

SPECIAL ISSUES FOR CHILDREN OF DEPORTED PARENTS

June 2017
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Immigrant Families Today

- ▶ Immigrant families: “mixed status”
 - A majority of families (54%) that include at least one unauthorized adult also include at least one citizen, usually a child. (Pew Hispanic Center, 2011)
- ▶ Immigrant families with children experience greater poverty
 - For families with children under age of 18, non-citizen families had the highest rate of poverty of any group in NC (39.3% compared to 20.4% for native-born)(UNC, James Johnson study, 2014)

Recent Developments in Immigration

- Erasure of previous priorities that focused on serious criminals
- Elimination of proposed DAPA program for parents of U.S. citizens

Executive Order: Enhancing Public Safety in the Interior of the United States

(January 2017)

- ▶ **Sec. 5.** Enforcement Priorities...the Secretary of Homeland Security...shall prioritize for removal...removable aliens who:
 - ▶ (a) Have been convicted of any criminal offense;
 - ▶ (b) Have been charged with any criminal offense, where such charge has not been resolved;
 - ▶ (c) Have committed acts that constitute a chargeable criminal offense;
 - ▶ (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
 - ▶ (e) Have abused any program related to receipt of public benefits;
 - ▶ (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
 - ▶ (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

- ▶ **Sec. 7.** Additional Enforcement and Removal Officers. The Secretary...shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers

DAPA Program Formally Rescinded

- ▶ From the Department of Homeland Security:
- ▶ “On June 15, [2017], Department of Homeland Security Secretary John F. Kelly, after consulting with the Attorney General, signed a memorandum rescinding...the program known as Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”) ...”
- ▶ “The rescinded memo purported to provide a path for illegal aliens with a U.S. citizen or lawful permanent resident child to be considered for deferred action.”
- ▶ “[T]he Deferred Action for Childhood Arrivals (DACA) program will remain in effect.”

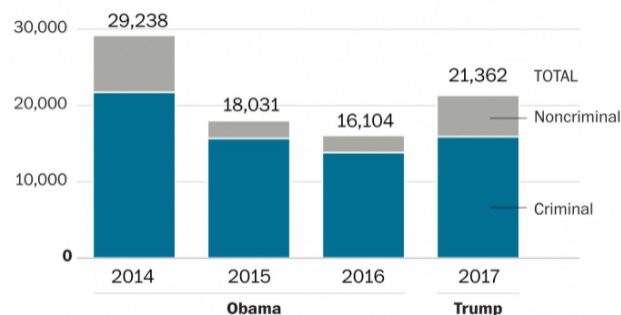
Immigration Arrests of Non-Criminals Increasing Compared to Previous 2 Years

The Washington Post

April 16, 2017

How immigration arrests fare under Trump

From January 20 to March 13, by year.



Source: Immigration and Customs Enforcement

THE WASHINGTON POST

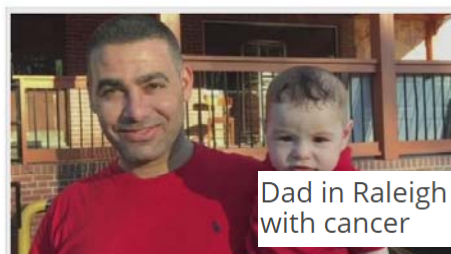
Deportation Statistics

- ICE arrests have increased under the new administration, especially of non-criminal immigrants.
- But deportations have slowed down. Immigration courts are backlogged and underfunded.



*Statistics from 1/20/17 - 4/24/17 and same period in previous years.

Families Facing Deportation



WNCN.com

June 6, 2017

Dad in Raleigh facing deportation has daughter with cancer

Image of Mosa Hamadessa supplied to CBS North Carolina



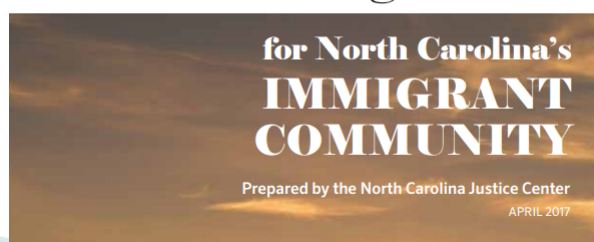
American Friends
Service Committee



Emergency Planning for Immigrant Families

- ▶ NC Justice Center is leading Power of Attorney and emergency preparedness clinics around Eastern NC
- ▶ We are training attorneys across the state and providing informational materials to families

An Emergency Planning Guide



Goals of Emergency Planning

- ▶ Have a family who might face deportation prepare by:
 - Developing an Emergency Contact Sheet
 - Keeping Important Documents and Information in a Safe Place
 - Making a Plan to Care for Their Property and Household Finances
 - Making a Plan to Care for Their Children
 - Making a Plan to Care for Their Pets
 - Preparing Powers of Attorney
 - Connecting With Their Community

Emergency Guide

- ▶ Emergency Guide provides a place for families to store important information about their:
 - Children
 - Children's medical histories
 - Preferred caregivers for their children (non-binding)
 - Finances (bank accounts, cars, etc.)
 - Family contacts abroad
 - Emergency contacts
- ▶ The Guide also provides informational handouts on:
 - Obtaining a U.S. passport for citizen children
 - How your minor child can travel abroad without a parent
 - How your child can enroll in school without a parent
 - What are Powers of Attorney
 - And more...

Statutory Basis for Powers of Attorney

- ▶ Statutory Basis for Powers of Attorney: NC Gen. Stat. Chapter 32 A.
- ▶ Terminology:
 - Principal: the person giving away the powers to someone else to perform acts in his/her name
 - Agent: the person receiving the powers to perform acts for another
- ▶ Durable POAs are *broad and sweeping*
 - Emphasize this with clients; importance of picking trusted agent
- ▶ POA itself does not give "instructions" to the agent
- ▶ Agent has a fiduciary duty to the principal to act responsibly/in the interests of the principal

Advising Families about Selecting an Agent to Manage their Affairs

- ▶ We ask the family who they have selected to be their agent, and what is their relationship to that person? (friend, brother, child, etc.)
- ▶ Advise on the importance of picking trusted person
- ▶ Special Advice about types of agents:
 - Young adults/adult children who are 18–21 years old: Ok to pick, but advise family about whether young person is mature enough for the task
 - Spouses: Ok to pick, but make sure they understand that a legal/biological parent of a child does not need a POA to take care of their own child. For child-related matters, the family may want to pick a third party.
 - Undocumented agents: Ok to pick, but advise about risks if that person is deported. Family can pick a contingent agent.
 - Agents out of the country: Strongly recommend against, even if the person has a “valid visa” to come in and out of the U.S.

Different Family Situations

- ▶ **Single parent; other parent is deceased**
 - One parent can sign the child-related POA docs alone.
- ▶ **Parents divorced or separated (never married); one parent has sole legal and physical custody with a court order**
 - The one parent with sole custody can sign the POA docs alone.
- ▶ **Parents divorced or separated (never married); parents have joint custody with a court order**
 - Allow one parent to sign the docs alone.
 - HOWEVER, must explain to parent that if the other biological/legal parent objects to the situation, the biological parent will probably trump over the third party who has POA powers.
- ▶ **Missing Parent (one parent has abandoned/rarely in touch) and no custody order in place:**
 - Same as above – if missing parent shows up in the future, his rights as biological father will probably trump over the third party with the POA.
 - Advise these families to seek advice of family law attorney re – formalizing their custody over their child.
- ▶ **Parents are together – a happy couple!**
 - Preferable to have both parents sign the POA documents as they relate to children.
 - If only one parent is present at the consultation, allow one parent to sign the docs but explain same as above – that if the other parent objects to the granting of POA powers to a third party, the other parent’s rights will probably trump.
 - Best to have both parents there and on the same page.

Power of Attorney Documents

- ▶ Four Forms to Fill out for Each Client:
 - Durable Power of Attorney
 - Modeled off the standard Durable Power of Attorney in Chapter 32A of the General Statutes, with a few modifications
 - DMV POA
 - Only if they are title owner of a car or mobile home
 - This is a standard form offered by NC DMV
 - Authorization to Make Health Care Decisions for a Minor
 - Modeled off the standard language in Chapter 32A of General Statutes
 - Power of Attorney to Make Educational Decisions for my Child

Power of Attorney To Make Educational Decisions About My Child(ren)

State of North Carolina
County of _____

I, _____, appoint _____, to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to making educational decisions and other decisions about the care of my children.

In the event the person named above is unable or unwilling to serve as so appointed, I appoint _____, to be my contingent attorney-in-fact.

I am the parent or legal guardian of the following child(ren):

{Space to add Names and Ages of Children}

It is my desire that my children be cared for by and reside with the attorney-in-fact named in this Power of Attorney.

I give my attorney in fact the power to make educational decisions for the child(ren), including enrolling my child(ren) in school, receiving notices of discipline under G.S. §115C-391, attending conferences with school personnel, granting permission for school-related activities, authorizing services for my child(ren) that are designed to provide educational benefit and/or access to a free, appropriate public education in public school, to negotiate and approve on my child(ren)'s behalf reasonable accommodations in education services, and to have access to my child(ren)'s school records and other personal education information.

I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.

This is a DURABLE POWER OF ATTORNEY. This power shall not be affected by my subsequent incapacity or mental incompetence.

The powers herein granted shall exist to their full extent in any jurisdiction, including any State of the United States of America and in any foreign country where such powers may be necessary. The powers herein granted shall exist to their full extent regardless of my whereabouts within or without the United States of America;

_____ (initial if applicable). This Power of Attorney has been provided to me at the moment of execution in both the English language and the Spanish language. I am able to understand the Spanish language fully and understand the terms and conditions contained herein.

Families Need Advice on Difference Between POA and Custody

Seek Family Law Advice: The documents we filled out for you today do not grant “legal custody” of your children to the agent. They give certain limited powers to the agent you have selected to make health care decisions and educational decisions for your children. However, they are not a substitute for legal custody. If your goal is to have your children live long-term with a caregiver in the United States, you should consult the advice of a family law attorney about what steps would need to be taken to transfer custody of your children to that person in the future if that is what you desire. There are a lot of factors to consider in this decision, and a family law attorney can help you make those decisions.

NOTE: If you are a single parent, divorced or separated, and you currently do not have a formal custody order for your child, contact a family law attorney to get more advice about your situation. A Power of Attorney form does not take away the rights of the child’s parents. If you have concerns about your child living with or being cared for by his or her other parent in your absence, we recommend that you talk to a family law attorney about your situation.

Enrollment of Your Children in School: The power of attorney form that you signed is probably not going to be good enough, by itself, to allow your child’s caregiver to enroll your children in school. The caregiver is going to need to sign some additional documents when and if they need to enroll your children in school. We have given you more detailed information about how a caregiver (who is not the parent) can enroll a child in school in North Carolina.

Is a Power of Attorney the Same Thing as a Custody Order?

No. The Power of Attorney does not give legal custody of your children to the agent. You can only transfer legal custody of your children to someone else by a court order. The Power of Attorney will help the agent be able to make health care decisions and educational decisions for your children. If your goal is to have your children live long-term with a caregiver in the United States, you should consult the advice of a family law attorney about what steps would need to be taken to transfer custody of your children to that person in the future if that is what you desire. There are a lot of factors to consider in this decision, and a family law attorney can help you make those decisions.

Will my child’s other parent be able to take my child if I get deported?

A Power of Attorney form does not take away the parental rights of either of the child’s parents. If you are a single parent, divorced or separated, and you currently do not have a formal custody order for your child, you may want to consult with a family law attorney to get more advice about your situation. If you have concerns about your child living with, or being cared for, by his or other parent, we recommend that you talk to a family law attorney about getting a court order.

Enrolling a Child in School

Rights Of Children Living With Caretakers

Thousands of children in North Carolina live with caregivers who are not their parents. Most often, those caregivers are the child’s relatives. But, caregivers can also be friends of the child or neighbors.

Why Do Some Children Need Caregivers?

The child’s parents may be in drug or alcohol treatment programs, in jail, deceased, deported, on active military duty, homeless or terminally ill. The parent may have lost custody because of child abuse, abandonment or neglect or the parent may be unable or unwilling to care for the child.

Do I Need An Identification To Enroll A Child?

You should not need any kind of specific picture ID to enroll a child in school, whether or not the child is related to you.

Do I Need Legal Custody or Guardianship From The Court?

You don’t need to have court-ordered custody or guardianship to enroll a child in school.

What Documents Do I Need to Enroll A Child In School?

Under North Carolina law, a caregiver can use special documents to enroll a child in school:

- The NC Residency Affidavit is a simple two-page form that you can get from the school. If the parent is able to give written permission, the parent will also need to fill out a separate Affidavit form. The affidavits require a notary to witness your signature.

Strengths and Limitations: The Durable Power of Attorney

STRENGTHS	LIMITATIONS
Legally binding, comes from Chap 32A	Many people may be wary of giving a third party ability to engage in financial transactions for them. Best to create it without a "springing power" so it can be used immediately, but this could lead to abuse.
Critically necessary in order to help a third party conduct your financial affairs	Some banks require their <u>own</u> POA form to be used, have to check with bank about their rules.
Customizable, so families can choose which financial powers to give a third party, and which not to give.	

Strengths and Limitations: Educational/Caregiving POA

STRENGTHS	LIMITATIONS
Can act as a guidepost to DSS as to an adult the family has identified as a caregiver for their child	Not legally binding in regard to child custody -- court process needed (families are informed of this in materials and at the clinic).
May take child out of the "Dependent Juvenile" definition so as to remove them from DSS jurisdiction? Discuss with group!	Additional forms are needed per NCGS Chapter 115C to enroll a child in school (families are informed of this in educational materials and at the clinic)

Strengths and Limitations: Health Care of a Minor POA

STRENGTHS	LIMITATIONS
Legally binding, allowed by Chapter 32A	Can only be filled out by a legal/custodial parent, not a caregiver who does not have legal custody (per statute).
Ensures that at least children's critical medical needs can be taken care of if there is an emergency before legal custody or guardianship is finalized.	Some families may feel uncomfortable giving power to make these decisions to a third party.

Questions for Discussion

- ▶ Would your office use the Educational/Caregiver POA as a helpful tool in identifying a caregiver for a child who has come into your care?
- ▶ Would your office use the Educational/Caregiver POA to screen children out of the "dependent" definition entirely?
- ▶ Are there improvements to the Educational/Caregiver POA that you would like to see from the DSS perspective?
 - What are they?
- ▶ Are there concerns you have about use of the Educational/Caregiver POA?
- ▶ Are there other methods of helping parents plan for their possible absence that we should consider?

Neglected Juvenile

- ▶ does not receive proper care, supervision or discipline from parent, guardian, custodian, caretaker
- ▶ is not provided necessary medical / remedial care;
- ▶ has been abandoned;
- ▶ lives in injurious environment; or
- ▶ unlawful transfer of custody/is placed for care or adoption in violation of law.

Relevant if child lives where another child has

- died as a result of suspected abuse / neglect or
- been subjected to abuse / neglect by an adult who regularly lives in the home.

Dependent Juvenile

Needs assistance or placement because

1. Child has no parent, guardian, or custodian responsible for his / her care or supervision, or
2. Parent, guardian, custodian
 - a. is unable to provide for child's care or supervision and
 - b. lacks an appropriate alternative child care arrangement.

* Note: this chart applies to <i>children</i> only. Different eligibility for adults.	U.S. Citizen Children	Qualified Alien Children (Refugees, Asylees, LPRs (green card), Cuban/Haitian entrants, VAWA)	Other Legally Present Immigrant Children (temporary visas, U visas, TPS, and more)	Undocumented and DACA Children
Medicaid	Eligible	Eligible *no waiting period	<u>Eligible</u> *no waiting period	Not Eligible
Affordable Care Act	Eligible	Eligible *no waiting period	Eligible *no waiting period	Not Eligible
Food Stamps	Eligible	Eligible* *(but must wait 5 yrs)	Not Eligible	Not Eligible
SSI	Eligible	LPRs: Eligible after 5 yr wait. Refugees, asylees, others: Only eligible during first 7 yrs of status.	Not Eligible	Not Eligible

* Note: this chart applies to <i>children</i> only. Different eligibility for adults.	U.S. Citizen Children	Qualified Alien Children (Refugees, Asylees, LPRs (green card), Cuban/Haitian entrants, VAWA)	Other Legally Present Immigrant Children (Special Immig. Juvenile Status, temporary visas, U visas, TPS, and more)	Undocumented and DACA Children
Public housing/ Section 8	Eligible	Most are Eligible* *categories are slightly different from Medicaid/food stamps, no 5 yr waiting period)	Not eligible.	Not eligible
Child Protective Services (Inc. Title IV-B)	Eligible	Eligible	Eligible	Eligible
Title IV-E Reimbursement (adoption, foster care)	Eligible.	Eligible.	Not eligible.	Not eligible.

School Enrollment Issues

NCGS 115C-366 (a3): A student who does not reside in a local school administrative unit may attend school there if they live with an adult who *does* live in that unit as a result of one of the following:

- a. The **death, serious illness, or incarceration** of a parent or legal guardian.
- b. The **abandonment** by a parent or legal guardian of the complete control of the student as evidenced by the **failure to provide substantial financial support and parental guidance**.
- c. **Abuse or neglect** by the parent or legal guardian.
- d. The physical or mental condition of the parent or legal guardian is such that he or she **cannot provide adequate care and supervision** of the student.
- e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the **recommendation of the department of social services or the Division of Mental Health**.
- f. The loss or uninhabitability of the student's home as the result of a **natural disaster**.
- g. The parent or legal guardian is one of the following: [on active military duty or other military-related situations]

Contact Us

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