



U.S. EXECUTIVE ORDER UPDATE

Continued Protection of the Meaning and Value of U.S. Citizenship

On August 6, 2026, President Trump signed a new executive order to further restrict automatic birthright citizenship. Compared to the January 20, 2025 executive order, this order is more narrowly tailored in scope and, for the first time, explicitly addresses commercial surrogacy arrangements.

KEY PROVISIONS

- 1. Restricts birthright citizenship:** Children born in the United States to non-U.S. citizens who are not lawful permanent residents and who are present in the U.S. under specific circumstances listed in the order will not be recognized as U.S. citizens by the federal government.
- 2. Covered circumstances:** Includes (a) when the mother is unlawfully present in the United States or unlawfully present on a temporary basis and the father is not a U.S. citizen or lawful permanent resident at the time of the child's birth; and (b) when the mother is lawfully present in the United States or lawfully present on a temporary basis and the father is not a U.S. citizen or lawful permanent resident at the time of the child's birth due to commercial surrogacy or other related arrangements in the United States or elsewhere.
- 3. Effective date:** Federal agencies will issue implementing guidance within 30 days of the order's publication.

LEGAL ANALYSIS

Is birthright citizenship suspended?

No. This executive order is a policy of the federal executive branch and is likely to face judicial review. The order does not amend any state laws governing lawful presence, parent-child relationships, or contract law.

How is this order currently being challenged?

This order is currently being challenged in federal court and was stayed nationwide by a federal court on June 30, 2026.

How might this order develop in the future?

We expect this order will face new legal challenges. Related litigation may result in a temporary restraining order (TRO), preliminary injunction, or other judicial relief that could pause enforcement. Following review, the case may proceed through the appellate process. The U.S. Supreme Court issued a birthright citizenship decision on June 30, 2026, holding that nationwide injunctions remain permissible under federal law. The decision also emphasized that broader or new injunctions are subject to the limitations of the Judiciary Act of 1789, Section 14, as amended. Whether this order ultimately complies with federal law remains to be seen.

CONCLUSION

This executive order significantly impacts commercial surrogacy arrangements involving non-U.S. citizens. Until further guidance is issued, the order's legality and enforceability remain uncertain, and children born into international surrogacy families may be unable to obtain U.S. citizenship.

We recommend that you consult with an attorney or proceed with U.S. surrogate family planning arrangements without delay, and closely monitor updates from federal agencies within the next 30 days for implementing guidance and subsequent court rulings.

① For Official Order: [Whitehouse.gov](https://www.whitehouse.gov)

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