

FOR IMMIGRANT PARENTS

Immigrant parents who are worried that they may be separated from their child because of an immigration action, such as an arrest, detention, or deportation, should consider making a plan now for the future care and custody of their children. There are several tools for parents. Parents should consult with an attorney to discuss their needs.

Standby Guardianship for Future Care and Custody

A parent can choose a “standby guardian” to take care of a child if the parent becomes separated from the child due to an immigration action, such as an arrest, detention, or deportation.

By naming a standby guardian, parents can feel secure that if they are separated because of immigration action, their child will be properly cared for by someone of their choosing. This reduces the risk that the child will go into foster care.

Choosing a standby guardian does not mean that a parent is giving up his or her parental rights. The guardianship goes into effect **only** if separation occurs. Parents can revoke a standby designation at any time.



How to Designate a Standby Guardian

The most common option allows parents to complete a form that will name the standby guardian. The form is signed by the parent, the standby guardian, and two witnesses. If a triggering event, called an “administrative separation”, occurs, the standby guardians can act as guardian. An administrative separation is when an immigration authority separates, or threatens to separate, a parent from their child with an action like detention or deportation. If the administrative separation occurs, the standby guardian must go to Family or Surrogate’s Court within 60 days of the separation to become the permanent guardian.

Designation of Person in Parental Relationship

In addition, or as a separate option, parents can complete a form called “Designation of Person in Parental Relationship” to name an adult authorized to make basic medical and educational decisions for their child. The form is signed by the parent and must be notarized. The designation is valid for a maximum period of one year. To extend the designation, the parent must be available to sign and notarize the form once it expires. Like standby guardianship, parents can choose to make the designation valid only if separation occurs and can be revoked at any time.

This option gives more limited powers to the named adult than standby guardianship and does not require going to court.

How can I get help?

Immigrants interested in standby guardianship and future care planning for their children should speak with an attorney.

For more information, parents can call NYLAG’s information line:

(212) 659-6188