



A MARYLAND COURT BLOCKS TRUMP'S LATEST END-RUN AROUND BIRTHRIGHT CITIZENSHIP

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As we discussed in our previous [blog](#), the Trump administration's August 6, 2026 executive orders were not genuine efforts to comply with the Supreme Court's decision in [Trump v. Barbara](#). They were an attempt to keep attacking birthright citizenship by changing the labels. The U.S. District Court for the District of Maryland in [Casa v. Trump](#) confirms exactly that. On September 2, 2026, Judge Deborah Boardman held that the administration's 2026 executive order is "almost certainly unconstitutional" as applied to the certified class and entered a preliminary injunction blocking its enforcement against those children.

The [2026 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.

In *Trump v. Barbara*, the U.S. Supreme Court held that children born in the United States to parents who are unlawfully or temporarily present here are citizens at birth under the Fourteenth Amendment. The Maryland court emphasized that the Supreme Court had already decided that children in the

identical certified class “satisfy both elements of the Citizenship Clause: they are ‘born . . . in the United States’ and ‘subject to the jurisdiction thereof,’” and therefore “are citizens at birth”. That should have ended the matter. Instead, the administration issued a new executive order purporting to identify categories of U.S.-born children who supposedly fall outside the rule announced in *Barbara*. Judge Boardman correctly recognized that these new carveouts “bear little to no resemblance to the ‘narrow exceptions’ to the rule of citizenship by birth recognized by the Supreme Court in *Barbara*” and concluded that “the 2026 Executive Order is almost certainly unconstitutional as applied to the certified class”.

The plaintiffs feared, for instance, that they could be deprived of citizenship under the 2026 executive order if their parents were rightly or wrongly be labeled an “alien enemy,” and the child could therefore be denied citizenship, “even though they do not fall within a recognized exception to birthright citizenship.” The court cited the example of a parent who could be characterized as an alien enemy because of their tattoos. The plaintiffs further suggested that they could be denied citizenship under the birthright tourism clause of the executive order because their mother bought a plane ticket to come to the United States, where she then gave birth, and this might constitute a “commercial transaction” that falls within the second executive order’s sweep.

The opinion is especially compelling because it treats the case as one about fidelity to Supreme Court precedent, not creative relitigation. Judge Boardman put it: “The Supreme Court has spoken: Children in the certified class are ‘citizens at birth.’” She then added the line that should end the administration’s latest maneuver: “*Barbara* is the law of the land. The President must follow it”. Once the Supreme Court has declared that these children are citizens at birth, the Executive Branch cannot order agencies to deny or refuse to recognize that citizenship.

That matters in practical terms because these orders are not abstract. They direct agencies to act. Executive Order 14160 instructed federal agencies that “no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship” for certain U.S.-born children. And when agencies act on an unconstitutional citizenship theory, the harm is immediate. Judge

Boardman explained that citizenship is a “most precious right,” and that the threatened denial of citizenship causes irreparable harm because citizenship is “the right to have rights - to freely participate in our political community”.

The “birth tourism” provision is no more valid than the administration’s other carveouts. The 2026 executive order purported to deny citizenship where either parent engaged in a “commercial transaction to purchase or access birthright citizenship,” including commercial arrangements to ensure that the mother, or a surrogate, is present in the United States to give birth. But that theory still collides with *Barbara*. Whatever one thinks about a parent’s reason for coming to the United States, *Barbara* does not permit a motive-based exception to birthright citizenship. The Supreme Court’s rule did not turn on whether a parent came temporarily, paid for travel, or had a suspect motive for entering the United States. The Supreme Court held that children born to parents who are unlawfully or temporarily present in the United States are citizens at birth. Congress used the same rule in 8 U.S.C. § 1401(a), which provides that persons “born in the United States, and subject to the jurisdiction thereof,” “shall be nationals and citizens of the United States at birth”. In other words, even if the government characterizes a parent’s trip as “birth tourism,” the child’s citizenship still turns on the child’s birth in the United States and subjection to U.S. jurisdiction. Judge Boardman therefore refused to let the government evade *Barbara* by repackaging disapproval of parental motive into a new exception to citizenship.

Judge Boardman’s opinion recognizes that the case is about preserving the citizenship of children the Supreme Court has already declared to be citizens. The administration cannot use a new executive order to do indirectly what *Barbara* forbids directly. As Judge Boardman explained, the relevant question was whether the plaintiffs were entitled to preliminary relief because the order was likely unconstitutional as applied to the certified class, and “the answer to that question is yes”.

The same rule of birthright citizenship appears not only in the Fourteenth Amendment but also in 8 U.S.C. § 1401(a). That statute does not empower the President to create new disfavored subclasses of U.S.-born children. To the contrary, it codifies the ordinary rule of citizenship at birth for those born in the United States and subject to its jurisdiction. That is why the administration’s renewed effort collides not just with the Constitution and Supreme Court precedent, but also with Congress’s own enacted citizenship rule.

The Constitution does not permit the President to sort U.S.-born children into favored and disfavored categories based on their parents' immigration status, alleged affiliations, motives for travel, or manner of entry. *Barbara* rejected that project, and Judge Boardman's injunction makes clear that the administration cannot revive it by administrative ingenuity. Birthright citizenship remains what it has long been: a constitutional and statutory guarantee, not a presidential favor.

But Trump's attack on birthright citizenship is unrelenting. An [interim final rule](#) dated September 4, 2026 implements the foreign-government-employee portion of the 2026 Executive Order by defining "foreign government employee" to include ambassadors, certain embassy or consular employees, persons employed by a foreign government in an official capacity, and persons employed by an international organization that possesses international-organization immunity. That definition is broader than the narrow birthright-citizenship exception traditionally associated with foreign diplomatic officers, and it may sweep in people whose roles are far removed from the classic ambassadorial or diplomatic function, such as a janitor employed by the United Nations or an administrative assistant working in a consular mission.

Fortunately, the administration concedes that the interim final rule will not take effect so long as the injunction in *Casa v. Trump* remains in place. But that is cold comfort. Trump's assault on birthright citizenship persists, and he will keep trying to chip away at it with impunity despite *Trump v. Barbara*. The courts must continue to hold the line, because citizenship by birth is a constitutional guarantee, not a privilege the President may narrow by executive fiat against children born to parents in the United States he does not like.

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