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There have been previous rulings that passport applications must allow for an "X" gender marker to avoid discrimination against both intersex and nonbinary people. By removing that option, this policy violates intersex, transgender, and nonbinary American's Fifth and Fourteenth Amendment rights of due process and equal protection.

There has been no harm done to the American people by allowing for gender markers accurately reflecting the gender identity of applicants, nor is there any good to be gained for the American people by introducing this discriminatory policy. Furthermore, EO1468's definition of sex is not based in science, and any attempt to use it to develop law or policy will crumble under the faintest amount of scrutiny or analysis. It is simply too far from the real facts about human anatomy, biology, sex, and gender to have any bearing on how this country is run.