

United States Senate

WASHINGTON, DC 20510

January 24, 2020

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street N.W.
Washington, D.C. 20520

Dear Mr. Secretary,

We write to express our concern with new restrictions by the State Department on the travel of certain pregnant women to the United States. On Wednesday, January 22, 2020, congressional staff participated in a telephone briefing from State Department officials that provided few answers to the many serious questions raised by the rule. Given the substantial change in policy and the lack of any clear national security rationale, we request that the rule's effective date be postponed until the questions below are fully and satisfactorily answered.

State Department officials were unable to provide any rationale for limiting the travel of pregnant women and their families, repeated claims of so-called "birth tourism" that they were unable to substantiate, and provided no data corroborating the existence of a widespread problem or national security risk.

Moreover, Department officials were unable to explain how consular staff would implement this sensitive policy without discriminating against pregnant women, or impacting visitor visa applicants traveling to the United States for medical treatment.

In light of the lack of transparency on the new rule, we request additional information about the genesis and implementation of the new restrictions. Specifically:

1. Is it the State Department's position that it is illegal for pregnant travelers to come to the United States?
2. Is it the State Department's position that it is illegal for a foreign national to give birth in the United States?
3. So long as a visa applicant does not lie on the visa application, is it the State Department's position that it is illegal to come to the United States even with the primary purpose of giving birth in the United States?
4. Is it the State Department's position that it is illegal or unconstitutional for a child so born to be granted U.S. citizenship?

5. Are there any other visa requirements where, assuming the applicant is truthful on his or her application and meets all other standards, there is a basis for denial for coming to the United States for an activity that is not illegal and that is allowable?
6. If an activity is legal and allowable, what is the basis for the Department determining in the proposed rule that it is not “legitimate”?
7. What is the basis in State Department or other official U.S. government sourcing for the assertion in the January 22nd briefing that there are “tens of thousands” of so-called “birth tourism” births in the United States each year? By what means is this documented?
8. What is the specific “national security threat” the Department claims is posed to the United States from so-called “birth tourism”? Or the specific “law enforcement” threat? Or the “public health threat”? Please provide any Bureau of Intelligence and Research or other Intelligence Community analysis and assessment of this threat, including any mitigation recommendations.
9. What is the Department’s assessment of the top national sources of illegitimate “birth tourists”, and what nationalities do you anticipate will be most affected and “discouraged” from applying for B visas to travel to the United States on account of this rule? Which countries have allegedly benefited from “birth tourism”?
10. How does the Administration plan to respond if and when other countries take reciprocal action against pregnant U.S. citizens?
11. What is the specific guidance being provided to consular officers for implementing this new rule? What is the specific training being provided to consular officers in implementing this new rule? Will consular officers be trained in what constitutes specialized medical care for complicated pregnancies? Will consular officers be given the example fact patterns from the rule regarding scenarios in-which the presumption of “birth tourism” is rebutted (i.e. specialized medical care for complicated pregnancies, emergency travel to visit a dying relative, and derivative citizenship)? Please include a timeline in response to each question.
12. What are the specific factors a consular officer can consider to have “reason to believe” a B visa nonimmigrant applicant is traveling to the United States for the primary purpose of obtaining U.S. citizenship for a child? What are the factors a consular officer will consider when determining if a visitor visa applicant has a “legitimate reason” for traveling to the United States for medical treatment? Or determining whether the visitor visa applicant has the “means and intent” to pay for medical treatment?
13. Please describe the interagency decision-making process for this rule, including the roles of the White House, the Department of Justice, the Department of Homeland Security, and the State Department. Were you personally consulted in the decision-making process for this rule?

14. Is this part of a broader Trump Administration plan to completely revoke birthright citizenship?

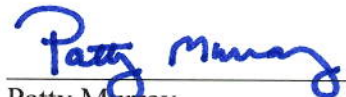
15. Are you aware of reports that properties owned and operated by the Trump Organization have been used as part of "packages" offered by birth-tourism companies?

Thank you for your attention to this matter. We would also appreciate receiving the answers to these questions by February 7, 2020.

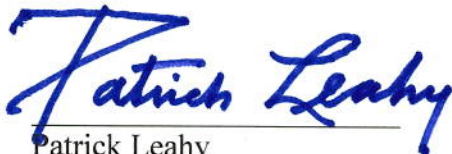
Sincerely,



Robert Menendez
United States Senator



Patty Murray
United States Senator



Patrick Leahy
United States Senator



Dianne Feinstein
United States Senator



Martin Heinrich
United States Senator