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March 23, 2020

U.S. Department of State
Bureau of Consular Affairs
Via email: NPIC@state.gov

To Whom It May Concern:

We are writing on behalf of the Academy of Adoption and Assisted Reproduction Attorneys (“AAAA”). AAAA is a credentialed, nonprofit organization of attorneys, judges and law professors throughout the world, all of whom are distinguished in the legal fields of adoption and assisted reproductive technology. We support and advocate for the rights of families and for ethical consideration of the interests of all involved in adoption and assisted reproduction.

A troubling circumstance, unique to our field, has arisen as a result of the COVID-19 pandemic and the resultant travel bans and restrictions on passports. By way of short explanation: one of the assisted reproductive technologies that help families grow is gestational surrogacy. This means an embryo not genetically related to the gestational surrogate, but is related to the intended parents, is implanted into the surrogate’s uterus. If a pregnancy is achieved, then the surrogate, also called a carrier, will gestate the pregnancy and deliver the intended parents’ baby. In many, even most cases, a court of competent jurisdiction in the United States, usually in the state where the baby is expected to be born, will issue a pre-birth Order of Parentage, directing that, upon birth, the Intended Parent are the legal parents and they shall have immediate custody. Our community serves both domestic and international clients. We are extremely concerned that international clients will be unable to obtain passports for their infants. As a consequence, they cannot travel home and will be forced to remain in the States for an indefinite period. Obtaining their babies’ passports from their home country is not usually an option, as, in most cases, that process can only occur in their home country. Of course, COVID-19 will not stop the births of babies. Currently, and in the coming weeks and months, hundreds or even thousands of U.S. gestational carriers will deliver babies who are the legal children of clients from abroad. Their fervent wish will be to take their children home as soon as possible, where they can obtain consistent newborn health care and the safe, customary shelter of home.

The closure of the State Department Passport Issuing Agencies is wreaking havoc on these parents. Among the very concerning issues are: health care for newborns who have no insurance here, health care for parents, who also do not have coverage here, and the financial drain on these families and our own health care resources during this public health crisis. Additionally, parents may have already come to the U.S. to avoid being locked down in their own countries-their travel visas will expire if they are unable to leave with their infants, putting them and their families at even greater risk.

While we as individual citizens, professionals and as part of the fertility community fully appreciate the severity of the COVID-19 outbreak and commend the gestures

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taken to protect all of us, we are struggling to assist our clients and their newborns. We respectfully ask for your help.

Our organization as a whole, and our individual members, would welcome the opportunity to assist in problem solving. At a minimum, we note that expedited passport services, routinely used by our international clients, could now be particularly useful. This would minimize in-person contact at the regional passport offices. Regardless of the specifics of any solution, though, these newborn passports must be issued on an emergency basis. This truly is an emergency, life or death situation for these families. We understand and appreciate that current travel restrictions may prevent immediate departures once the passport is issued. However, preventing a timely departure when the situation eases will be the certain result of not issuing passports for these children now. Developing and implementing a plan will serve not only the best interests of these children and their families, but will preserve and support the best care for everyone at risk during these most challenging times.

Thank you for your assistance.

Sincerely,



Margaret E. Swain, RN, JD
Attorney at Law
Director of ART, AAAAA
Chair, ART Legislative Committee



Catherine W. Keefe
President, AAAAA