

# Congress of the United States

Washington, DC 20510

March 17, 2025

Russell Vought  
Director  
The Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

**RE:** 30-Day Notice of Proposed Information Collection: Application for a U.S. Passport, DS-11, OMB Control Number: 1405-0004; 30-Day Notice of Proposed Information Collection: Application for a U.S. Passport for Eligible Individuals: Correction, Name Change to Passport Issued 1 Year Ago or Less, and Limited Passport Replacement, DS-5504, OMB Control Number: 1405-0160; and 30-Day Notice of Proposed Information Collection: U.S. Passport Renewal Application for Eligible Individuals, DS-82 OMB Control Number: 1405-0020.

Dear Director Vought:

We write to strongly oppose the proposed changes to passport forms DS-11, DS-5504, and DS-82 to replace the term “gender” with “sex” and to request the applicant’s “biological sex at birth,” with only a male or female option. These changes, which the Department of State has stated are pursuant to Executive Order No. 14168, will decrease passport accuracy; will subject our transgender, nonbinary, and intersex constituents to potential harassment and violence; raise serious constitutional concerns; and are contrary to the purposes of the Paperwork Reduction Act.

## **I. These proposed changes undermine the usefulness of passports in helping correctly identify the passport holder.**

Passports are intended to show the passport holder’s identity and nationality,<sup>1</sup> yet these changes will decrease the ability of both U.S. Transportation Security Administration agents and foreign passport control agents to accurately identify the passport holder. These changes require transgender, nonbinary, and intersex people to have gender markers that are inconsistent with their gender. In many cases, these changes may require a gender marker that is inconsistent with the passport holder’s legal name and their gender expression as captured in their passport photo. These inconsistencies will increase confusion and complicate agents’ responsibility to ensure the passport belongs to the passport holder. Having a passport with an incorrect gender marker while abroad will also place Americans in dangerous and high-stress situations at passport controls overseas. This will both jeopardize these Americans’ safety abroad and potentially increase the workload of our consular officers around the world. The repercussions of these

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<sup>1</sup> See, 8 U.S.C. 1101(a)(30)

changes will also have consequences beyond international travel, as passports are used in many other domestic contexts to verify the identity and nationality of individuals.

## **II. These proposed changes will subject transgender people to potential harassment and violence and undermine their wellbeing.**

Requiring transgender people to have passports that do not accurately reflect their gender identity can subject transgender people to harassment, discrimination, and potential violence. For example, 22% of transgender respondents to a 2022 U.S. survey reported being verbally harassed, assaulted, asked to leave a location, or denied services after showing someone an identification document with a name or gender that did not match their gender presentation.<sup>2</sup> Having identification that correctly corresponds with their gender identity, on the other hand, is associated with positive mental health outcomes for transgender people. For example, one study found that compared with transgender individuals with no IDs with accurate gender markers, transgender people with IDs with accurate gender markers had a lower prevalence of psychological distress, suicidal ideation, and suicide planning.<sup>3</sup> Similarly, another study found that having correct gender markers on one's ID is significantly associated with lower reports of depression, anxiety, and psychiatric distress.<sup>4</sup>

There is no record that the State Department, in proposing changes to passport forms to collect information on sex assigned at birth instead of allowing applicants to have gender markers that reflect their gender identity, has taken into account the harm these changes will cause to transgender Americans.

## **III. These proposed changes are not the result of significant deliberations or studies and raise significant constitutional concerns.**

Since at least 1992, the State Department has allowed transgender applicants to update their gender markers on their passport.<sup>5</sup> In 2010, the Department updated the policy to remove the surgical requirement and allow applicants a range of medical documentation to reflect their gender identity,<sup>6</sup> and in 2022, the State Department removed the medical documentation requirement to update a gender marker, and began allowing nonbinary, intersex, and others to

<sup>2</sup> Sandy E. James, et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, Advocates for Trans Equality (Feb. 2024), [https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report\\_FINAL.pdf](https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf)

<sup>3</sup> Ayden I Scheim, et al., *Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study*, *The Lancet Public Health* 5:4 (Apr. 2020) <https://www.sciencedirect.com/science/article/pii/S2468266720300323>

<sup>4</sup> Arjee Restar, et al, *Legal gender marker and name change is associated with lower negative emotional response to gender-based mistreatment and improve mental health outcomes among trans populations*, *SSM Population Health* (May 2020) <https://pmc.ncbi.nlm.nih.gov/articles/PMC7229467/>

<sup>5</sup> PASSPORT BULLETIN 92-22 (1992), U.S. DEPT OF STATE, *see* California Transgender Law 101 (Apr. 2006), Attachment G: Passport Bulletin 92-22, [https://www.ncdsv.org/uploads/1/4/2/2/142238266/ca\\_trans\\_law\\_101.pdf](https://www.ncdsv.org/uploads/1/4/2/2/142238266/ca_trans_law_101.pdf), page 41. In addition, in 1971 the Department explicitly allowed an applicant to “assume a name indicating a change of sex” on their passport. Passport Instruction 2510.9C, Appendix A, General Guideline No. 10, “Use of Names Indicating a Change of Sex” (May 4, 1971) (On file with author).

<sup>6</sup> *New Policy on Gender Change in Passports Announced*, U.S. Dep’t of State (June 2010), <https://2009-2017.state.gov/r/pa/prs/ps/2010/06/142922.htm> [hereinafter “2010 Passport Policy”].

have passports with an X gender marker.<sup>7</sup> The 2010 change was consistent at the time with the standards and recommendations of the World Professional Association for Transgender Health, which the State Department highlighted as being “recognized by the American Medical Association as the authority in this field.”<sup>8</sup> The 2022 change brought this policy in line with current recommendations from the American Medical Association and American Psychological Association.<sup>9</sup> The 2022 update was made after significant deliberations, including a two part notice and comment period, consultation with partner countries that offered an ‘X’ gender marker, consultation with the Centers for Disease Control and Prevention’s National Center for Health Statistics which conducted qualitative research on how to define the ‘X’ gender marker, and interviews with a diverse group of people.<sup>10</sup>

However, the State Department is now preventing transgender, nonbinary, and intersex individuals from changing their gender markers or receiving an ‘X’ gender marker on their passports. These changes do not appear to be in response to significant deliberations or studies, but rather simply in response to Executive Order No. 14168. Executive Order No. 14168, which attempts to assert that there are only two sexes, male and female, ignores the multiple factors that attribute to the concept of sex, including chromosomes, gonads, anatomy, secondary sex characteristics, and gender identity—as well as the existence of intersex people whose sex characteristics do not fit typical notions of male or female bodies. In addition, this Executive Order contains language demonstrating animus against the transgender community. Animus is neither an important nor legitimate government interest, and government policies motivated by animus are clear violations of the Constitution’s guarantee of equal protection of the laws.<sup>11</sup>

The proposed form changes and the State Department’s underlying policy raise other serious constitutional concerns. The underlying policy of denying transgender, nonbinary, and intersex people passports that reflect their gender identity discriminates on the basis of sex,<sup>12</sup> is not substantially related to an important government interest and does not rationally or substantially advance any legitimate government interest—as required under the Fifth Amendment’s guarantee of equal protection under the law. The underlying policy that these form changes are intended to implement raises other significant Fifth Amendment concerns, including impeding transgender, nonbinary and intersex people’s right to travel and their right to avoid disclosure of private information. This policy and the implementing form changes also force transgender, nonbinary, and intersex people to either declare a gender that they do not identify with when applying for a passport or forego having a passport altogether—despite the First Amendment’s

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<sup>7</sup> *X Gender Marker Available on U.S. Passports Starting April 11*, U.S. Dep’t of State (Mar. 2022), <https://2021-2025.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/> [hereinafter “2022 Passport Policy”].

<sup>8</sup> 2010 Passport Policy, *supra* n. 6.

<sup>9</sup> See, *Conforming Sex and Gender Designation on Government IDs and Other Documents H-65.967*, American Medical Association (2011), <https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-0-5096.xml>; Transgender, Gender Identity, and Transgender, Gender Identity, and Gender Expression Non-Discrimination, American Psychological Association (2008), <https://www.apa.org/about/policy/transgender.pdf>.

<sup>10</sup> 2022 Passport Policy, *supra* n. 7.

<sup>11</sup> See, e.g., *Romer v. Evans*, 517 U.S. 620 (1996).

<sup>12</sup> See, *Bostock v. Clayton County*, 590 U.S. 644 (2020).

guarantee of freedom of speech. Litigation has already been filed relating to these claims<sup>13</sup> and will likely cost the government significant resources, including financial resources. The State Department is acting carelessly in dismissing over 30 years of policy precedent without any evidence, reasoning, or studies and should return to its previous, constitutionally-sound policy of allowing people to update their gender markers consistent with their gender.

#### **IV. These proposed changes contradict the purposes of the Paperwork Reduction Act.**

Lastly, these Notices of Proposed Information Collection were published pursuant to the Paperwork Reduction Act, which was passed to “minimize the Federal paperwork burden for individuals,” “minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information, and “maximize the usefulness of information collected by the Federal Government”<sup>14</sup>—yet the changes the State Department is proposing and the underlying passport policy contradict all three of these goals. There have been public reports of applicants being asked to provide additional information because of this new policy and of officials holding on to critical identification documents that were submitted as part of a requested name or gender marker change.<sup>15</sup> This policy is not minimizing the burden for individuals—it is increasing it. In addition, the State Department’s own website highlights how this new policy creates additional work for federal employees processing passport applications and renewals, including by leading to delays in getting passports and requiring applicants to submit additional information—information passport agents will then have to analyze.<sup>16</sup> In addition, as highlighted above, collecting information on a passport applicant’s sex assigned at birth is *not* useful information for the Federal government, as federal officials can more easily confirm a passport holder’s identity with a passport that accurately reflects their gender.

We are also concerned that these form changes and the underlying policy have been rushed, without significant opportunities for public comment. Unlike the 2022 change, which included a two-part notice and comment process,<sup>17</sup> the cited 60-day comment period for these proposed information collections did not include the suggested form changes to replace the term “gender” with “sex” and to request the applicant’s “biological sex at birth,” with only a male or female option—meaning the current 30-day comment period is the only opportunity for the public to weigh in.<sup>18</sup>

<sup>13</sup> *Orr v. Trump* (D. Mass) Case No. 1:25-cv-10313.

<sup>14</sup> Public L. 96-511.

<sup>15</sup> Mizy Clifton, *State Dept. gender policy puts transgender Americans in legal limbo*, SEMAFOR (Feb. 14, 2025), <https://www.semafor.com/article/02/14/2025/trumps-gender-policy-leaves-transgender-americans-in-legal-limbo>; Orion Rummier, *The State Department is blocking new passports for trans Americans*, THE 19TH (Jan. 28, 2025), <https://19thnews.org/2025/01/transgender-passports-state-department/>

<sup>16</sup> Sex Marker in Passports, U.S. Dep’t of State (last updated Feb. 11, 2025) <https://travel.state.gov/content/travel/en/passports/passport-help/sex-marker.html>.

<sup>17</sup> See, e.g., 86 FR 51434 and 87 FR 10426.

<sup>18</sup> The rushed nature of this process can also be seen in the entries on OIRA’s website for the information collections; all three include incorrect citations in the federal register for the 60-day and 30-day notices. As of February 25, 2025, the entry for “U.S. Passport Renewal Application for Eligible Individuals” cites to 89 FR 12582 for the 60-day notice, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202502-1405-003](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202502-1405-003), but the actual citation is 89 FR 93390, <https://www.federalregister.gov/documents/2024/11/26/2024-27705/60-day-notice-of-proposed-information-collection-us->

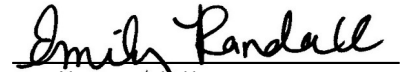
## V. Conclusion

Transgender, nonbinary, and intersex Americans deserve to have ID documents, including passports, that reflect their identity. This is critical for their safety and for their ability to fully participate in society. The changes the State Department is proposing to passport forms DS-11, DS-5504, and DS-82 and the Department's underlying new passport policy undermine the purpose of passports to help correctly identify the passport holder, will harm our constituents, raise serious constitutional concerns, and are contrary to the purposes of the Paperwork Reduction Act. For these reasons, we urge you to abandon these proposed changes to replace the term "gender" with "sex" and to request the applicant's "biological sex at birth," with only a male or female option. We urge the Administration to instead continue to allow transgender, nonbinary, and intersex Americans to update their passports to reflect their gender identity, including by applying for 'X' gender markers.

Sincerely,



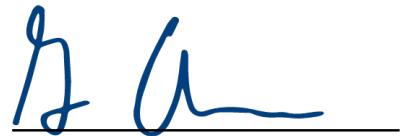
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Emily Randall  
Member of Congress



Kevin Mullin  
Member of Congress



Gabe Amo  
Member of Congress



Mark Takano  
Member of Congress



Delia C. Ramirez  
Member of Congress

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[passport-renewal-application-for-eligible](#). Similarly, the entry for "Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement" cites to 89 FR 12580 for the 60-day notice, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202502-1405-002](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202502-1405-002), but the actual citation is 89 FR 94867, <https://www.federalregister.gov/documents/2024/11/29/2024-28038/60-day-notice-of-proposed-information-collection-application-for-a-us-passport-for-eligible>. In addition, the entry for "Application for a U.S. Passport" cites to 89 FR 12583 on November 24, 2024 for the 60-day notice, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202502-1405-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202502-1405-001), but the actual citation is 89 FR 93389 and dated November 26, 2024, <https://www.govinfo.gov/content/pkg/FR-2024-11-26/pdf/2024-27703.pdf>. In all of these cases, OIRA appears to incorrectly be listing the Public Notice number, as opposed to the page number in the Federal Register. OIRA has made the same mistake when citing the 30-day Notice in the Federal Register in all three entries. While this may seem minor, these errors further impede the public's ability to properly find the correct entries in the Federal Register—entries that they may find to be informative as they seek to offer feedback on the proposals.



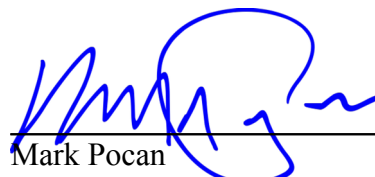
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Member of Congress



Paul D. Tonko  
Member of Congress



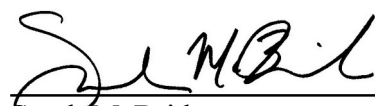
Brad Sherman  
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Mark Pocan  
Member of Congress



Eleanor Holmes Norton  
Member of Congress



Sarah McBride  
Member of Congress



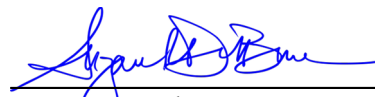
Raja Krishnamoorthi  
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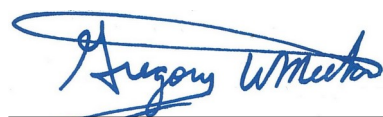
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Darren Soto  
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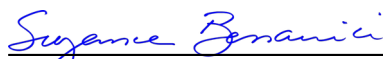
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Member of Congress



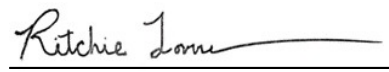
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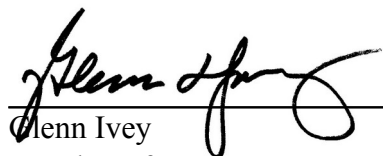
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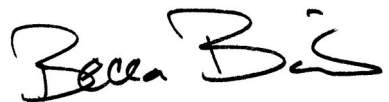
Suzanne Bonamici  
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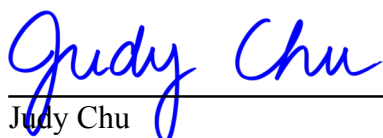
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Glenn Ivey  
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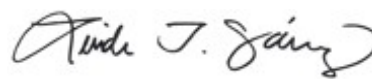
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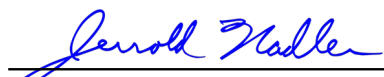
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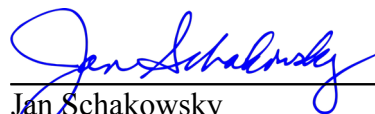
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Jerrold Nadler  
Member of Congress



Jan Schakowsky  
Member of Congress



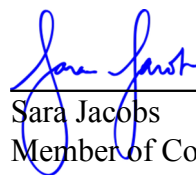
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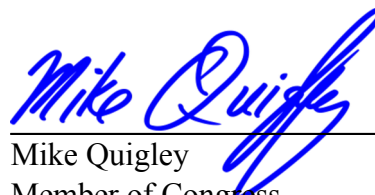
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Sara Jacobs  
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Henry C. "Hank" Johnson, Jr.  
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Mike Quigley  
Member of Congress



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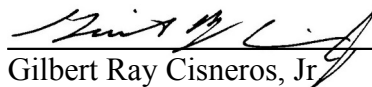


Jesús G. "Chuy" García  
Member of Congress

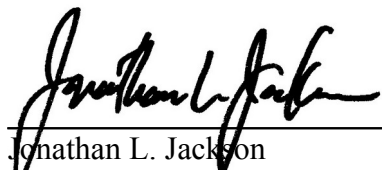




Pramila Jayapal  
Member of Congress



Gilbert Ray Cisneros, Jr.  
Member of Congress



Jonathan L. Jackson  
Member of Congress



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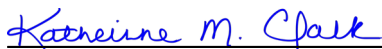
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Summer L. Lee  
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Greg Casar  
Member of Congress




Katherine M. Clark  
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Seth Moulton  
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Norma J. Torres  
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Nydia M. Velázquez  
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Danny K. Davis  
Member of Congress



Rick Larsen  
Member of Congress



Dan Goldman  
Member of Congress



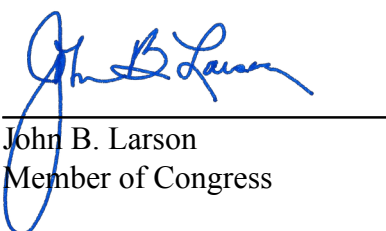
Suhas Subramanyam  
Member of Congress



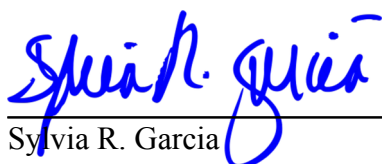
Jennifer L. McClellan  
Member of Congress



Mark DeSaulnier  
Member of Congress



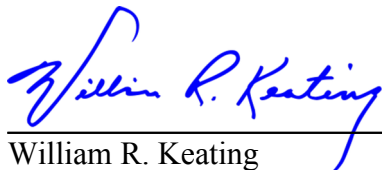
John B. Larson  
Member of Congress



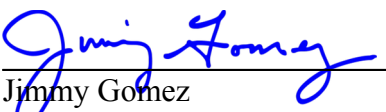
Sylvia R. Garcia  
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Jared Huffman  
Member of Congress



William R. Keating  
Member of Congress



Jimmy Gomez  
Member of Congress



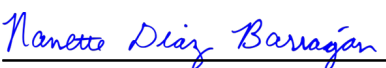
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Yassamin Ansari  
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Nanette Diaz Barragán  
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Robert J. Menendez  
Member of Congress



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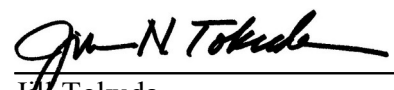
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Debbie Wasserman Schultz  
Member of Congress




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Luz M. Rivas  
Member of Congress




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Jim Tokuda  
Member of Congress



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Donald S. Beyer Jr.  
Member of Congress



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Lori Trahan  
Member of Congress

CC: Marco Rubio, U.S. Secretary of State