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The United States previously issued corrected and replacement passports to transgender, intersex, and nonbinary people that reflected the sex they live as and express, rather than the sex they were assigned at birth. Under the government's new arbitrary and unlawful policy, the United States will now refuse to correct and replace passports to otherwise eligible Americans because they are transgender, intersex, or nonbinary—except on terms that expose them to grievous harms and violate their constitutional rights to equal protection, travel, privacy, and speech and flout the Administrative Procedure Act (the “APA”).

The passport policy is unlawful and unconstitutional. It discriminates against individuals based on their sex and, as to some, their transgender status. It is motivated by impermissible animus. It wrongly seeks to erase the reality that transgender, intersex, and nonbinary people exist today as they always have.

That passport policy is expressly based on Executive Order 14168, titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” E.O. 14168 is transparently unlawful and unconstitutional. It is also unmoored from scientific and medical reality: Transgender people, intersex people, and people who do not identify as either or exclusively male or female exist. Scientific and medical authorities have recognized that fact, as have courts across the country, including the U.S. Supreme Court. E.O. 14168 seeks to rewrite those realities and replace them with the sole options of “male” or “female” based on no science, no evidence, and no meaningful explanation aside from empty, dehumanizing rhetoric.

A person's gender identity is an essential part of their identity and very frequently predicts how they will be identified by others more accurately than their sex assigned at birth. For purposes of identity documents, including passports, a person's gender identity is the most important and accurate characteristic for determining what their sex is and what their sex designation should be.

Transgender, intersex, and nonbinary Americans will be harmed by the Passport Policy. Americans will be forced to use passports with a sex designation that contradicts their gender identity and the sex designation on their other identification documents. Transgender and nonbinary Americans will not apply for corrected or replacement passports for fear that they will not receive a passport or that they will receive an unusable passport with the wrong sex designation. Having incorrect sex designations on their passports will put them in danger of mistreatment when they travel.

Disclosure that someone is transgender, nonbinary, or intersex when they do not want that information disclosed subjects that person to harm, including an invasion of privacy. It also subjects them to significant risks of discrimination and harassment in a variety of settings, including employment, travel, financial transactions, and in interactions with government employees, including, but not limited to, law enforcement personnel. Disclosure of that information can seriously jeopardize a person's safety and subject the person to risk of bodily harm.