WOMEN'S REFUGEE COMMISSION
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Birthright Citizenship and Pregnant Immigrant Women: Ensuring Access to Citizenship After Trump v. Barbara

On June 30, 2026, the US Supreme Court decided *Trump v. Barbara*, reaffirming the Constitution's guarantee of full and equal citizenship for all children born in the US, irrespective of their parents' immigration status. The decision was unequivocal; however, meaningful access to citizenship is embedded within a landscape of policies and practices that impact how immigrant parents can secure rights for their children. This includes parents' ability to obtain vital documents such as birth certificates and passports for their US citizen newborns.

Concern over whether and how mothers can secure documents for their babies is particularly heightened for pregnant women in immigration custody. Detained pregnant women face many obstacles caring for themselves and their pregnancies, including ensuring that they can access necessary medical care and sufficient nutrition. A woman who gives birth in custody may also face significant challenges obtaining a birth certificate for her child.

Pregnant immigrant women in the community also face real barriers accessing healthcare for themselves and their babies, as well as obtaining documents for their US-born children, due to heightened immigration enforcement and the rescission of policies that prevented ICE from arresting and detaining immigrants in hospitals, social service offices, and other sensitive locations.

Birth certificates are necessary for parents to obtain vital services for their children, like enrolling them in school or obtaining public benefits to which they are eligible as citizens. They may also be vital to preventing family separation or facilitating reunification if an immigrant parent is deported. Requirements for obtaining a birth certificate are governed by state law and vary by state. State laws that limit the kinds of identification required for a parent to secure a birth certificate for their child, or that require multiple personal identity documents for a parent to secure a birth certificate for their child, also restrict access to these vital documents for US citizen babies, since undocumented women may not have or be unable to obtain the number or kind of documents accepted.

The Women's Refugee Commission (WRC) has documented some of the barriers that pregnant immigrant women, both in immigration custody and in the community, face in securing full US citizenship for their children. We also identify necessary steps that state and federal policymakers can take to reduce these barriers and promote equal access to citizenship for all babies born in the US.

Pregnant Women and Girls in US Immigration Custody

Pregnant, postpartum, or nursing immigrants may be detained by one of several federal agencies, including the Department of Homeland Security's (DHS) US Immigration and Customs Enforcement (ICE) and US Customs and Border Protection (CBP), and the Department of Health and Human Services' Office of Refugee Resettlement (ORR). Each of these agencies has, at various times, produced policies governing care in custody for pregnant, postpartum, and nursing women. These policies exist in connection with other protections for detained adults and youth more broadly, which also contain protections for pregnant detainees. These include ICE's National Detention Standards, ICE's Family Residential Standards, CBP's National Standards on Transport, Escort, Detention, and Search (TEDS), the HHS Foundational Rule on the treatment of Unaccompanied Children, and many others.

Special protections for pregnant, postpartum, and nursing women reflect their heightened vulnerability, including advanced medical and nutritional needs. Medical experts clearly state that the "conditions in DHS facilities are not appropriate for pregnant women or children." Since the start of the administration, detention conditions for all detainees have also worsened considerably; reports of severe overcrowding, grossly inadequate food and potable water, little access to life-sustaining medical care, and other abusive conditions have emerged. WRC has documented how these conditions impact pregnant, postpartum, and nursing women, including being fed spoiled food, receiving insufficient medical care even for high-risk pregnancies, and being left unmonitored during life-threatening complications.

Pregnant Women in ICE Detention Facilities

Since 2021, ICE has maintained a policy (known as the 2021 Pregnancy Directive) that protects pregnant, postpartum, and nursing women from unnecessary detention. Specifically, the policy states pregnant, postpartum, and lactating women should not be detained absent an exceptional circumstance. If these women are detained, the policy requires that they be detained in conditions that are suitable for their physical and mental health needs and are monitored regularly to ensure that detention remains safe and appropriate.

Over the past 18 months, WRC has tracked significant violations of the 2021 Pregnancy Directive, including numerous reports of women who have been detained absent an exceptional circumstance or legal reason. Although ICE has produced very little data on this population since the start of the second Trump administration, the data we do have suggests a substantial increase in the number of pregnant detainees from 2024 and earlier, to 2026.

The data that has been provided by ICE recently regarding 2025–2026 suggests that as many as 10 percent of detained pregnant women are in their third trimester of pregnancy. Without clear policy and practice governing their release, the number of late-stage pregnant detainees increases the likelihood that a pregnant woman will give birth in ICE custody.

Reports of late-stage pregnant women being deported have also emerged, despite additional ICE restrictions limiting transportation of women after 27 weeks, and generally prohibiting transport from 36 weeks to term. These include a 21-year-old woman in her eighth month of pregnancy, who was deported to Colombia while in a state of acute medical distress. WRC has tracked additional cases of women who were placed on transfer and removal flights after 27 weeks.

No clear procedures exist for ensuring that any such live birth will be properly recorded, that the relevant state agency has access to women in ICE custody, or that detained mothers can obtain vital documents like birth certificates and passports for their US citizen newborns.

The administration's decision to effectively shutter or eliminate DHS's core oversight agencies also limits women's ability to report violations of their rights. The Office of Civil Rights and Civil Liberties (CRCL) and the Office of the Immigration Detention Ombudsman (OIDO) provided vital monitoring and investigations inside detention centers to ensure that immigration enforcement was complying with civil and human rights laws. Detainees could also file complaints directly to DHS if their rights were violated. Without these oversight bodies, detained pregnant women and their lawyers are left with few options to report an inability to secure vital documents, or any other abuse, to DHS.

To ensure full compliance with the requirements of birthright citizenship, ICE should develop guidance to ensure that all babies born to detained mothers in ICE custody are timely registered and that their mothers have sufficient opportunity to secure their vital documents like US birth certificates. This includes the ability to obtain a passport for any baby whose parent is facing or may face deportation. Certain state laws can also protect detained mothers' ability to register births with the relevant state agency. Some state laws, like California's SB81, prevent federal immigration authorities from blocking an undocumented woman's ability to register her baby's birth; additional states should pass similar legislation and ensure that they clearly protect women already detained.

Pregnant Women in CBP Custody

Pregnant migrants are also detained by US Customs and Border Protection (CBP)—either at a Border Patrol processing facility at the border, or by the Office of Field Operations (OFO) at a Port of Entry such as an airport. Historically, the majority of pregnant migrants were detained in Border Patrol facilities; however, the current restrictions around accessing asylum at the border have comparatively increased the number of pregnant women detained by OFO, as seen in the recent case of Annabella Gyasi, who was detained for more than a week at Dulles airport.

CBP has a documented history of harm to pregnant women and their babies. These include inadequate access to medical care, insufficient monitoring or oversight of pregnant migrants, and a history of turning away pregnant asylum seekers who present themselves at Ports of Entry.

In 2021, the DHS's Office of Inspector General (OIG) issued a report responding to an incident at the Chula Vista Border Patrol Station, in which a pregnant asylum seeker partially delivered her baby while standing in the station hallway, without medical assistance. The report led to the creation of a CBP policy on Pregnant, Postpartum, and Nursing Women and their Infants (2021 CBP Pregnancy Directive), which imposed stricter monitoring and oversight requirements over all pregnant, postpartum, and nursing women in CBP custody, as well as increased requirements for care in custody. In May 2025, CBP leadership revoked a number of policies related to care for vulnerable groups in CBP custody, including the processing of pregnant, postpartum noncitizens and infants.

The 2021 CBP Pregnancy Directive led to significant improvements in the care of pregnant, postpartum, and nursing women and their infants in CBP custody; however, changes to CBP policy and practice are reversing this trend. For instance, in June 2025, a pregnant asylum seeker was detained at the Blaine Border Patrol facility with her husband and four children, one of them an infant, for close to a month. The CBP facility, which is not intended for long-term detention, did not have beds or full bathroom facilities, leaving the family (including the pregnant mother) without access to proper bedding or a shower in the building for weeks.

Reduced monitoring and oversight are also a problem in CBP facilities. It is unclear whether the data collection and reporting requirements of the 2021 CBP Pregnancy Directive are still in effect; however, if these have also been rescinded, CBP would have less visibility over when a pregnant woman gives birth in CBP custody and what happened to mother and child. As with ICE detainees, the elimination of oversight agencies like CRCL and OIDO leaves pregnant women in CBP custody with few options to report abuse or violations of their rights to DHS.

To ensure full compliance with the requirements of birthright citizenship, CBP should restore all rescinded reporting requirements and issue guidance to ensure that pregnant border crossers are not turned

away or unlawfully detained at Ports of Entry, that they receive required medical attention, and that any child born on US soil can receive a birth certificate and other vital documents prior to their mother's release or removal.

Pregnant Unaccompanied Girls in ORR Custody

Unaccompanied Children (children who arrive at the border without a parent or guardian) and immigrant children separated from parents or sponsors are held in the custody of the Office of Refugee Resettlement (ORR). Care standards for youth in immigration custody are governed by several laws and regulations, including the 2022 Unaccompanied Children Program Foundational Rule and the 1997 Flores Settlement Agreement.

Among other important provisions, the Foundational Rule requires that all youth in ORR custody, including pregnant youth, have access to healthcare. It is especially important that pregnant and parenting youth have access to the specialized healthcare they need to support their pregnancies.

Historically, ORR policy and practice was to release youth in custody to a safe sponsor, often a family member, who would assume responsibility for their care. However, the second Trump administration has heightened barriers to sponsorship, including increased vetting requirements, steep fees, and data-sharing agreements that make sponsor information sharable with immigration enforcement agencies. As a result of these and other policy changes, many youth are spending more time in ORR custody than they would have in prior years.

Over the past year, reports of pregnant youth being transferred to ORR facilities in South Texas have emerged. This includes numerous reports of pregnant youth being detained at an ORR facility in the border town of San Benito, Texas. The transfers raised considerable questions about access to medical care for pregnant youth and their babies, including access to maternal-fetal specialists and neonatal specialty care.

Youth in ORR custody cannot choose in what state or in which facility they are held. They also cannot leave the facility independently to obtain their own healthcare, go to a government office, seek social services, or register a birth. These restrictions pose numerous challenges for pregnant youth. Texas, for instance, has state laws that limit the kinds of sexual and reproductive healthcare women can receive, even in emergency situations. If taken to an emergency room or other health facility, pregnant youth would be subject to these state-law restrictions.

Texas law also requires that a parent provide two forms of identification to obtain a birth certificate for their child. As a result of a 2016 legal settlement, the state is required to accept a wider array of non-US forms of identification, such as Mexican "matriculas," in birth registration; however, the requirement that a parent present two forms of identification remains. Depending on their age and the circumstances under which they left their country of origin, unaccompanied children may have a harder time producing two legally acceptable forms of identification, even with the expanded list of eligible documents.

To ensure full compliance with the requirements of birthright citizenship, ORR should ensure that all pregnant youth in ORR custody can access the healthcare they need to support their pregnancies, as well as obtain meaningful access to birth certificates. ORR should also endeavor to release all pregnant and parenting youth to sponsors as quickly as possible so that they can obtain necessary care and documents, according to the Best Interest of the Child standard.

Pregnant Immigrant Women in the Community

Pregnant immigrant women in the community also face significant barriers to obtaining essential services like healthcare, nutrition, and access to government services to which they are entitled. These barriers differ considerably from the kinds of barriers that women in federal custody experience, but they can have an equally real impact on whether a pregnant immigrant woman who gives birth in the US is meaningfully able to document citizenship for their newborn child.

Fear of immigration enforcement in sensitive locations like hospitals is among the primary barriers. In January 2025, the second Trump administration rescinded a policy known as "Guidelines for Enforcement Actions in or near Protected Areas," allowing CBP and ICE officers to enter previously protected locations like hospitals, places of worship, schools, and social service agencies to arrest and detain immigrants. Since the memo was rescinded on January 21, 2025, ICE has begun routinely arresting people in hospitals, outside schools, and in other previously protected areas.

Amid this climate of fear, many reports suggest that pregnant women are delaying or skipping care because they are afraid of being detained and deported. Medical experts are clear that delayed or missed care can have detrimental health impacts on pregnant women and their babies.

Access to healthcare coverage for immigrants is also being curtailed. H.R. 1, also known as the "One Big Beautiful Bill," significantly reduced access to federal healthcare programs like Medicaid for many immigrants, including refugees, asylees, and some domestic violence and trafficking survivors. It also reduces funding to states and to hospitals that provide healthcare to immigrants, making it more difficult for them to obtain care.

Pregnant women require safe access to healthcare to support their pregnancies. Forcing them into the shadows not only impedes their ability to safely obtain that care; reducing their contact with the healthcare system may also impact whether their US citizen newborns are registered at birth and provided vital documents like birth certificates.

State laws that limit access to birth certificates for immigrant parents, including laws that restrict the forms of identification to ones that immigrant women may have a harder time obtaining, or require two forms of ID for obtaining a birth certificate, also impede meaningful access to birthright citizenship for children of immigrant parents. States should ensure that their policies provide meaningful access to birth certificates for these children.

Recommendations

The US Departments of Homeland Security and Health and Human Services should:

- To ensure full compliance with *Trump v. Barbara*, establish distinct agency-wide policies and procedures for ensuring that all babies born in US immigration custody are recognized as US citizens. These policies should also include dedicated processes for ensuring that detained mothers have an opportunity to secure all necessary documents for their children, including US birth certificates and passports, prior to release and/or removal.

Congress should:

- Utilize its oversight authorities to ensure that federal agencies are implementing meaningful access to birthright citizenship for immigrant women who give birth in ICE, CBP, and HHS custody. Such oversight could include:
    - A quarterly reporting requirement of all live births in DHS and HHS custody, the immigration disposition of their mothers, how many of the mothers secured US birth certificates, passports, and other vital documents, and the time between the birth and processing of those documents.
    - An annual review of existing HHS and DHS policy on live births in custody.
    - Augmenting pregnancy- and postpartum-related DHS and HHS guidance to include language on accessing US birth certificates for children born in US custody.
- Pass legislation securing safe access to sensitive locations such as hospitals, social service agencies, and government offices, to promote access for pregnant immigrants.
- Ensure continued access to healthcare programs that support pregnant immigrants' access to safe care, to promote ongoing connections between pregnant immigrants and the healthcare system. Congress should also continue to support state-funded postpartum coverage for up to 12 months through Medicaid or the Children's Health Insurance Program (CHIP) to promote ongoing connections between newborn US citizen children and the healthcare system.

States should:

- Pass laws, similar to California's SB81, that can protect immigrant access to hospitals, including laws that designate a patient's immigration status as protected medical data, designate state-funded health facilities as enforcement-free zones, and protect access to state agency functions like birth registration in hospitals, detention centers, and other custodial settings.
- Ensure that their state laws and policies around birth registration ensure meaningful access to birth certificates for immigrant parents. Key provisions include expanding the list of acceptable documents, reducing barriers like two-identification requirements, and enacting meaningful oversight procedures to ensure that detained immigrants can access birth registration for their babies.

Civil society should:

- Community groups, including immigrant and health groups, should work to educate immigrant communities about the *Trump v. Barbara* decision on birthright citizenship.
- Health care providers should provide guidance to comply with *Trump v. Barbara* in all hospitals, private birth centers, and other locations where babies are born.

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Women's Refugee Commission

The Women's Refugee Commission (WRC) improves the lives and protects the rights of women, children, youth, and other people who are often overlooked, undervalued, and underserved in humanitarian responses to displacement and crises. We work in partnership with displaced communities to research their needs, identify solutions, and advocate for gender-transformative and sustained improvement in humanitarian, development, and displacement policy and practice. Since our founding in 1989, we have been a leading expert on the needs of refugee women, children, and youth and the policies that can protect and empower them.

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