferencia de la hipoteca.
  - Paga cualquier tarifa y registra la trasferencia de la hipoteca en el condado o en la ciudad.

- ☐ Transfiera las facturas de servicios públicos, seguro, y otras responsabilidades al nombre del receptor o comprador de la casa.

- ☐ Contrate los servicios de un corredor de bienes raíces, o si va a vender la casa por su cuenta, debe familiarizarse con el proceso de venta. También puede ser ventajoso tener un abogado que se dedique a casos de bienes raíces que pueda asegurar que se cumplan todas las leyes de su área.

  - Haga saber al comprador los hechos materiales, tales como defectos y fallas. Las leyes estatales y federales van a determinar la medida de divulgación necesaria.
  - Localizar y prepare el contrato. Contratos de adhesión están disponibles en línea o por medio de un profesional de bienes raíces. Los documentos principales necesarios para la venta de una casa son: oferta de compra; contrato de ventas de bienes raíces, y declaración de divulgación de la propiedad residencial (incluyendo la divulgación de pintura con base de plomo). Otros documentos podrán ser necesarios, dependiendo de cada venta en específico.
  - Determine quién es responsable de hacer las inspecciones de la casa y de otros gastos basados en negociaciones con el vendedor. Establecer fechas límite de vencimiento para las inspecciones y aprobaciones de los informes de inspección. Establecer quién es responsable de hacer las reparaciones, en su caso, por mandato de los informes de inspección.

- ☐ Hable con los prestamistas a tiempo y de manera frecuente cuando pueda haber un problema para efectuar un pago de la hipoteca. Los prestamistas generalmente responden mejor si le notifica por adelantado en vez de esperarte y convertirse en un incumplido de su hipoteca.

- ☐ Consulte a agencias de asesoría de vivienda para que le aconsejen acerca de como tratar con los pagos vencidos y de las alternativas para la ejecución de la hipoteca. En el ambiente económico de hoy, los prestamistas están más dispuestos a negociar con los prestatarios en vez de iniciar una ejecución de hipoteca.

Claves para llevar

➔ **Debe estar consciente de que una vez que transfiere su casa a alguien como un regalo, ya no podrá tener ningún derecho legal sobre esa propiedad. Además, pueden haber impuestos significativos debido al dar su casa a alguien como un regalo.**

➔ **Su casa tal vez sea su activo mas valioso, por lo tanto es importante que la venta de su hogar vaya de acuerdo con todas las leyes. Un agente de bienes raíces puede ser de gran ayuda, y es recomendable contactar a uno si no está familiarizado con el proceso de venta.**

Lista de Verificación para Transferir o Vender un Negocio

- ☐ Transferir o vender un negocio le puede tomar mucho tiempo. Si es dueño de un negocio, tal vez quiera planificar con anticipación para prepararse para una posible deportación. Es posible que desee considerar la concesión de poderes notariales en caso de deportación.

- ☐ Debe familiarizarse con el proceso y con los requisitos básicos para transferir un negocio. Cuando un dueño de un negocio vende o regala su empresa, él o ella ya no tiene el derecho de controlarla ni de obtener ninguna ganancia de ella. Además solo algunas personas pueden encargarse de un negocio: por ejemplo: los únicos propietarios deben ser mayores de 18 años de edad y ser legalmente competentes (esto es, no estar incapacitado de alguna manera).

- ☐ Dependiendo de las leyes del estado, condado, y de la ciudad, puede que tenga que disolver la empresa y el beneficiario puede tener que volver a registrarse en el nombre del destinatario Consulte a las agencias de la ciudad, condado y del estado para una orientación adicional en este proceso.

- ☐ Deberá transferir cualquier hipoteca o préstamos de los activos de la empresa al nuevo propietario. Al hacer esto, usted no será responsable de las obligaciones una vez que deje de estar involucrado en el negocio. Si usted tiene acuerdos que no le permiten la transferencia de estas obligaciones, tratar de renegociar ellos.

- ☐ Transferir, o pedir al nuevo propietario que vuelva a solicitar, cualquier licencia estatal (por ejemplo, licencias para vender bebidas alcohólicas o billetes de lotería), permisos de zonificación o otras autorizaciones aplicables. Obtener la adecuada aprobación de las agencias del gobierno puede tardarse varios meses.

- ☐ Pida consejo a un asesor fiscal calificado para garantizar el cumplimiento de todas las normas y regulaciones fiscales aplicables.

- ☐ Informar al nuevo propietario de todas las cuestiones e información requerida para operar el negocio. Tus conocimientos técnicos y experiencia son un elemento esencial para que el negocio siga teniendo éxito.

Clave para llevar

➔ **Transferir o vender un negocio es un proceso importante y complejo. Las reglas y regulaciones locales van a determinar los pasos necesarios para transferir de manera correcta un negocio a un nuevo dueño. Consúltelo con las agencias locales de la ciudad, condado, y del estado para orientación adicional en el proceso.**

Lista de Verificación para Deuda de Tarjeta de Crédito

- ☐ Si tiene tiempo antes de irse del país, debería comunicarte con sus prestamistas, notificarles la situación y proporcionales una dirección en su país de origen o de nueva residencia. Asegúrese de comunicarse con ellos por teléfono y por correo electrónico, enviarles una notificación de un correo certificado, y solicite un acuse de recibo.

- ☐ Si usted es sujeto de deportación inmediata, deberá guardar un registro de la información de contacto del acreedor accesible y enviar un pago al prestamista al llegar a su nuevo país de residencia. También deberá tratar de comunicarse con el prestamista después de la deportación para proporciónale una dirección de correo actualizada.

Clave para llevar

➔ **Su deuda no será cancelada por salir del país. Muchos bancos y prestamistas son multinacionales y pueden tratar de cobrar la deuda fuera de los Estados Unidos si la deuda no se paga.**

Lista de Verificación para Seguridad Social y Beneficios de los Veteranos

- ☐ Si usted era un asalariado en los Estados Unidos y recibía beneficios de seguridad social, sus hijos y otros dependientes pueden seguir recibiendo beneficios si son ciudadanos americanos.

- ☐ Si usted era un asalariado en los Estados Unidos, y recibía beneficios de seguridad social y sus dependientes no tienen estatus legal en los Estados Unidos, debe hacerles saber que ellos no pueden recibir beneficios si se encuentran fuera de los Estados Unidos por cualquier lapso de tiempo. Usted no podrá recibir beneficios de seguridad social una vez que la Administración del Seguro Social sea notificado de que ha sido deportado. Sin embargo, si está admitido legalmente a los EE.UU. para la residencia permanente después de ser deportado, los beneficios que estaban pendientes de pago a causa de su deportación pueden ser pagables cuando te readmitan.

- ☐ Si era un asalariado, los pagos a los beneficiarios de la seguridad social pactados para después de su muerte, no se harán a menos de que lo vuelvan a admitir en los EE.UU. para una residencia permanente después de que lo hayan deportado.

- ☐ Si recibe beneficios de seguridad social como un dependiente de un asalariado, y lo deportan, pero no deportan al asalariado, el asalariado va a seguir recibiendo beneficios.

Clave para llevar

➔ **Deportación de un inmigrante que sea asalariado o sus dependientes puede afectar los beneficios de seguridad social y de los veteranos. Si es un asalariado, sus dependientes van a seguir recibiendo beneficios si son ciudadanos de los EE.UU. pero si no tienen un estatus legal, debe asegurarse que ellos entiendan que no pueden recibir beneficios en su record durante ningún mes que ellos estén afuera de los EE.UU. por cualquier lapso de tiempo.**

Lista de Verificación para Presentar Cuestiones de Impuestos

- ☐ Incluso si no es un residente permanente lega a efectos de la legislación de inmigrantes, puede ser – y si ha vivido en los EE.UU. por un largo tiempo, probablemente son – un residente extranjero para los propósitos de legislación fiscal.

- ☐ Si usted es un extranjero no residente para efectos fiscales, deberá llenar la forma 1040NR o la forma 1040NR-EZ al final del año fiscal para poder recibir cualquier reembolso por el ejercicio.

- ☐ Si usted es un residente extranjero para efectos de la legislación fiscal, debe llenar la forma 1040 al finalizar el año fiscal como lo hubiera hecho si estuviera en los Estados Unidos.

- ☐ El cónyuge de un residente puede presentar sus devoluciones de impuestos conjuntamente con su cónyuge deportado si el cónyuge deportado decide ser tratado como un residente extranjero para efectos fiscales. En ese caso, el cónyuge deportado debe declarar su ingreso en todo el mundo.

- ☐ Si usted no presenta sus formas de impuestos adecuadas, podrá ser sujeto a penalizaciones en material civil y penal. Esto tal vez hará que le sea imposible volver a inmigrar a los Estados Unidos en un futuro.

- ☐ Todas las formas necesarias están disponibles en el IRS en la página web siguiente: www.irs.gov.

Clave para llevar

➔ **Si lo deportan, aún así deberá presentar la forma 1040 o la 1040 NR, de manera adecuada, como si la estuviera presentando al finalizar el año fiscal. La presentación de una devolución de impuestos le va a permitir recibir los impuestos que pago de más y los créditos de impuestos – tales como el Crédito fiscal del Ingreso Ganado[2] – que le deben.**

[2] Incluso si usted no es residente legal, usted todavía puede ser un residente extranjero para efectos fiscales. Si usted ha estado en los Estados Unidos por más de seis meses, es probable que sea un residente extranjero a efectos fiscales. Como un extranjero residente, usted es elegible para el Crédito Fiscal sobre Ingresos.

Lista de Verificación para Activos, Propiedades y Beneficios de Menores

- ☐ Se aplican normas especiales a la propiedad en poder de un menor de edad. Estas normas varían de estado a estado, y un experto en las reglas específicas a su estado debe ser consultado para cualquier pregunta o asunto
- ☐ Haga una lista de todas las cuentas bancarias, registros de automóviles, o tarjetas de crédito para que usted y su hijo menor de edad son cofirmantes. Si es posible, actúe o tome medidas antes de la deportación para proteger estos bienes.
- ☐ Si su hijo menor de edad tiene la posesión de propiedades de mucho valor económico, considere trasferir la titularidad legal de la propiedad a otro tutor o custodio bajo el estatuto UTMA o UGMA de su estado si usted es deportado.
- ☐ Haga una lista de todas las situaciones en donde actúa en calidad de fideicomisario, tutor o custodio de los activos que sean para beneficiar a su hijo menor de edad (incluyendo inversiones, herencia, cuentas de ahorro para educación, y activos sujetos a un fideicomiso). Considera transferir el control sobre esos activos a otro adulto si es deportado.
- ☐ Haga planes para los beneficios del gobierno que su hijo menor de edad reciba y que puedan verse afectados con tu deportación.
- ☐ Si su hijo menor de edad abandona el país con usted durante la deportación, deberás consultar a un profesional con experiencia para determinar si los activos de su hijo se pueden vender, en caso de que se pueda, como se pueden vender y sacarlos del país junto con él o ella.
- ☐ Usted y su hijo pueden solicitar que cualquier tutor o fideicomisario que este administrando los activos de su hijo le rinda cuentas para asegurar que los activos estén seguros y que están siendo administrados apropiadamente.
- ☐ Si tu hijo menor de edad es responsable y maduro, deberías considerar una solicitud de emancipación en caso de ser deportado para que su hijo pueda tomar el control legalmente de sus propios asuntos.

Lista de Verificación para la Custodia de los Hijos

- ☐ Podrá nombrar a una persona como el tutor temporal de su hijo(s) al otorgar un poder para actos de administración y al ejecutar una forma de designación de tutor temporal. Las autoridades no están obligadas a aceptar la designación de tutor temporal, pero es mejor que no tener nada.

  - Aunque un tribunal va a tomar en cuenta muchos factores al determinar un tutor legal para su hijo (s), el factor mas importante siempre son "interés superior del niño."Es posible que un tribunal vaya a considerar el estatus de indocumentado de un individuo como un factor contrario a los mejores intereses del menor.

  - También es una buena idea nombrar un tutor que cuide a su hijo menor de edad para después de su muerte en su "última voluntad y en su Testamento". El tutor va a necesitar presentar una solicitud ante el tribunal para ser designado formalmente.

- ☐ Usted debe mantener en un lugar seguro el acta o certificado de nacimiento de su hijo menor de edad, tarjeta de seguridad social y pasaporte(s), cualquier orden de custodia o acuerdos de custodia, la Forma de Designación de Tutor Temporal, su Ultima Voluntad y Testamento. También debe decirle a alguien de confianza donde pueden encontrar estos documentos importantes, si usted está detenido.

- ☐ Si hay más de un tutor legal de su hijo menor de edad, ambos están obligados a solicitar el pasaporte de su hijo. Debe llenar una declaración de consentimiento o de circunstancias especiales (DS-3053) que se protocolizará ante notario, si los padres o el tutor legal no pueden o no están en condiciones de solicitar el pasaporte del menor personalmente.

How Children Move Through the Child Welfare System

Child Protective Services

Allegations of abuse or neglect called into CPS Hotline

Allegations meet investigation standards?

YES — CPS INVESTIGATES

NO

Investigation: Allegation substantiated?

YES

NO

Investigation: Is child in imminent danger?

YES

NO

Refer to community services
(alternative response, differential response, etc.)

Offer services
(substance abuse, domestic violence, family preservation, kinship placement)

Services successful?

YES

NO

Close file and/or monitor case

One day to six months from hotline call

CPS files Petition for Dependency

Child Welfare Courts

Parents offered services

Child placed in:
1) Kinship care or
2) Non-relative foster care or
3) Congregate care
Agency monitors case

YES

Shelter Care/ Preliminary Protective Hearing: Should child be removed from home?
ICWA*

NO

Offer services and/or monitor case

72 hours after filing petition

Child continues in:
1) Kinship care or
2) Non-relative foster care or
3) Congregate care
Agency monitors case

YES

Adjudicatory/Fact-Finding Hearing: Are the allegations against the parents true?
ICWA*

NO

May offer services, monitor case or close case

15 to 90 days after first hearing

Parents ordered into services

Concurrent Planning:
Usually plan for reunification and another permanency option
Court/review board monitors case (every six months)

YES

Dispositional/ Dependency Hearing: Is child a ward of the state (dependent)?
ICWA*

NO

3 to 30 days after second hearing

Permanency Planning Hearing:
Determine best permanency option
ICWA*

- Reunification with parent(s)

OR

- Adoption (requires termination of parental rights)

OR

- Guardianship

OR

- Alternative permanent placement (usually foster or kinship care)

12 to 18 months after first hearing
(every six months thereafter, if needed)

***Indian Child Welfare Act (ICWA)**
State must notify tribes of youth with native ancestry at each of these points. Tribe may choose to:

1) Take over jurisdiction
2) Transfer case to tribal court
3) Become a party to case but leave it under state's jurisdiction

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