



# TRUMP'S LATEST ATTACK ON BIRTHRIGHT CITIZENSHIP IS STILL BLATANTLY UNCONSTITUTIONAL

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Following [defeat in the Supreme Court](#) in *Trump v. Barbara* on constitutional grounds of a presidential order limiting birthright citizenship, President Trump signed two new executive orders on August 6, 2026, to limit birthright citizenship for those he [deems](#) not to “fall within the rule of birthright citizenship announced by the Supreme Court”:

- [Continuing to Protect the Meaning and Value of American Citizenship](#), which “identifies, non-exhaustively, and prescribes action concerning certain categories of children of aliens who do not fall within the rule of birthright citizenship as announced by the Supreme Court”; and
- [Ending Birth Tourism](#), which aims to “prevent the entry into the United States of, or the granting of any visa or other travel authorization to, any alien entering or attempting to enter the United States for the purpose of engaging in birth tourism; revoking the visa or travel authorization and permanently barring entry of any alien who enters or attempts to enter the United States for the purpose of engaging in birth tourism; denial of entry to, or removal of, any alien who previously engaged or plans to engage in birth tourism; or other appropriate action against entities, organizations, or individuals, within or outside of the United States, responsible for facilitating or enabling birth tourism in any manner.”

The first order identifies several categories of persons it asserts are not covered by birthright citizenship, including those with a parent who is an “alien enemy,” such as a member of a designated Foreign Terrorist Organization or a Specially Designated Global Terrorist; those with a parent who is a foreign government

employee, including ambassadors, certain embassy or consular employees, officials of foreign governments, or employees of international organizations with immunity; those whose parent engaged in a commercial transaction or fraudulent activity to obtain or access birthright citizenship, including arrangements to ensure that the mother or a surrogate is present in the United States or a U.S. territory to give birth; and those born in a U.S. territory or territorial waters where citizenship is not conferred by federal statute.

Even if a child is born in the US to any member of a designated terrorist organization, he or she is still a US citizen under the 14th amendment. A member of a designated terrorist organization is still subject to US law. They are not like children of members of an invading army who have seized control of US territory thus preventing the exercise of US jurisdiction. The child born in the US to a person who may have committed acts of terrorism is still a US citizen. The sins of the parent should not be passed onto a new born child.

Unless the parent personally enjoys diplomatic or comparable immunity, however, the child should remain a U.S. citizen at birth. The order is ambiguous because it is unclear whether it applies only to employees who themselves possess immunity, or more broadly to any employee of an international organization that enjoys institutional immunity. If the latter interpretation were adopted, the child of a rank-and-file UN employee, such as a janitor who is fully subject to U.S. law, could be denied birthright citizenship—an absurd result that underscores the order's overbreadth.

A child born in the United States remains a U.S. citizen even if the parent entered through a commercial arrangement or so-called birth tourism. *Trump v. Barbara* covers birth tourism as well, a point underscored by Justice Alito's dissent criticizing that practice. Even if the child is born through a surrogate in the US, the child is a US citizen. If the surrogate is a US citizen herself, that should remove any doubt regarding the child's US citizenship.

Children born in territory where citizenship is not conferred by federal statute may not claim birthright citizenship. This seems to be American Samoa, and it is true that children born in American Samoa are not conferred US citizenship.

In the second order "Birth tourism" is [defined](#) as "(a) the entry of any foreign

national into the United States via a nonimmigrant visa for the purpose of giving birth on American soil; or (b) any effort by any foreign national to facilitate the entry of any foreign national into the United States via a nonimmigrant visa for the purpose of giving birth on American soil.” The order on birth tourism states that U.S. immigration laws “establish discrete categories of temporary nonimmigrant visas to allow foreign visitors into the United States for study, exchange, temporary employment, tourism, and other transitory activities that are now exploited by birth tourism operators. Participants in birth tourism schemes abuse these categories to establish a permanent foothold in the United States by securing the advantage of citizenship for their children and then potentially for themselves.”

Apart from being unconstitutional, the second order will sow confusion and fear well beyond the narrow category of people it purports to target. A long-term nonimmigrant who has been living lawfully in the United States in F-1, H-1B, L-1, O-1, or other temporary status, and who briefly travels abroad before returning while pregnant, could be wrongly suspected of entering for the impermissible purpose of giving birth. Consular officers and CBP inspectors may feel pressured to probe pregnancy, medical plans, family intentions, or future immigration possibilities, even where the person’s primary purpose remains study, employment, business, or another lawful activity. The order thus risks turning ordinary visa adjudications and admissions inspections into intrusive inquiries into reproductive status and motive, with unpredictable consequences for lawful visa holders, their employers, universities, and families. It may also deter pregnant nonimmigrants from traveling, seeking medical care, or candidly answering routine questions, because any mention of childbirth in the United States could be misconstrued as evidence of “birth tourism.” In this way, the order operates not merely as an attack on birthright citizenship, but as a dragnet that can chill lawful travel and destabilize settled lives even before any court strikes it down.

Both orders are blatantly unconstitutional and should meet the same fate as the initial executive order [rejected in \*Trump v. Barbara\*](#). The Fourteenth Amendment does not permit the President to create disfavored categories of children born on U.S. soil and then strip them of citizenship because of their parents’ status, motives, associations, or manner of entry. Nor may the government evade the constitutional command by recasting birthright citizenship as a privilege to be withheld from children whose parents it labels

undesirable. These orders would invite arbitrary enforcement, chill lawful travel, and unsettle the citizenship of children whom the Constitution places beyond presidential discretion. Courts should therefore reject this renewed attempt to narrow birthright citizenship and reaffirm the simple rule that has long anchored constitutional citizenship: with narrow exceptions, a child born in the United States and subject to its jurisdiction is a citizen at birth.