

Joint action letter to policymakers on excluding expecting parents from the COVID-19 travel ban and issuing emergency passports to their newborns

We the undersigned organizations are writing to you to seek your urgent help to adjust current regulations to allow prospective parents from all over the world to travel to the U.S. to be with their newborn child.

The Coronavirus pandemic has created hardships and challenges worldwide, and governments strive to respond by issuing new rules. Inadvertently, not all scenarios are taken into consideration, and groups of people may find themselves in extremely difficult situations, sometimes virtually impossible. This is what's happening now to prospective parents from all over the world are now unable to come and take care of their genetic newborn child (or children if the pregnancy is twins) that were carried by women who chose to be gestational surrogates in the United States. Even though these surrogacy arrangements are fully legal, the disruption caused by travel bans and limited access to necessary official documents is leading to intolerable anxiety and causing avoidable health risks to the newborn children.

The prospective parents involved have experienced significant challenges in building their families. Many have experienced years of suffering from infertility, others are members of the LGBTQ community and have no access to parenting options in their home countries. The gestational surrogates are highly altruistic women that also do not deserve the apprehensive uncertainty and stress they are now undergoing due to this situation.

We call upon the authorities in the USA to adjust current regulations to recognize the need of prospective parents to arrive at least several weeks in advance of the expected birth of their children, and recognize the medical necessity of allowing them to return to their home countries before they overstay their visas and where the babies will be fully covered by health insurance and in a safer permanent environment.

In normal times the conventional process includes the prospective parents being handed their baby upon birth by virtue of express written agreements and other consent documents that are drafted well before the birth. Final parental rights are established through legal orders issued prior to the birth, or immediately following it, and subsequently birth certificates are issued with the names of the legal parents. Temporary health insurance is typically arranged in advance through the prospective parents (and requires them to be recognized as legal parents). Babies are then typically issued passports by the country where the birth took place, allowing speedy return to the home country, to a home where they can be better cared for, and where long term health coverage is available.

The entire process is based on the simple assumption that the parents will be present at the birth of their child. It is the legal right of the gestational surrogates to never be asked to make healthcare decisions for the newborn, nor to be held responsible for the ongoing care and expenses for the child. It is obviously the right of the child to have the proper care and legal filiation.

This process has been thrown into chaos by entry bans, the scarce availability of transportation, and closure of governmental offices in charge of issuing birth certificates and passports. Babies, parents, and gestational surrogates are all extremely susceptible and exposed to unnecessary mental, health, and financial hardships. Birth should be a time of joy and bonding, not emotional distress and fear.

The USA already offers exclusions to the entry bans to parents of a citizen. Unfortunately, officials are unclear about how to implement the rules in the case of prospective surrogacy parents in a surrogacy arrangement, and most often they prevent their entry until after the baby is born. Parents then face the challenge (and often extreme expense) of arranging last minute transportation and handling quarantine requirements before they can meet their parentless children. The babies require the appointment of emergency guardians or even foster families. Even after they reunite with their baby, they are unable to secure passports in order to return home, and may even risk overstaying their visas.

The simple solution is to allow prospective surrogacy parents into the country well in advance by recognizing travel for the birth of a surrogacy child as essential (as Canada has already done), and to recognize that issuing passports for the newborns should fall under the emergency exclusions that already allow this in life-or-death situations in the USA.

The current situation is not aligned with the best interests of any party, nor are they in the interest of public health. It is causing confusion, stress, and undue medical risks.

The undersigned organizations stand with these families and urge all concerned to find appropriate and prompt solution that is in the best interest of all involved.

RESOLVE: The National Infertility Association
The American Society for Reproductive Medicine (ASRM)
The Academy of Adoption and Assisted Reproduction Attorneys (AAAA)
Men Having Babies
Family Equality
The National LGBT Bar Association
National Center for Lesbian Rights
GLBTQ Legal Advocates & Defenders (GLAD)
The Society for Ethics for Egg Donation and Surrogacy (SEEDS)
Oregon Surrogacy Professionals Association
Network of European LGBTIQ* Families Associations (NELFA)
Taiwan LGBT Family Rights Advocacy (TLFRA)
The Aguda –The Association for LGBTQ Equality in Israel
The Association of Israeli Gay Fathers