



Explainer: Trump Administration Issues New Executive Orders Targeting Birthright Citizenship and Birth Tourism

Introduction

On August 6, 2026, President Donald Trump [issued](#) two Executive Orders seeking to restrict birthright citizenship and prevent what the administration calls “birth tourism.” The orders come just five weeks after the Supreme Court’s June 30 decision in [Trump v. Barbara](#), which reaffirmed that nearly all children born in the United States are U.S. citizens at birth, regardless of their parents’ immigration status. The Court held that the [Fourteenth Amendment’s Citizenship Clause](#) establishes a broad territorial rule of citizenship, subject only to a small number of longstanding exceptions.

The first order, “[Continuing to Protect the Meaning and Value of American Citizenship](#),” directs federal agencies not to recognize U.S. citizenship for certain children born in the United States when neither parent is a U.S. citizen. It identifies four categories of children that the administration claims fall outside the constitutional guarantee:

1. Children with a parent who is an “alien enemy”;
2. Children with a parent who is a foreign government employee;
3. Children whose parents engage in certain commercial transactions involving birth in the United States, including surrogacy arrangements; and
4. Children born in U.S. territories or territorial waters where citizenship is not conferred by Federal statute.

The second order, “[Ending Birth Tourism](#),” focuses on the parents rather than the citizenship of their children. It directs the Departments of State and Homeland Security to take action against foreign nationals who use nonimmigrant visas to enter the United States for the purpose of giving birth, including potentially denying or revoking visas, refusing entry, and taking action against individuals or organizations that facilitate birth tourism. The scope of the issue, however, appears relatively limited. Even the highest estimates of births of this type represent [less than 1%](#) of the more than 3.7 million births in the United States each year.

This explainer provides an overview of both Executive Orders and examines their key provisions in light of the Supreme Court’s decision in [Trump v. Barbara](#). It also considers how the orders’ approaches to birthright citizenship and birth tourism relate to the constitutional principles and historical exceptions reaffirmed by the Court. Finally, it highlights the potential implications of the Executive Orders and the legal questions they may raise as the administration seeks to implement them.

Background: What Did the Supreme Court Decide in Trump v. Barbara?

The August 6 Executive Orders must be understood in light of the Supreme Court's decision in [Trump v. Barbara](#), which challenged President Trump's [January 20, 2025, Executive Order](#) seeking to deny birthright citizenship to certain children born in the United States to parents who were unlawfully or temporarily present. The Court held that the [Citizenship Clause](#) enshrined in the [Fourteenth Amendment](#) incorporates the longstanding common-law principle of [jus soli](#) (which literally means "the right of soil"), under which birth within U.S. territory generally confers citizenship.

While the Court [recognized](#) a limited number of historical exceptions, including children born to accredited foreign diplomats and children born in a territory outside U.S. sovereign control, it rejected creating new exceptions based on a parent's immigration status or domicile. The Trump administration argues that the August 6 Executive Orders fall within these narrow historical exceptions rather than attempting to revive the broader approach taken in the January 2025 Executive Order. However, several provisions of the new orders [appear to expand](#) these historical exceptions beyond the circumstances recognized by the Supreme Court, potentially raising significant constitutional and legal questions.

The American Civil Liberties Union (ACLU) and other advocacy groups have already [moved to challenge](#) the Executive Orders, arguing that they improperly attempt to circumvent the Supreme Court's recent ruling on birthright citizenship. On August 11, the groups asked a federal court to block the administration from enforcing the orders, setting the stage for another round of litigation over the scope of the president's authority to limit birthright citizenship.

First Executive Order: "Continuing to Protect the Meaning and Value of American Citizenship"

The first [Executive Order](#) is principally an attempt to identify additional categories of children whom the administration argues are not covered by the Fourteenth Amendment. It instructs federal agencies not to issue documents recognizing U.S. citizenship to a person born in the United States when neither parent is a U.S. citizen and one of four circumstances applies.

1. Foreign government employees

The order excludes children from birthright citizenship when either parent is a "foreign government employee," including ambassadors, certain foreign embassy or consulate employees, foreign government employees, and employees of international organizations with immunity. While the Supreme Court has long recognized an exception for children of accredited foreign diplomats because diplomatic immunity places their parents outside ordinary U.S. jurisdiction, the new Executive Order extends

this exception to broader categories of foreign government and international organization employees. Whether these individuals possess the type of immunity that places them outside U.S. jurisdiction, as required by the traditional exception reaffirmed in *Trump v. Barbara*, is [likely](#) to be an important legal question.

2. “Alien enemies” and foreign terrorist organizations

The order also excludes children from birthright citizenship when either parent is an “alien enemy,” defined to include members of a designated Foreign Terrorist Organization or individuals designated as Specially Designated Global Terrorists. Although the order relies on a historical exception for children of individuals associated with an enemy, the Supreme Court indicated that this exception applies when a foreign enemy actually controls the territory where the child is born. Membership in a designated foreign terrorist organization does not necessarily mean that the person or organization exercises such control, making the administration’s application of this historical exception likely to face judicial review.

3. Commercial transactions and surrogacy

The order also seeks to deny citizenship when a parent attempts to “[purchase or access](#)” birthright citizenship through a commercial transaction, including arrangements involving U.S.-based surrogates, or engages in fraud to obtain citizenship. This represents a significant departure from the historical exceptions recognized in *Trump v. Barbara*, which emphasized that birthright citizenship is based primarily on where a child is born and whether the United States exercises sovereign authority there, rather than on the conduct or intentions of the child’s parents. Because the order would make citizenship depend, at least in part, on parental conduct and commercial arrangements occurring before a child’s birth, its attempt to connect such conduct to the jurisdiction requirement could raise significant constitutional questions.

4. U.S. territories

Finally, the order addresses children born in U.S. territories or territorial waters where citizenship is not conferred by Federal statute. This provision appears to have a more limited effect. [American Samoa](#) is currently the principal U.S. territory where persons born there generally do not acquire U.S. citizenship by statute in the same manner as persons born in other U.S. territories.

While this provision largely reflects existing statutory treatment – which could be modified through legislation – rather than creating a new exception to the Fourteenth Amendment, its inclusion in the Executive Order is nevertheless concerning because it further blurs the distinction between the constitutional guarantee of birthright citizenship and citizenship rules established by Congress for certain territories. Rather

than clarifying the scope of birthright citizenship, the provision risks creating additional uncertainty about the citizenship rights of people born in U.S. territories.

Second Executive Order: “Ending Birth Tourism”

The second [Executive Order](#) takes a different approach. Rather than directly declaring that particular U.S.-born children are not citizens, it seeks to prevent foreign nationals from entering the United States for the purpose of giving birth. The available estimates suggest that birth tourism accounts for a relatively small share of births in the United States.

The Migration Policy Institute (MPI) [estimates](#) that between 22,000 and 26,000 U.S. births each year may be attributable to birth tourism. By comparison, the Centers for Disease Control and Prevention (CDC) [reported](#) approximately 9,600 births in 2024 to mothers whose addresses were outside the United States or its territories. Because the CDC figure includes births to mothers who may not have traveled to the United States specifically to give birth, it should not be treated as a direct measure of birth tourism. Even the higher MPI estimate, however, [represents](#) less than 1% of the more than 3.7 million births in the United States each year.

The order defines “birth tourism” as the entry of a foreign national into the United States on a nonimmigrant visa for the purpose of giving birth on American soil, or an effort to facilitate such entry. The order specifically contemplates actions such as denying or revoking visas, preventing entry into the United States, and taking action against individuals and organizations that facilitate birth tourism.

This order raises a somewhat different legal question from the first. The Supreme Court's decision in [Trump v. Barbara](#) directly addressed whether the president could deny citizenship to U.S.-born children who are otherwise covered by the Fourteenth Amendment. The Court held that the January 2025 Executive Order could add new restrictions.

The more difficult question is whether the administration can treat the mere purpose of giving birth in the United States as a sufficient basis for denying admission or revoking a visa, even when the traveler otherwise complies with immigration requirements.

What Happens Next?

The Executive Orders are likely to face [legal challenges](#). Although the administration's decision to issue narrower orders rather than simply revive the January 2025 policy appears designed to respond to the limits established by the Supreme Court, several provisions nevertheless appear to push beyond the narrow historical exceptions recognized in *Trump v. Barbara*. The central legal dispute will be whether the administration is implementing existing exceptions or purporting to use executive

authority to create new limitations on birthright citizenship that the Court has already rejected.

The American Civil Liberties Union (ACLU) and other advocacy groups have already [challenged](#) the Executive Orders, arguing that they improperly attempt to circumvent the Supreme Court's recent decision. On August 11, the groups asked a federal court to block enforcement of the orders, setting the stage for another round of litigation over the scope of the administration's authority to limit birthright citizenship.

For now, the Supreme Court's core holding in [Trump v. Barbara](#) remains important: birthright citizenship is the constitutional rule, and exceptions are narrow. The Court held that temporary visitors and people who are unlawfully present remain subject to U.S. jurisdiction and that their children born in the United States therefore acquire citizenship at birth. The August 6 Executive Orders test how far the executive branch can go in defining the exceptions to that rule.

Ultimately, the courts will once again be asked to decide whether the administration is enforcing longstanding exceptions or attempting to create new ones. Until those questions are resolved, the August 6 Executive Orders are likely to generate uncertainty for families, federal agencies, and state and local governments responsible for documenting U.S. citizenship.