

# Transgender Americans Challenge Trump's Passport Policy in Court

The A.C.L.U. filed a lawsuit after the president's administration stopped issuing passports that reflect the gender identity of transgender and nonbinary people.



By Ernesto Londoño

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Seven transgender American citizens sued President Trump and the State Department in federal court on Friday, arguing that a new policy that prevents people from changing gender markers on passports violates their constitutional rights.

The new passport policy stems from an executive order titled "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," which was among the orders Mr. Trump signed on his first day back in office.

The order asserts that the government must end "gender ideology," which the president described as "an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa."

After reading President Trump's order, Zaya Perysian, a transgender woman in California, rushed to apply for a new passport last month, hoping she would receive one that included an "F" for female before the State Department rescinded longstanding policies allowing transgender people to update gender markers on their documents.

When the passport arrived in the mail, it identified her as a man.

"We didn't expect the federal government to turn on us so quickly and render us void, basically," said Ms. Perysian, 22, who is a plaintiff. "I am not a man and I will not accept being seen as a man while traveling."

Lawyers with the American Civil Liberties Union filed the lawsuit in federal court in Massachusetts, where several of the plaintiffs live. It adds to a torrent of legal challenges the Trump administration is facing on a host of initiatives, including efforts to end birthright citizenship and to drastically downsize the federal work force.

Harrison Fields, a White House spokesman, said on Friday evening that the administration was prepared to defend the passport policy in court.

"Radical Leftists can either choose to swim against the tide and reject the overwhelming will of the people, or they can get on board and work with President Trump to advance his wildly popular agenda," he said in an email.

The president's orders have sought to limit government recognition of an individual's gender to the sex listed on the original birth certificate, bar transgender soldiers from serving in the military and require the Bureau of Prisons to house female transgender prisoners in men's prisons. Mr. Trump also has called for the halting of any medical treatment to prisoners "for the purpose of conforming an inmate's appearance to that of the opposite sex."

The plaintiffs in the passports case argue that Mr. Trump's policy violates constitutional protections against sex discrimination and infringes on the rights to privacy and freedom of speech.

The State Department has not issued detailed guidance to the public on its new passport rules. But transgender rights groups said the department in recent weeks did away with an option to select gender-neutral markers on passport applications and began issuing new documents to transgender people with markers that reflect the sex listed on applicants' original birth certificates.

Tammy Bruce, a spokeswoman for the State Department, did not respond to an email seeking details of the new policy. Karoline Leavitt, the White House press secretary, told the news outlet NOTUS last month that the new policy would not be applied retroactively, but that any new passports would reflect a person's "God-given sex, which was decided at birth."

Sruti Swaminathan, who represents the plaintiffs, said the new policy exposes transgender people to the potential for harassment, suspicion by the authorities about fraudulent documents and even violence when they travel abroad.

"It's deterring people from even wanting to travel," said Mx. Swaminathan, who is nonbinary.

The change has broad implications beyond overseas travel, said Rodrigo Heng-Lehtinen, the executive director of Advocates for Trans Equality. In recent years, he said, passports have become vital documents transgender people use to apply for jobs, housing, loans and government benefits, particularly in states where it's difficult or impossible to include their gender identity on other forms of identification.

The newly issued passports effectively out transgender people against their will at a time when animus against them is widespread, he said.

"It puts a scarlet letter on someone just because of who they are," Mr. Heng-Lehtinen said.

Reid Solomon-Lane, 36, a transgender man from Massachusetts who transitioned in 2007, said that obtaining a passport that identified him as male felt empowering and enabled him to work as a flight attendant for nearly a decade without worrying about his safety.

"At this point in my life, having transitioned so long ago, my trans status is not something I think about every day," said Mr. Solomon-Lane, who is also a plaintiff in the suit. "To have something that challenges my identity so deeply, and to feel that you are losing your status as an American citizen simply because of being transgender, nonbinary or intersex, is terrifying."

Mr. Solomon-Lane, whose current passport will expire during this administration, said he would be too fearful to travel abroad with a document that identifies him as a woman.

"The thought of being separated from my children for questioning, or anything like that, just is not a risk that I'm willing to take," said Mr. Solomon-Lane, a flight coordinator for a pilot organization.

Ms. Perysian, who transitioned in 2020, said she experienced unwelcome and demeaning treatment while traveling domestically using documents that bore her former name and identified her as male.

“All of that stopped after my license was updated,” said Ms. Perysian, a social media content creator who documented her gender transition on TikTok, where she has nearly five million followers.

The State Department’s policy on passports and gender has grown more permissive since the agency issued its first directive on the subject in 1971.

Back then, passports did not feature a sex marker. But the State Department issued guidance authorizing requests for name changes that were “suggestive of a change of sex,” according to a 2017 memo outlining the history of sex identifiers on passports the agency produced as part of a lawsuit.

The State Department began including sex markers on passports in 1977, a change government officials attributed to the rise of unisex fashion and hair styles.

“Gender-bending fashion made it harder for border officials to identify someone as male or female,” said Craig Robertson, a professor of communication studies at Northeastern University who wrote a book about the history of the American passport. “I sometimes joke David Bowie caused M/F sex markers to be added to the passport.”

In the early 1990s, the State Department issued new guidance allowing transgender people to obtain passports with an updated sex marker as long as they provided evidence that they had undergone surgery as part of their gender transition.

In 2010, then-Secretary of State Hillary Clinton rescinded the surgery requirement. The agency adopted a more lenient standard, asking only that transgender passport applicants produce a letter from a doctor asserting they had received “appropriate clinical treatment for gender transition.”

In 2021, the State Department issued the first passport with a gender-neutral marker — an x — the result of a yearslong legal battle by Dana Zzyym, an intersex military veteran.

The next year, the Biden administration issued a new policy allowing passport applicants to select any gender marker. Gone was the requirement to provide medical records or a rationale.

Mr. Robertson said little would be lost if passports once again did not include sex markers.

“The State Department has always struggled to offer a compelling argument why a traveler’s sex and gender is critical to identify them as a citizen, especially in an era of retina scans and biometrics,” he said.

Seamus Hughes contributed research.

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