

Passport Policy

As of November 2007 and by agreement with the U.S. Attorney's Office, Pretrial Services is responsible to collect and maintain passports when the court has ordered that a defendant surrender the passport. All passports surrendered to Pretrial Services prior to November 2007 were returned either to the Department of State or the appropriate Immigration and Customs Enforcement (ICE) field office if the case was closed. If the case was still pending, the passport remained with Pretrial Services.

After 2007, in the Southern District of New York, the passport receipt form was modified to inform the defendant that he/she has 90 days from the date of sentencing to obtain an order from the court to have the passport returned. Prior to the sentencing, the officer is to remind the individual that his/her defense counsel should make the request at sentencing so that the AUSA is aware and can make any objections to the request. The notice at the bottom of the Receipt for Passport form (PS Form 41) reads as follows:

Upon adjudication of the case, your passport will be returned to the issuing agency, U.S. Department of State (or the U.S. Department of Homeland Security, Immigration and Customs Enforcement, in the case of a foreign passport). If at sentencing, you receive a term of probation, your attorney could petition the sentencing judge to have your passport returned to you immediately or to have it transferred from Pretrial Services to Probation. In absence of such an order, after 90 days, your passport will be sent to the appropriate authorities. If the charges against you are dismissed or if you are acquitted, contact Pretrial Services for your passport.

Defendant prohibited from applying for a new passport:

The pretrial services officer is to send a Form 40 "Notice Regarding United States Passport" to the Department of State if the order involves a United States passport.

United States Department of State
Office of Passport Policy and Advisory Services
2100 Pennsylvania Avenue N.W., 3rd Floor
Washington, DC 20037

Defendant surrendering passport to U.S. Pretrial Services :

If the court orders the defendant to surrender the passport, the officer should:

- specify when the passport is to be surrendered (usually at the post release intake interview)
- after obtaining the passport, give the defendant a receipt for the passport (PS Form 41) containing the defendant's name, the date the passport was surrendered, the passport number, the country of origin, the defendant's signature, and the officer's signature
- provide the administrative assistant with information necessary for the passport database
- retain the original signed copy of the receipt in the case file
- place the passport in an envelope with the defendant's name and passport number on it and place it in the passport safe (also include a copy of the passport receipt in the envelope)
- send a Form 40 "Notice Regarding United States Passport For Criminal Defendant" to the Department of State if the order involves a United States passport. If the order involves a foreign passport, send the Form 40A "Notice Regarding Foreign Passport For Criminal Defendant" to the appropriate field office of Immigration and Customs Enforcement (ICE) Detention and Removal Operations (DRO). [For assignments and addresses, see: <http://www.ice.gov/graphics/dro/contact.htm>.]

Defendant who cannot locate his/her passport:

- the officer must complete the Affirmation of Lost and/or Non-Possession of Travel Documents form (PSA SDNY form) and have the defendant sign it
- notify the court and the assistant United States attorney when the defendant cannot locate his or her passport

Disposition of surrendered passports:

When a passport is surrendered by a defendant, Pretrial Services becomes the custodian of the document. Passports should be retained pending their use as evidence or the disposition of charges, and then disposed of as described below. The date and method of passport disposition should be memorialized in the defendant's case file. If during the course of supervision a defendant's bail is revoked and the case transferred to an administrative caseload or if the defendant was never placed on supervision, it will be the responsibility of the administrative assistant to dispose of the passport as indicated below.

Defendant Not Convicted: The officer should return the document to the defendant. Exception: If the passport is known to have been issued in a false name, the officer should seek court permission to return the document to the Department of State (if a United States passport) or to the appropriate ICE DRO field office (if a foreign passport) unless the document is being held for evidentiary purposes in another proceeding.

Defendant Convicted : Absent specific directives from the court, the officer should return the passport to the Department of State (if a United States passport) or to the appropriate regional office of Immigration and Customs Enforcement (if a foreign passport). Send with the passport an updated copy of the Form 40 or Form 40A that was used for the original notification, along with a copy of the Judgment. The Judgment accompanying foreign passports being sent to ICE DRO should be certified whenever possible. Pursuant to the agreement between the U.S. Attorney's Office and U.S. Pretrial Services, if a defendant is sentenced to probation, he/she should have his/her attorney petition the sentencing judge to have the passport returned immediately or transferred from Pretrial Services to Probation. In absence of such an order, after 90 days, the passport will be sent to the appropriate authorities (Department of State or ICE DRO field office).

Expired Passports should be handled the same as valid passports

- after the passport has been properly disposed of following the procedures listed above, the officer or the administrative assistant needs to notify the administrative assistant responsible for the passport database to update the information to reflect the disposal of the passport

Transfer of passport to U.S. Probation:

- the transfer of the passport from U.S. Pretrial Services to U.S. Probation can

occur with an order from a District Court Judge or Magistrate Judge

(a) after the Judgment and Commitment Order is entered when a defendant is sentenced to a term of probation, supervised release or time served or

(b) if the defendant is sentenced to a term of incarceration, after he has finished serving his term of imprisonment

- the Transfer of Passport form (SDNY form) must be completed by the officer after the order has been obtained from the District Court Judge or Magistrate Judge authorizing the transfer of the passport

- the original form will be retained by the pretrial services officer and both the U.S. probation officer and the assistant U.S. Attorney will be provided with a copy for their files

Passport-related forms:

The following forms are available on the home page under Passport-related forms or on the O: drive under Defendant-related forms

- PS Form 41 - Receipt of Passport form
- PS Form 40 - "Notice Regarding United States Passport For Criminal Defendant"
- PS Form 40A - "Notice Regarding Foreign Passport For Criminal Defendant,"
- Affirmation of Lost and/or Non-Possession of Travel Documents (SDNY form)
- Transfer of Passport (SDNY form)

Frequently asked Questions (FAQ's):

1. How much time does the defendant have to request the return of the passport?

As indicated on the Passport Receipt form, the defendant has 90 days from the date of sentencing to obtain an order from the judicial officer to have the passport returned or transferred from Pretrial Services to Probation. Prior to the sentencing, the officer should remind the defendant that his attorney should make the request at sentencing. The AUSA may object to the return of the passport and therefore should also be involved in this decision.

2. What if a defendant was released on bail with a condition to surrender their passport but pretrial supervision was not ordered?

Even if the defendant was not released with pretrial services supervision, the intake officer is required to obtain the passport from the defendant and send Form 40 "Notice Regarding United States Passport for Criminal Defendant" to the Department of State or in the case of a foreign passport, the Form 40A "Notice Regarding Foreign Passport For Criminal Defendant" to the appropriate field office of Immigration and Customs Enforcement (ICE) Detention and Removal Operations (DRO).

3. What if U.S. Probation asks Pretrial Services to send them the passport?

The agreement with the U.S. Attorney's Office is that Pretrial Services notify them when the passport is going to be transferred to the Probation Department. Pretrial Services MUST have an order from the court authorizing the transfer of the passport. Pretrial Services MUST send the U.S. Attorney's Office a Notice of Transfer form.