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Challenge brought to Trump's new birthright citizenship order



By Amy Howe / AUG 11, 2026



(Katie Barlow)

Just five days after President Donald Trump signed [a new executive order](#) that seeks to narrow the availability of birthright citizenship – the current guarantee of automatic citizenship to almost all babies born in the United States – lawyers for the plaintiffs who successfully challenged Trump's earlier order restricting birthright citizenship returned to federal court in New Hampshire. In [a motion filed on Tuesday morning](#), lawyers from the American Civil Liberties Union and other civil rights groups urged U.S. District Judge Joseph Laplante to clarify that the new order goes beyond the limited exception – for foreign diplomats – to birthright citizenship that the Supreme Court reaffirmed in its June 30 decision in [Trump v. Barbara](#).

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Trump's first attempt to end birthright citizenship came at the beginning of his second term, when he signed an [executive order](#) that prohibited children whose parents were either undocumented immigrants or only in the United States temporarily from gaining automatic U.S. citizenship.

On the last day before the court's summer recess, a majority of the court ruled that Trump's 2025 order violated the Constitution. In his opinion for the court, Chief Justice John Roberts wrote that the 14th Amendment's citizenship clause, which grants citizenship to anyone "born ... in the United States and subject to the jurisdiction thereof," sweeps broadly, subject only to a few "narrow exceptions" for "the children of foreign ministers and

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Instead, on Aug. 6, Trump signed a new executive order, bearing the title "[Continuing to Protect the Meaning and Value of American Citizenship](#)." At the same time, he also signed a second order, titled "[Ending Birth Tourism](#)," that targets what the Trump administration has repeatedly characterized as a problem: travel by pregnant women to the United States to give birth so that their children will be U.S. citizens.

The new birthright citizenship order would apply to several different groups. This includes not only the children of ambassadors – that is, "foreign ministers" – but the children of a variety of other foreign citizens in the U.S., including other employees at a foreign embassy, employees of a foreign government who are in the United States in their official capacity, and employees of international organizations like the United Nations and the World Bank. Trump's new order would also exclude from birthright citizenship any child whose parent was designated as an "alien enemy" under several federal laws.

Additionally, Trump's order would apply to (among others) the children of parents who "engage[d] in a commercial transaction to ensure that the person's mother is present in the United States, or a territory of the United States, to give birth" and to children born in a U.S. territory or U.S. territorial waters "where citizenship is not conferred by Federal statute." Under federal law, babies born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands are currently entitled to U.S. citizenship (while those born in American Samoa are not), although a [bill](#) recently introduced in Congress would end birthright citizenship in those territories beginning on Jan. 1, 2027.

The challengers in *Trump v. Barbara* on Tuesday asked Laplante to enjoin this order. In that decision, they wrote, the Supreme Court rebuffed the Trump administration's attempt to carve out new exceptions – for the children of undocumented immigrants or parents who are only in the United States temporarily – from the 14th Amendment's citizenship clause. In so doing, the challengers stressed, the Supreme Court "reaffirmed ... that 'the Citizenship Clause ... granted citizenship to nearly all children born in the United States,' save only 'the "children of ambassadors" and other representatives of foreign sovereigns' along with Native American Tribal members." "That," the challengers concluded, "should have been the end of this issue."

The challengers also pushed back against any possible suggestion

that Trump’s Aug. 6 order should stand because it includes some groups of people – such as the children of ambassadors – “for whom the President can legally deny citizenship.” First, they said, as the Supreme Court established, the president cannot create exceptions to the citizenship clause. And the exceptions outlined in the Aug. 6 order apply much more broadly than the narrow exception to the citizenship clause for ambassadors – to, for example, the children of other foreign nationals employed at embassies in the United States, who do not have the same kind of full diplomatic immunity as ambassadors, and to the children of individuals designated as “alien enemies.”

The challengers contended that “[i]f the President issues 100 orders seeking to create new exceptions to the sacred guarantee of the Citizenship Clause, all 100 will be equally illegal. And nothing requires this Court to countenance the continued assault on this foundational constitutional principle or issue an endless string of” orders preventing such executive orders from going into effect.



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