



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

March 17, 2025

*Via Federal Rulemaking Portal*

The Honorable Marco Rubio  
Secretary  
U.S. Department of State  
2201 C Street NW  
Washington, D.C. 20520

RE: Comment on Notices of Proposed Information Collection / Application for a U.S. Passport (90 Fed. Reg. 9652); U.S. Passport Renewal Application for Eligible Individuals (90 Fed. Reg. 9800); Application for a U.S. Passport for Eligible Individuals: Correction, Name Change to Passport Issued 1 Year Ago or Less, and Limited Passport Replacement (90 Fed. Reg. 9800)

Dear Secretary Rubio:

The undersigned State Attorneys General of Massachusetts, New York, California, Connecticut, Hawai'i, Minnesota, Nevada, New Jersey, New York, Oregon, Vermont, and Washington ("the States") write to oppose proposed changes to information collection forms DS-11, "Application for a U.S. Passport"; DS-82, "U.S. Passport Renewal Application for Eligible Individuals"; and DS-5504, "Application for a U.S. Passport for Eligible Individuals: Correction, Name Change to Passport Issued 1 Year Ago or Less, and Limited Passport Replacement." The proposed changes to these forms will conflict with state laws; cause significant confusion, increase costs, and undermine state public safety interests; interfere with the rights of our transgender, nonbinary, and intersex residents to travel freely; and expose our transgender, nonbinary, and intersex residents to harm, including harassment, discrimination, and negative mental health outcomes. All Americans deserve identification documents, including U.S. Passports, that accurately reflect their identity; the States write to express our strong disapproval of the proposed changes.

## I. Background

Gender identity is understood as one’s internal sense of one’s gender, which, for many, aligns with sex assigned at birth.<sup>1</sup> However, for transgender and nonbinary individuals, there is an incongruence between gender identity and sex assigned at birth called gender dysphoria. Gender dysphoria is a medical condition that causes clinically significant distress and may result in “symptoms of depression and anxiety, substance use disorders, a negative sense of well-being and poor self-esteem, and an increased risk of self-harm and suicidality.”<sup>2</sup>

On January 20, 2025, the Trump administration released Executive Order No. 14,168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (“the Gender Identity EO”), rejecting gender dysphoria, a diagnosis recognized by every major medical association in the country, and states that it is now “the policy of the United States to recognize two sexes, male and female.”<sup>3</sup> The Gender Identity EO is driven by animus against transgender, nonbinary, and intersex people and disdain for gender diversity generally. It fails to recognize the existence of transgender, nonbinary, or intersex people, their dignity, and their personhood, and it frames their identity as fraudulent and worthy of discrimination. The undersigned States flatly reject these discriminatory attacks that lack any scientific or legal basis. The drastic policy changes announced in the Gender Identity EO and proposed in the information collection form changes described above break with decades of federal policy on gender identity and identifiers. Indeed, the federal government has a long history of recognizing gender identity as distinct from sex assigned at birth and accordingly granting individuals the ability to change gender markers in identifying records and documents.

### a. Social Security Administration

The Social Security Administration (SSA) has allowed individuals to change the gender marker in their Social Security records since November 1980.<sup>4</sup> In 2002, the SSA started to require documentation confirming that an individual received gender-affirming surgery before they could change their gender marker.<sup>5</sup> The SSA modified gender marker change requirements again in 2013, following similar policy shifts at the State Department, Office of Personnel Management, the Veterans Health Administration, and the U.S. Citizenship and Immigration Services.<sup>6</sup> The 2013 interpretive rules were more permissive about the circumstances that could justify changing the gender marker on SSA documentation, allowing individuals to submit a

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<sup>1</sup> Laurel Wamsley, *A Guide To Gender Identity Terms*, NPR (June 2, 2021), <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>.

<sup>2</sup> AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 513–14 (5th ed., text rev. 2022); Garima Garg et al., *Gender Dysphoria*, StatPearls (July 11, 2023), <https://www.ncbi.nlm.nih.gov/books/NBK532313/>.

<sup>3</sup> Exec. Order No. 14,168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8,615 (Jan. 20, 2025).

<sup>4</sup> Benjamin Cerf Harris, *Likely Transgender Individuals in U.S. Federal Administrative Records and the 2010 Census*, U.S. CENSUS BUREAU CTR. FOR ADMIN. REC. (May 4, 2015).

<sup>5</sup> SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 00203.215 *Changing Numident Data for Reasons other than Name Change* (2002).

<sup>6</sup> *Soc. Sec. Admin., Program Operations Manual System*, 127 HARV. L. REV. 1863, 1866 (2014).

government-issued identification document that already had the new gender marker, a court order, or a letter from a physician stating that they have been given “appropriate clinical treatment for gender transition.”<sup>7</sup>

In 2022, the SSA released new interpretive guidance allowing people to self-select their gender markers without supporting documentation, which the then-commissioner explained would “decrease administrative burdens and ensure people who identify as gender diverse or transgender have options in the Social Security Number card application process.”<sup>8</sup> Seeking to reverse nearly 45 years of federal policy, the current administration stopped the well-established practice of allowing gender marker changes in SSA records on January 31, 2025, after the Trump administration’s Gender Identity EO.<sup>9</sup>

### *b. Department of State*

The State Department’s policy changes historically proceeded along a similar path; the agency has permitted gender marker changes for decades, with the steps required to do so becoming increasingly permissive over the years. As early as the 1990s, the State Department allowed transgender individuals to change their gender markers after furnishing documentation verifying that they completed gender-affirming surgery.<sup>10</sup> That changed in 2010 when the agency shifted to only requiring a letter from a physician stating that the individual was getting “appropriate clinical treatment for gender transition.”<sup>11</sup> In 2020, a Nevada district court ruled that requiring a letter from a transgender plaintiff’s physician to change his passport gender marker violated his constitutional right to equal protection.<sup>12</sup> The decision found that, although the government did have an interest in producing accurate identification documents, in this case, the State Department failed to show that a physician letter would advance that interest “given that not all transgender persons receive or require physician treatment.”<sup>13</sup> The Department of Justice chose not to pursue an appeal in March 2021, in part because at that time, the State Department was reconsidering the physician certification requirement.<sup>14</sup> Then, on June 30, 2021, the State

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<sup>7</sup> SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10212.200 *Changing Numident Data for Reasons other than Name Change* (2013).

<sup>8</sup> Matthew Rodriguez, *Social Security Administration Will Allow People to Choose Their Gender Markers*, THEM (Oct. 20, 2022), <https://www.them.us/story/social-security-administration-transgender-gender-markers>.

<sup>9</sup> Samantha Riedel, *The Social Security Administration Is No Longer Allowing Changes to Gender Markers*, THEM (Feb. 5, 2025), <https://www.them.us/story/social-security-administration-no-longer-allowing-changes-gender-markers>.

<sup>10</sup> Ernesto Londoño, *Transgender Americans Challenge Trump’s Passport Policy in Court*, N.Y. TIMES (Feb. 7, 2025), <https://www.nytimes.com/2025/02/07/us/transgender-americans-lawsuit-trump-passports.html#:~:text=In%20the%20early%201990s%2C%20the,Zzyym%2C%20an%20intersex%20military%20veteran.&text=The%20next%20year%2C%20the%20Biden,Seamus%20Hughes%20contributed%20research>.

<sup>11</sup> *Id.*

<sup>12</sup> *Morris v. Pompeo*, 706 F. Supp. 3d 1074, 1089 (D. Nev. 2020).

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Solicitor Gen. Elizabeth Prelogar to Rep. Nancy Pelosi (Feb. 18, 2021), [https://www.justice.gov/oip/foia-library/osg-530d-letters/morris\\_v\\_pompeo\\_530d/dl](https://www.justice.gov/oip/foia-library/osg-530d-letters/morris_v_pompeo_530d/dl).

Department issued a statement that individuals would be able to self-select gender markers without medical documentation.<sup>15</sup>

That same year, the State Department first allowed an individual to get a passport with an X gender marker, and that decision became policy on April 11, 2022.<sup>16</sup> A press release from the agency stated that this change was for the benefit of “nonbinary, intersex, and gender non-conforming individuals.”<sup>17</sup> Both changes were part of the State Department’s “commitment to promoting the freedom, dignity, and equality of all people, regardless of their gender identity.”<sup>18</sup> It was not until the Gender Identity EO that the Department abandoned its practice of allowing for gender marker changes. Despite the change, there are individuals who hold current U.S. Passports with an X gender marker, and the United States continues to receive travelers from other nations that designate a gender other than “male” or “female” on their citizens’ Passports.<sup>19</sup>

Additionally, the United States is an active member of the International Civil Aviation Organization (ICAO), established by the Convention on Civil Aviation of 1944 (Chicago Convention).<sup>20</sup> ICAO is the sole international body that establishes global standards for travel document content and format, and its specifications for Machine Readable Passports explicitly provide for the sex of the Passport holder to be designated as “F,” “M,” or “X for unspecified.”<sup>21</sup> Furthermore, at least fifteen countries around the world currently allow for X gender markers on Passports.<sup>22</sup>

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<sup>15</sup> *They The People: Accurate Gender Markers for All*, ACLU, <https://www.aclu.org/news/topic/they-the-people-accurate-gender-markers-for-all#:~:text=Trans%2C%20intersex%2C%20and%20non%2D,add%20an%20X%20designation%20soon> (last updated May 16, 2024).

<sup>16</sup> On public forms, those who selected the X marker would have their gender listed as “unspecified or another gender identity” to maintain individual privacy. See Press Release, U.S. Dep’t of State, X Gender Marker Available on U.S. Passports Starting April 11 (March 31, 2022), <https://2021-2025.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/>.

<sup>17</sup> Press Release, U.S. Dep’t of State, X Gender Marker Available on U.S. Passports Starting April 11 (March 31, 2022), <https://2021-2025.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/>.

<sup>18</sup> Passports: Addition of Gender X Marker, 22 C.F.R. § 51.23 (2022).

<sup>19</sup> Australia, India, Malta, Nepal, and New Zealand are among the growing number of countries offering passports with gender markers other than “M” or “F.” See Lauren Bishop, Gender and Sex Designations for Identification Purposes: A Discussion on Inclusive Documentation for a Less Assimilationist Society, 30 WIS. J.L. GENDER & SOC’Y 131, 142 (2015).

<sup>20</sup> See *Wardair Can. Inc. v. Fla. Dep’t of Revenue*, 477 U.S. 1, 9-10 (1986); see also 22 U.S.C. § 5501 (“It is the policy of the United States . . . to work through the [ICAO] to improve aviation security internationally.”).

<sup>21</sup> Machine Readable Travel Documents, ICAO Document 9303, Part IV at 14 (8th ed. 2021) (“Sex of the holder, to be specified by . . . the capital letter F for female, M for male, or X for unspecified.”),

[https://www.icao.int/publications/documents/9303\\_p4\\_cons\\_en.pdf#:~:text=Doc%209303%2C%20Part%204%20defines%20specifications%20that,specifications%20herein%20shall%20apply%20equally%20to%20all](https://www.icao.int/publications/documents/9303_p4_cons_en.pdf#:~:text=Doc%209303%2C%20Part%204%20defines%20specifications%20that,specifications%20herein%20shall%20apply%20equally%20to%20all).

<sup>22</sup> C.L. Quinan, *Rise of X: Governments Eye New Approaches for Trans and Nonbinary Travelers*, MIGRATION POL’Y INST. (Aug. 17, 2022), [https://www.migrationpolicy.org/article/x-marker-trans-nonbinary-travelers#:~:text=Rise%20of%20X%3A%20Governments%20Eye%20New%20Approaches%20for%20Trans%20and%20Nonbinary%20Travelers,-August%2017%2C%202022&text=In%20April%202022%2C%20the%20United,%E2%80%9CX%E2%80%9D\)%20in%20passports](https://www.migrationpolicy.org/article/x-marker-trans-nonbinary-travelers#:~:text=Rise%20of%20X%3A%20Governments%20Eye%20New%20Approaches%20for%20Trans%20and%20Nonbinary%20Travelers,-August%2017%2C%202022&text=In%20April%202022%2C%20the%20United,%E2%80%9CX%E2%80%9D)%20in%20passports) (stating that Bangladesh, Canada, Denmark, Iceland, India, Malta, Nepal, New Zealand, Pakistan, Austria, Germany, and the Netherlands all provide X markers on passports); Michele Kelemen, *The Future of*

On February 8, 2025, the State Department issued internal guidance to all diplomatic and consular posts in alignment with the Gender Identity EO, stating that the Department would no longer issue U.S. Passports or Consular Reports of Birth Abroad (CRBAs) with X gender markers.<sup>23</sup> If any Passport or CRBA applications request X gender markers, the Department will change the gender marker to “M” or “F” when “sufficient evidence of biological sex at birth is provided or, if that does not exist, a review of all available evidence establishing biological sex at birth by a preponderance of evidence.”<sup>24</sup> If an application offers inadequate evidence of sex assigned at birth, employees are instructed to suspend the application and request more information from the applicant; if the additional information is also inadequate to determine sex assigned at birth—if the documents only present X, intersex monikers, or conflicting information—the application will be indefinitely suspended.<sup>25</sup> This constructive denial of Passports to transgender, nonbinary, and intersex people is blatantly discriminatory and a potential Fifth Amendment violation without due process. To determine sex assigned at birth, the guidance also directs agency employees to look at records created closest in time to the applicant’s birth.<sup>26</sup>

Ten days after issuing the guidance, the Department started releasing notices of proposed information collection forms for three different U.S. Passport application processes.<sup>27</sup> The notices alerted the public that the agency planned to change forms DS-11, Application for a U.S. Passport; DS-82, U.S. Passport Renewal Application for Eligible Individuals; and DS-5504, Name Correction or Change to a Passport Issued 1 Year Ago or Less, or Limited Passport Replacement.<sup>28</sup> Instead of asking for the individual’s gender, the forms would now request the applicant’s biological sex at birth, either male “M” or female “F,” to comply with the Gender

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*Passports With The X Gender Marker*, NPR (Jan. 29, 2025), <https://www.npr.org/2025/01/29/nx-s1-5276261/the-future-of-passports-with-the-x-gender-marker#:~:text=KELEMEN%3A%20In%202022%2C%20the%20Biden,won't%20give%20any%20numbers> (explaining that Australia offers X markers on passports); Cristian González Cabrera, *Argentina Recognizes Nonbinary Identities*, Hum. Rts. Watch (July 22, 2021), <https://www.hrw.org/news/2021/07/22/argentina-recognizes-nonbinary-identities#:~:text=The%20International%20Civil%20Aviation%20Organization,tolerance%2C%20and%20inclusion%20for%20all> (listing Argentina as one of the countries that offer X gender markers on passports); Katherine Fung, *Which Countries Recognize Third Gender Option on Passports*, Newsweek (Oct. 27, 2021), <https://www.newsweek.com/which-countries-recognize-third-gender-option-passports-1643167> (including Colombia on the list of countries that allow for X gender markers on passports).

<sup>23</sup> Ken Klippenstein (@kenklippenstein), SUBSTACK (Feb. 10, 2025, 10:08 AM), <https://substack.com/@kenklippenstein/note/c-92455307>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Application for a U.S. Passport, 90 Fed. Reg. 9652 (Feb. 14, 2025); U.S. Passport Renewal Application for Eligible Individuals, 90 Fed. Reg. 9800 (Feb. 18, 2025); Application for a U.S. Passport for Eligible Individuals: Correction, Name Change to Passport Issued 1 Year Ago or Less, and Limited Passport Replacement, 90 Fed. Reg. 9800 (Feb. 18, 2025).

<sup>28</sup> *Id.*

Ideology EO.<sup>29</sup> Prior to this change, the notices explain, the agency had also changed “gender” to “sex” on these forms.<sup>30</sup>

The proposed changes lack rational justification, besides animus towards transgender and nonbinary individuals, that would provide cause for departing from the longstanding approach of allowing for gender marker changes. Accordingly, in early February, a plaintiff class comprised of transgender, nonbinary, and intersex individuals sued President Trump in his official capacity, Secretary Rubio in his official capacity, and the United States of America, on the grounds that the State Department’s new Passport policy—revoking plaintiffs’ ability to get accurate gender designations on their Passports—violates plaintiffs’ Fifth and First Amendment rights and the Administrative Procedure Act.<sup>31</sup> Filed in the District of Massachusetts, the class’s complaint explains that the State Department’s new policy requires Passport holders to pick “M” or “F” in accordance with whether they “‘belong[, at conception, to the sex that produces’ either ‘the large’ or ‘the small reproductive cell,’” which presents unworkable and medically inaccurate definitions of “male” and “female.”<sup>32</sup>

## II. Use of X Markers and Ability to Change Gender Designation

### a. *Social Transitioning and Self-Identification*

Estimates suggest that nearly 1.6 million adults and youth in the U.S. identify as transgender, and of those, approximately 341,800 adults identify as gender nonconforming and/or nonbinary.<sup>33</sup> An estimated 5.6 million U.S. residents are born intersex.<sup>34</sup> For many transgender, nonbinary, and intersex people, social transitioning—the process by which someone’s gender expression becomes consistent with their gender identity—may be the first step toward living authentically as their true gender. Social transitioning often involves a transgender, nonbinary, or intersex individual changing their name and altering their legal and identification documents to reflect the name they now use and the gender markers associated with their gender identity.<sup>35</sup> Forcing a transgender, nonbinary, or intersex person to live in a way that does not align with their gender identity impedes their social transition and may increase symptoms of gender dysphoria or otherwise cause significant harm.<sup>36</sup> When a transgender, nonbinary, or intersex person possesses

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Compl., Ashton Orr v. Donald Trump, No. 1:25-cv-10313 (D. Mass. Feb. 7, 2025).

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *How Many Adults and Youth Identify as Transgender in the United States?*, UCLA WILLIAMS INST. (June 2022), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.

<sup>34</sup> Associated Press, *How Many Trans and Intersex People Live in the U.S.? Anti-LGBTQ Laws Will Affect Millions*, NBC NEWS (July 27, 2023), <https://www.nbcnews.com/nbc-out/out-news/many-transgender-intersex-people-live-us-rca96711>.

<sup>35</sup> *Gender Identity: Social Transitioning*, UMass Memorial Health, <https://www.ummhealth.org/health-library/gender-identity-social-transitioning> (last visited March 14, 2025).

<sup>36</sup> Press Release, Massachusetts Comm’n on LGBTQ Youth, Massachusetts Allows Nonbinary Marker on Licenses, IDs (Nov. 19, 2019), <https://www.mass.gov/news/massachusetts-allows-nonbinary-marker-on-licenses-ids> (noting that “having a gender marker on identification that does not match one’s gender identity can lead to discrimination and even violence, and causes many individuals to avoid receiving services or entering spaces in which an ID is required.”).

accurate identification documents—ones with gender markers that match their gender identity—they may move through the world as themselves, without “outing” themselves to everyone who sees that documentation.<sup>37</sup> Getting accurate identification documents can thus be an essential part of social transition because the documents can affirm the holder’s gender.<sup>38</sup>

### *b. State Laws Permitting Gender Marker Changes and X Markers*

Accurate identification documents allow individuals to participate fully in society. Without accurate documents, it can be difficult for people to obtain necessities, foster stability in their lives, and partake in the privileges of citizenship. For instance, having accurate identifying documents is a requirement to get public benefits—without any, it can be difficult to obtain cash or food assistance or apply for Social Security benefits.<sup>39</sup> A lack of accurate identification can also prevent people from enrolling in school or GED programs, finding housing or accessing shelters, and getting jobs or health insurance.<sup>40</sup> Citizens may not be able to register to vote, or vote in some places, without accurate identification.<sup>41</sup> Moreover, without such identification, individuals may find it hard to open bank accounts, contract for utilities, travel by plane, and enter buildings or venues with security.<sup>42</sup>

Policies that affirm transgender, nonbinary, and intersex lives are important, and the States recognize that efforts to deny the existence of our transgender, nonbinary, and intersex residents cause dignity harm, increase confusion, and escalate the chances of discrimination and negative mental health outcomes. States across the country, including but not limited to the undersigned States, have passed a variety of laws prohibiting discrimination on the basis of gender identity and expression.<sup>43</sup> Rejecting transgender, nonbinary, and intersex people’s ability to be their

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<sup>37</sup> Ayden I. Scheim, Amaya G. Perez-Brumer, & Greta R. Bauer, *Gender-Concordant Identity Documents And Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, 5 LANCET PUB. HEALTH (March 2020),

<https://pmc.ncbi.nlm.nih.gov/articles/PMC9912749/#:~:text=Of%2022%20286%20respondents%20included,structural%20determinants%20of%20transgender%20health> (“Changing one’s name and gender marker on IDs such as birth certificates, passports, and driver’s licenses can be a crucial step in legal and social gender affirmation.”).

<sup>38</sup> *Id.*

<sup>39</sup> MOVEMENT ADVANCEMENT PROJECT, THE ID DIVIDE: HOW BARRIERS TO ID IMPACT DIFFERENT COMMUNITIES AND AFFECT US ALL 14 – 15 (Nov. 2022), <https://www.mapresearch.org/file/MAP-Identity-Documents-report-2022.pdf>.

<sup>40</sup> *Systems of Inequality: Poverty & Homelessness*, SYLVIA RIVERA LAW PROJECT, <https://srp.org/wp-content/uploads/2017/03/Poverty-and-Homelessness-Flowchart.pdf> (last visited March 14, 2025).

<sup>41</sup> MOVEMENT ADVANCEMENT PROJECT, *supra* note 39 at 16 – 18.

<sup>42</sup> *Id.* at i – ii.

<sup>43</sup> **California:** Cal. Civ. Code § 51(b), (e)(5) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(7) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 368D-1 (education); *id.* § 302A-461 (school athletics); *id.* § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Kansas:** Kan. Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug.

authentic selves and hold consistent identification documents, such as birth certificates, other state identification documents, and Passports, pushes them into societal isolation.<sup>44</sup>

As of March 3, 2025, at least 16 states allow transgender, nonbinary, and intersex people to correct their state-issued birth certificate to accurately reflect their gender identity.<sup>45</sup> The options include male, female, or X.<sup>46</sup> The States have various laws and policies that welcome their residents to get a legal name change in recognition of their residents' true selves. These laws and policies also permit individuals to change their legal documents—including state identification documents like non-driver IDs and driver's licenses, as well as birth certificates—to reflect their gender identity.

In New York, for example, the state legislature passed the Gender Recognition Act (GRA), which allows adults and minors to obtain a legal name change or gender change through the court system and select a gender of male, female, or X.<sup>47</sup> For minors, a legal guardian is required to

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21, 2020) (advising that Kansas laws prohibiting discrimination based on “sex” in “employment, housing, and public accommodation” contexts “are inclusive of LGBTQ and all derivatives of ‘sex’”). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(9-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov’t § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7, fifty-ninth (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Minnesota:** Minn. Stat. § 363A.03(44) (definition); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (housing); *id.* §§ 613.310(4), 613.330 (employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(Q) (definition); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Const. Art. 1 § 11 (prohibiting discrimination, including on the basis of sex and gender identity and expression); N.Y. Exec. Law §§ 291, 296 (education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Pennsylvania:** 43 P.S. § 953; 16 Pa. Code § 41.206 (defining sex to include gender identity). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(11), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); *id.* § 49.60.040(27) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing).

<sup>44</sup> *Exclusion and Identity: Life Without ID*, PRIVACY INT’L (Dec. 14, 2018), <https://privacyinternational.org/long-read/2544/exclusion-and-identity-life-without-id> (“Identity documents and cards can be sources of exclusion in different ways. Hurdles to access and use ID can occur at different stages of the process, from enrolment and registration through to authentication and verification. It can range from people not having an ID card at all, to issues with using the ID.”).

<sup>45</sup> *Equality Maps: Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, [http://www.lgbtmap.org/equality-maps/identity\\_document\\_laws](http://www.lgbtmap.org/equality-maps/identity_document_laws) (last visited March 14, 2025).

<sup>46</sup> *Id.* 16 states, including California, New York, Illinois, Michigan, Illinois, and Massachusetts allow for an X marker on birth certificates. *Id.*

<sup>47</sup> N.Y. Civ. Rights Law § 6-A.



complete the process; adults can petition to change their name and gender markers and can obtain a gender change order without having to present any medical documentation.<sup>48</sup> With a legal name change order, individuals can change their New York State or New York City birth certificate so that it lists their updated name, and all individuals can change the gender markers on their birth certificates without a gender change order. Legal name change proceedings for transgender and nonbinary New Yorkers are often sealed and confidential for privacy, and when an individual updates their birth certificate in New York or New York City, the original record is sealed and cannot be unsealed absent a court order.<sup>49</sup> This process was designed to ensure that transgender and nonbinary New Yorkers can update their documents and keep their private medical information private and not be forced to use or show their original, inaccurate birth certificates.

In other states, like Massachusetts, individuals can request a change in the sex designation on their birth certificate to “female,” “male,” or “X” without any medical or healthcare documentation, court order, or proof of name change.<sup>50</sup> As of July 2024, people in Massachusetts can amend marriage records by requesting to remove the sex of either or both parties to the marriage, designate “X,” “M,” or “F” on an application for a driver’s license, learner’s permit, identification card, or liquor purchase identification card.<sup>51</sup> Similarly, in California, Connecticut, Hawai‘i, Illinois, Nevada, New Jersey, Minnesota, Oregon, Vermont, and Washington, individuals can designate their gender as “X,” “M”, or “F” on their driver’s licenses or other identification cards.<sup>52</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> N.Y. Civil Rights Law §§ 67, 67-B (permitting amendment of “sex designation on a birth certificate and ordering “records of such change . . . to be sealed); Public Health Law §§ 4132, 4138(f); New York State Department of Health, *Gender Designation Amendments*,

[https://www.health.ny.gov/vital\\_records/gender\\_designation\\_corrections.htm](https://www.health.ny.gov/vital_records/gender_designation_corrections.htm) (conforming state agency must maintain prior birth certificate in sealed file.); N.Y. Vital Statistics § 207.05(b).

<sup>50</sup> MGL c. 46, § 13(e). *See also* 410 ILCS 535/17(1)(e); N.J.S.A. 26:8-40.12; Conn. Gen. Stat. § 19a-42(b); ORS 432.235.

<sup>51</sup> MGL c. 46, § 13(l); MGL c. 90, § 8N. Several states allow individuals to request the removal of, or change, gender-identifying language on their marriage certificates. *See e.g.*, 750 ILCS 5/222; Cal. Health & Saf. Code, §103425).

<sup>52</sup> *See* Cal. Veh. Code §12800(a)(2) – (3); Press Release, Conn. Gov. Ned Lamont, Governor Lamont Announces DMV Now Including ‘Nonbinary’ as Gender Option for Driver’s Licenses and ID Cards (Jan. 27, 2020), [https://portal.ct.gov/governor/news/press-releases/2020/01-2020/governor-lamont-announces-dmv-now-including-nonbinary-as-gender-option?language=en\\_US](https://portal.ct.gov/governor/news/press-releases/2020/01-2020/governor-lamont-announces-dmv-now-including-nonbinary-as-gender-option?language=en_US); Haw. Rev. Stat. §§ 286-109(a), 286-303; 15 ILCS 335/5; Press Release, Nev. Dept. of Motor Vehicles, Nevada Implements Gender-Neutral IDs (April 22, 2019), <https://dmv.nv.gov/news/19001-gender-x-available.htm>; Press Release, N.J. Motor Vehicle Comm’n, Gender “X” Option Now Available for Licenses/IDs in New Jersey (April 19, 2021), <https://www.nj.gov/mvc/press/archives/2021/041921.htm>; Paul Walsh, *Minnesota Now Offers ‘X’ For Gender Option on Driver’s Licenses*, MINN. STAR TRIBUNE (Oct. 3, 2018), <https://www.startribune.com/minnesota-now-offers-x-for-gender-option-on-driver-s-licenses/494909961>; Casey Parks, *Oregon Becomes First State to Allow Nonbinary on Drivers License*, THE OREGONIAN (June 15, 2017), [https://www.oregonlive.com/portland/2017/06/oregon\\_becomes\\_first\\_state\\_to.html#incart\\_river\\_home\\_pop](https://www.oregonlive.com/portland/2017/06/oregon_becomes_first_state_to.html#incart_river_home_pop); Vt. Dep’t of Health, Vital Records Rule, Code of Vermont Rules 13 140 081 (Dec. 29, 2022); Ragini Gupta, *‘Nonbinary Genders Are Valid’: Washington State Begins Issuing Licenses With Gender Marker ‘X’*, CASCADE PBS (Nov. 14, 2019), <https://www.cascadepbs.org/2019/11/nonbinary-genders-are-valid-washington-state-begins-issuing-licenses-gender-marker-x>.

Transgender, nonbinary, and intersex people, like all American residents, have the right to dignity and the right to participate fully in our workplaces, schools, places of worship, and our public accommodations. They therefore must have access to accurate identification documents.

### **III. The Proposed Changes Conflict with State Policies; Cause Confusion, Increase Costs for States, and Undermine State Public Safety Interests; Compromise the Right to Travel; and Harm Our Transgender and Nonbinary Residents**

#### ***a. The Proposed Changes Conflict with State Laws***

Preventing people from aligning their U.S. Passports with their gender identity is arbitrary and conflicts with countless state policies allowing residents to use gender designations that correspond with their gender identity. The States have a sovereign interest in the issuance of state identity documents and vital statistics collection and have carefully implemented systems to manage them. The States have developed processes for issuing birth certificates, driver's licenses, and non-driver photo identification cards as well as procedures to determine and change gender designation on such documents.<sup>53</sup> The proposed changes would undermine these systems by forcing residents to have documents that do not accord with their identities, nor with the rest of their identification documents.

Since the States allow transgender, nonbinary, and intersex residents to change the gender marker on their birth certificates, whether by administrative process or court order, the proposed changes will make many transgender and nonbinary people's Passports inconsistent with their most foundational identity documents.<sup>54</sup> Many of the States also allow transgender people to change their birth certificate based on self-attestation without any need for medical intervention, documentation, or surgery.<sup>55</sup> Furthermore, when transgender, nonbinary, or intersex people update their birth certificates, many of these states keep the original certificates sealed; they can

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<sup>53</sup> NAT'L NETWORK FOR YOUTH, A STATE-BY-STATE GUIDE TO OBTAINING ID CARDS (2016), [https://nn4youth.org/wp-content/uploads/Field-Guide\\_Obtaining-ID-Cards.pdf](https://nn4youth.org/wp-content/uploads/Field-Guide_Obtaining-ID-Cards.pdf).

<sup>54</sup> *Birth Certificates*, AM. BAR ASSOC., [https://www.americanbar.org/groups/public\\_education/publications/teaching-legal-docs/birth-certificates/#:~:text=In%20the%20United%20States%2C%20birth,or%20apply%20for%20other%20benefits](https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/birth-certificates/#:~:text=In%20the%20United%20States%2C%20birth,or%20apply%20for%20other%20benefits) (last visited March 14, 2025) (explaining that "birth certificates serve as proof of an individual's age, citizenship status, and identity. They are necessary to obtain a social security number, apply for a passport, enroll in schools, get a driver's license, gain employment, or apply for other benefits."). Changes to gender markers on birth certificates are made in the states by administrative process or court order. *See* N.J.S.A. 26:8-40.12 (requiring a court order to change one's name but not the gender marker on one's birth certificate); Cal. Health & Saf. Code, § 103426 (explaining that no court order is required to change the gender marker on a California-issued birth certificate); ORS 33.460 (explaining applications for legal change of sex to a court).

<sup>55</sup> *See e.g.*, Cal. Health & Saf. Code, §103426; Conn. Gen. Stat. § 19a-42(b) (stating that self-attestation is sufficient for changing one's birth certificate gender marker); 410 ILCS 535/17(1)(e); WAC 246-490-075(4), (6). Some states have determined that getting rid of surgery requirements is constitutionally required. *See* Letter from Michigan Attorney Gen. Dana Nessel to Michigan Dir. of Dept. of Health and Hum. Servs. Elizabeth Hertel (June 30, 2021), [https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2021/June/7313\\_to\\_AG\\_signed\\_06-30\\_003\\_729202\\_7.pdf?rev=ff93cf9b95234bdba53df80aadf679fb&hash=A44C724A4AA65635B4072D7267434E1B](https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2021/June/7313_to_AG_signed_06-30_003_729202_7.pdf?rev=ff93cf9b95234bdba53df80aadf679fb&hash=A44C724A4AA65635B4072D7267434E1B) (declaring that the "sex-reassignment surgery" required to change one's sex designation on a birth certificate under Michigan law violates an individual's equal protection and due process rights).

only be unsealed with a court order.<sup>56</sup> The proposed changes deny the contents of state-issued birth certificates and will force transgender, nonbinary, and intersex individuals to submit identification documents that do not match the “sex” on their DS-11, DS-82, and DS-5504 forms. These discrepancies could prevent them from getting a Passport at all, particularly if the February 8, 2025, internal guidance holds. Additionally, some states provide for gender marker changes on birth certificates by court order; the proposed changes would therefore give license to the State Department to undermine lawful state court orders that change individuals’ legal gender designation.

If these changes take effect, transgender, nonbinary, and intersex individuals may have accurate gender markers on most or all documents except their U.S. Passports, which, as the following sections explain, may pose issues as individuals engage in daily life—enrolling in school, establishing parentage, or proving work authorization with an employer—and exacerbate their gender dysphoria.

***b. The Proposed Changes Will Cause Confusion, Increase Costs, and Undermine State Public Safety Interests***

The mismatch between state-issued identification materials and U.S. Passports will create significant confusion and costs, at least some of which will be borne by the States. The States accept U.S. Passports to verify eligibility for a number of systems and activities: benefits, housing, access to certain public accommodations like bars and restaurants, employment, enrollment in our schools, and a range of financial transactions.<sup>57</sup> A U.S. Passport that does not match a resident’s gender identity will cause confusion and delays at the state agencies that administer these programs, particularly if state identification conflicts with the U.S. Passport data. Further, the proposed changes ignore intersex individuals and provide no guidance on how they should choose “M” or “F” on any such forms. Such uncertainty may constructively deny individuals access to Passports, which will result in confusion and significant delays, force the States to expend needless additional resources, and violate these individuals’ Fifth Amendment due process rights.

When a state agency reviews an application submitted with a U.S. Passport as a method of identification, an inconsistency between the gender marker listed on the application and the inaccurate one presented by the Passport may cause confusion and delay review. Even when state agencies rely on self-selected gender markers on an application for a state benefit, for instance, if there is any other issue with identity or residency, officials will need to assess a secondary form

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<sup>56</sup> See Cal. Health & Saf. Code, §103426; Haw. Rev. Stat. § 338-17.7(b) (stating that original birth certificates only “shall be opened only by an order of a court of record or . . . by request of the birth registrant.”); 410 ILCS 535/17(4); N.J.S.A. 26:8-40.12; Minn. Stat. Ann. §144.218; ORS 432.245.

<sup>57</sup> See e.g., N.Y. DEPT. OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE APPLICATION FOR: PUBLIC ASSISTANCE, CHILD CARE IN LIEU OF PUBLIC ASSISTANCE, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, MEDICAID AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, MEDICAID AND PUBLIC ASSISTANCE, SERVICES INCLUDING FOSTER CARE, CHILD CARE ASSISTANCE, EMERGENCY ASSISTANCE ONLY, <https://otda.ny.gov/programs/applications/1301.pdf> (last visited March 16, 2025) (“[T]o prove who you are, you can supply photograph identification, a driver license, a United States passport. . .”).

of identification and may be confronted with different gender markers on different legal documents.

Notably, individuals are likely to submit their Passports when applying for certain benefits even if they possess other forms of identification. As a federally recognized identification document, a U.S. Passport carries significant weight and provides proof of not only the identity of the holder but also their citizenship status. In some states, like New York, individuals must provide proof of identity *and* U.S. Citizenship and/or Immigration Status to apply for health insurance.<sup>58</sup> Similarly, in New York City, one member of a household must prove that they are a U.S. Citizen or non-citizen with eligible immigration status for access to public housing.<sup>59</sup> The confusion presented by a Passport with inaccurate gender markers in any process for public benefits will introduce unnecessary administrative burdens and extra costs on state agencies. Likewise, state employers in receipt of potential or current employees' U.S. Passports with inaccurate gender markers will expend additional resources in determining an employee's identity for payment purposes. Public primary and secondary schools, too, will have to resolve confusion about students' identities, residences, and ages in order to enroll them. The proposed changes are likely to cause confusion and delays that will compromise transgender, nonbinary, and intersex individuals' ability to access essential services.

The confusion resulting from the proposed changes may similarly disrupt transgender, nonbinary, and intersex individuals' participation in society more generally. For instance, when individuals present U.S. Passports with inaccurate gender markers to enter age-restricted public accommodations, they may be denied entry temporarily, or permanently. Security guards may interpret the mismatch between a transgender, nonbinary, or intersex person's physical appearance and the "M" or "F" on their Passport as a sign of a counterfeit document—which security may feel empowered to confiscate.

The proposed changes will also undermine the States' public safety interests. Consistent identification documents are critical to the States' ability to serve their residents, by granting them access not only to essential services and public accommodations but also to a well-functioning justice system. Our state courts accept the U.S. Passport to verify identity in criminal and civil processes. Inconsistent or inaccurate identification documents could prevent victims and witnesses from taking part or delay their participation. Relatedly, during interactions with law enforcement, identification documents that present gender markers that diverge from an individual's gender identity may cause confusion and hinder verification of an individual's identity. The proposed changes would disincentivize the use of U.S. Passports for these important state public safety purposes, and for good reason: The inaccurate Passports of transgender, nonbinary, and intersex individuals may impair their engagement with the judicial

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<sup>58</sup> *Documents Needed When You Apply For Health Insurance*, N.Y. DEPT. OF HEALTH, [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/adm/10adm-5att1doccheck.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/adm/10adm-5att1doccheck.pdf) (last visited March 16, 2025).

<sup>59</sup> *Chapter 3: Applying to Public Housing*, N.Y.C. HOUSING AUTHORITY, <https://www.nyc.gov/site/nycha/residents/acop/chapter-3.page> (last visited March 16, 2025) (“At least one person in the applicant household must be a United States citizen or have eligible immigration status for the household to be eligible for the Public Housing program.”).

system and law enforcement officials. The proposed changes therefore would undermine the use of U.S. Passports for important state public safety purposes.

***c. The Proposed Changes Will Burden the Right to Travel***

The proposed changes will burden the fundamental rights of transgender, nonbinary, and intersex Americans to travel, causing harm to state economies. The right to travel has long been recognized as a fundamental right owed to Americans.<sup>60</sup> Yet the proposed changes improperly burden this constitutionally protected right by forcing transgender, nonbinary, or intersex Americans to use Passports that do not accurately reflect who they are and Passports that will almost certainly conflict with their state-issued identity documents. The inaccurate and inconsistent documents will restrict the ability of transgender, nonbinary, and intersex Americans to move freely throughout the country. For example, when traveling through a border checkpoint or security staffed by the Transportation Security Administration (TSA), an individual may be required to provide their U.S. Passport. If the individual has a Passport reflecting their sex assigned at birth, but that no longer visually comports with their gender identity or expression, that may cause significant confusion, additional delays, and harassment for that individual. Compounding this problem, it is not just international travel that could require a U.S. Passport. Beginning in May 2025, if residents choose not to get a Real ID, they will need a U.S. Passport to fly domestically.

Domestic travel is crucial to the health of the States' economies. After a period of financial downturn caused by the COVID-19 pandemic, domestic tourism has been vital to the States' economic recovery; domestic leisure travel alone is responsible for driving economic growth and job creation, generating \$855 billion across the country in 2023.<sup>61</sup> That same year, visitors from other states spent \$20.7 billion in Massachusetts,<sup>62</sup> \$47 billion in Illinois,<sup>63</sup> and over \$48 billion

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<sup>60</sup> *Dunn v. Blumstein*, 405 U.S. 330, 338, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) (“Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.”) (internal quotation omitted); *see also Kent v. Dulles*, 357 U.S. 116, 125-26, 78 S. Ct. 1113, 2 L. Ed. 2d 1204 (1958) (“The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment. . . . Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”) (citations omitted)); *Califano v. Aznavorian*, 439 U.S. 170, 176, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978) (“[T]he constitutional right to interstate travel [has been] recognized by this Court for over 100 years.”); *United States v. Guest*, 383 U.S. 745, 757, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966) (interstate travel is “a right that has been firmly established and repeatedly recognized.”) (collecting cases); *Shapiro v. Thompson*, 394 U.S. 618, 629, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651, 670-71, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974) (recognizing that the nature of “our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”).

<sup>61</sup> U.S. TRAVEL ASSOCIATION, ECONOMIC IMPACT OF THE U.S. TRAVEL INDUSTRY (2024), [https://wwwustravel.org/sites/default/files/2024-03/National%20Data\\_0.pdf](https://wwwustravel.org/sites/default/files/2024-03/National%20Data_0.pdf).

<sup>62</sup> Press Release, Mass. Office of Travel and Tourism, Tourism Drives Economic Growth in Massachusetts (Oct. 3-, 2024), <https://www.mass.gov/news/tourism-drives-economic-growth-in-massachusetts#:~:text=BOSTON%20%E2%80%94%20The%20Massachusetts%20Office%20of,state%20and%20supporting%20154%2C330%20jobs>.

<sup>63</sup> Press Release, Ill. Dept. of Com. and Econ. Opportunity, Governor Pritzker Announces Record Tourism Growth in 2023 (Aug. 15, 2024), <https://dceo.illinois.gov/news/press->

in New York City.<sup>64</sup> The States have a strong interest in out-of-state travelers having documentation that accurately reflects who they are. Burdening the ability of our residents and those of other states to travel may disrupt not only States' economies but also our higher education systems – it is imperative that out-of-state students and scholars be able to attend and visit our public institutions to promote intellectual exchange and construct academically talented student bodies and faculties.

Additionally, the proposed changes may cause significant issues for those who want to travel and hold Passports from multiple countries. There are at least 15 countries worldwide that allow for X markers on Passports and around 60 countries allow individuals to change their gender on official documents instead of forcing them to revert to sex assigned at birth.<sup>65</sup> The proposed changes ensure that these individuals will have forms of identification used for international travel that conflict; this could cause more delays, discrimination, and harassment of transgender and nonbinary individuals.

#### *d. The Proposed Changes Will Harm State Residents*

The discordance between individuals' gender identity and the gender marker on individuals' Passports will subject countless transgender, nonbinary, and intersex individuals to emotional distress, increase their risk of experiencing discrimination and harassment, and jeopardize their personal safety. Gender diverse individuals already face heightened persecution. One survey from the National Center for Transgender Equality found that 54 percent of its respondents were verbally harassed, 24 percent were physically attacked, and 13 percent were sexually assaulted, all because they were perceived as transgender while attending K-12 schools.<sup>66</sup> The survey found that, of the adult transgender respondents, 30 percent of those who were employed had been fired, denied a promotion, or experienced mistreatment in the workplace because of their transgender status.<sup>67</sup> That same National Center for Transgender Equality survey revealed that, of those transgender individuals who present identification inconsistent with their gender identity or name, almost one-third were made to leave the place where they presented the identification, verbally harassed, denied service, or physically attacked.<sup>68</sup> Another survey found that individuals who could not update their identification documents to reflect their gender identity experienced increased discrimination in both housing and hiring.<sup>69</sup>

If a transgender individual's Passport gender marker is inconsistent with their appearance, they will be forced to out themselves, making themselves vulnerable to harassment and discrimination

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release.30632.html#:~:text=Visitor%20spending%20in%202023%20surpassed,6.4%25%20increase%20from%202022%20figures.

<sup>64</sup> OFFICE OF THE N.Y. STATE COMPTROLLER, TRACKING THE RETURN: THE TOURISM INDUSTRY IN NEW YORK CITY (May 2024), <https://www.osc.ny.gov/files/reports/pdf/report-04-2025.pdf>.

<sup>65</sup> *Right to Change Legal Gender*, EQUALDEX, <https://www.equaldex.com/issue/changing-gender> (last visited March 16, 2025).

<sup>66</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 4 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>67</sup> *Id.* at 4 – 5.

<sup>68</sup> *Id.* at 89 – 90.

<sup>69</sup> Andrew Cray & Jack Harrison, *ID Accurately Reflecting One's Gender Identity Is a Human Right*, CTR. FOR AM. PROGRESS (Dec. 18, 2022), <https://www.americanprogress.org/article/id-accurately-reflecting-ones-gender-identity-is-a-human-right/#:~:text=Forty%20percent%20of%20respondents%20who,the%20person%20on%20their%20ID>.

every time this crucial identity document is required. This disclosure is also invasive and requires the revelation of private, sensitive information that would otherwise not be relevant to the intended purpose for which the Passport is used, such as travel or identity verification for state benefits.

While travelling internationally or travelling domestically and using a Passport for identification, transgender people will have to reveal their transgender status to, or have it revealed for them by, Transportation Security Administration (TSA) agents and any airport employees to whom they present the Passport. These moments are likely to become increasingly common for those travelling by plane within the country once REAL ID enforcement occurs on May 7, 2025; transgender individuals who do not have or are not using a REAL ID will have to use their Passports.<sup>70</sup> With the proposed changes in effect, transgender individuals who use their Passports as a method of identification to apply for jobs, enroll in school, or open a bank account will be outed to their employers, administrators and teachers, and those who may deny them banking services. They may be harassed and discriminated against in airports, at immigration checkpoints, at work, in school, and in financial institutions, all because their Passports divulge their transgender identity.

Additionally, forcing a transgender, nonbinary, or intersex individual to use a Passport with a gender marker that conflicts with their gender identity may not only subject them to more harassment and discrimination but may also cause “serious psychological distress” as compared to those whose identification documents accurately reflect their gender identity.<sup>71</sup> The mismatch between individuals’ Passports and their gender, and the fear of resulting exposure and harassment, could inhibit transgender, nonbinary, or intersex people from seeking or obtaining necessary services, including police assistance or emergency medical care. Indeed, transgender individuals in states with policies preventing them from getting identification documents aligned with their gender identity exhibited worse health outcomes.<sup>72</sup>

Furthermore, the proposed changes would not achieve any legitimate purpose. On the contrary, as a result of the proposed changes, transgender, nonbinary, and intersex individuals whose appearance aligns with their gender identity and not their assigned sex at birth will have Passports that are *inaccurate* as identifying documents. In addition to resulting in the denial of basic services, from housing to medical care—denials that will cause negative physical and mental health outcomes—inaccurate identification documents undermine the very purposes identification documents are intended to serve.<sup>73</sup>

#### **IV. Conclusion**

For the foregoing reasons, the States vehemently oppose the proposed changes to information collection forms DS-11, “Application for a U.S. Passport”; DS-82, “U.S. Passport Renewal

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<sup>70</sup> *Be Your Real ID Self*, DEPT. HOMELAND SECURITY, <https://www.dhs.gov/real-id> (last visited March 16, 2025).

<sup>71</sup> Ayden I. Scheim, Amaya G. Perez-Brumer, & Greta R. Bauer, *supra* note 37.

<sup>72</sup> Steve N. Du Bois et al., *Examining Associations Between State-Level Transgender Policies and Transgender Health*, 3 TRANSGENDER HEALTH (Dec. 2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6308272/>.

<sup>73</sup> NAT’L CTR. FOR TRANSGENDER EQUALITY, *supra* note 66 at 89 – 90 (describing how inaccurate documentation often leads to denial of services or care).

Application for Eligible Individuals”; and DS-5504, “Application for a U.S. Passport for Eligible Individuals: Correction, Name Change to Passport Issued 1 Year Ago or Less, and Limited Passport Replacement.” The proposed changes, motivated by animus against transgender, nonbinary, and intersex people, will conflict with state laws and state court orders; cause needless confusion, increase costs, and undermine state public safety systems; impede the ability and right of our transgender, nonbinary, and intersex residents to travel; and jeopardize the safety of transgender, nonbinary, and intersex individuals. These unjustified changes serve only to push transgender, nonbinary, and intersex individuals out of society—by making it increasingly difficult for them to travel and access essential services. They are out of alignment with past federal policy, state interests, and medical reality.

The States therefore strongly urge the State Department to withdraw the proposed changes.

Sincerely,



Andrea Joy Campbell  
Attorney General of Massachusetts



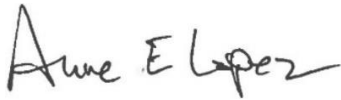
Letitia James  
Attorney General of New York



Rob Bonta  
Attorney General of California



William Tong  
Attorney General of Connecticut



Anne E. Lopez  
Attorney General of Hawai'i



Kwame Raoul  
Attorney General of Illinois



Keith Ellison  
Attorney General of Minnesota



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Attorney General of Nevada



Matthew J. Platkin  
Attorney General of New Jersey



Dan Rayfield  
Attorney General of Oregon



Handwritten signature of Charity R. Clark in cursive script.

Charity R. Clark  
Attorney General of Vermont

Handwritten signature of Nick Brown in cursive script.

Nick Brown  
Attorney General of Washington