UNDERSTANDING THE STATUS OF THE PASSPORT BAN

A Statement from SLC's Transgender Rights Initiative Director

July 11, 2025

Background: How Did We Get Here?

As a reminder, on January 20, 2025, the Trump administration issued an Executive Order that sought to prohibit transgender and non-binary people from obtaining federal documents reflecting the gender marker aligned with their gender identity. Following this cruel Executive Order, the Department of State immediately halted processing applications from folks seeking to amend their gender marker (or obtain a first-time passport reflecting the correct gender marker) and then began issuing passports exclusively reflecting folks' sex assigned at birth. A lawsuit was filed by the ACLU challenging the portion of the Executive Order prohibiting gender marker changes on U.S. Passports. This case is called *Orr v. Trump*.

On June 17th, the U.S. District Court of Massachusetts ordered the U.S. State Department to allow transgender people to access accurate passports that reflect the gender marker aligned with their gender identity. While the initial preliminary injunction order issued on April 18, 2025, was limited and only applied to the named plaintiffs in the case, the June 17th order granting class certification meant **the injunction now applies to every trans person who is part of the "class."** The class includes anyone whose gender identity differs from their sex assigned at birth and who either applied for (or would have applied for if not for the Executive Order by the Trump administration) a passport with a gender marker (M, F, or X) that does not align with their sex assigned at birth.

What Does This Mean?

While it was unclear at first whether Trump's State Department was going to comply with the federal court order blocking enforcement of this discriminatory ban, on July 2, 2025, the **U.S. Department of State finally updated the Passport website to reflect information about how to amend your name and/or gender marker on your U.S. Passport!**

This means it is ***imperative*** that all trans folks who do not currently have a Passport that reflects the correct gender marker apply to obtain one as soon as possible. There is no guarantee how long the class wide injunction will remain in place, so we encourage folks not to delay. Below, I provide all of the information you need to complete this process to make it as straightforward and seamless as possible.

Am I a Class Member?

The Department of State's own website makes clear you are a Class Member (and thus can apply to amend your existing passport to reflect the gender marker aligned with your gender identity or obtain a first-time passport reflecting the gender marker aligned with your gender identity) if:

- You **previously** applied to amend the gender marker on your Passport to reflect (or obtain a first-time passport reflecting) your gender identity and you were denied because of the Executive Order; or
- You **would have** applied to amend the gender marker on your Passport to reflect (or obtain a first-time passport reflecting) your gender identity if not for the discriminatory Executive Order
- **Note**: this includes folks who sought to (or would have sought to) obtain a passport with an "X" gender marker.

Next, the Department of State's website makes clear:

If you are a class member, you are eligible to receive a passport with your sex marker of choice **(M, F, or X)** if:

- You do not have a valid passport,
- You need to renew your current passport before it expires within one year,
- You need to change your passport, so the sex printed on the passport matches your selected gender identity, or to reflect a name change, or
- You need to apply for a new passport because your current passport is lost, stolen, or damaged.

WHAT DO I HAVE TO DO TO GET A CORRECT PASSPORT?

You will submit a Passport application and a completed "attestation form" - this form is linked here and also available on the Department of State website. This important form is the only way to identify yourself as a class member and inform the State Department what gender marker you want on your passport.

If you are selecting an **"M"** or **"F"** designation, you should select that on the attestation form as well as your application. If you are selecting an **"X"** designation, you should leave the sex field blank on your application and select "X" on the attestation form. (The application forms currently don't include an "X" option).

Which Form Do I Use?

- If you are seeking a **first-time passport,** you will use form **DS-11**
- If you are seeking to **amend the name or gender marker** on your **existing valid Passport,** you will use form **DS-5504**
- If you are seeking to **renew a Passport** that expires in less than one year, you will use form **DS-82**
- If the passport is for a child who is **under 16 years old,** you will use form DS-11
- **Note:** all of these forms are hyperlinked above, and also available on the Department of State website at https://travel.state.gov/content/travel/en/passports/how-apply/forms.html
- ALL individuals must also submit the **Attestation Form** with their application!

How Do I Submit the Forms?

- The State Department requires that you submit an application **in person** to obtain a new passport or to replace a lost, stolen, or damaged passport.
- If you are applying to renew a passport or to amend information on an existing passport, you can submit the form **by mail**.

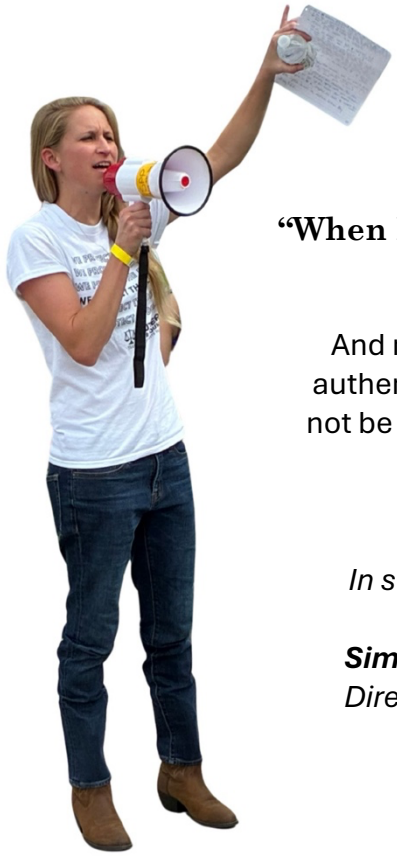
Whether you are applying in person or by mail, **all members of the class must complete a PDF version of the application,** as the online form filler on the Department of State website is not available for this purpose. Additionally, **all class members must submit the attestation form** with your application. This is the only way to ensure the court order provides you access to a correct gender marker on your Passport.

How To Stay Up to Date on Changes Regarding Passports?

Stay tuned for more updates from SLC's Trans Rights Director Simone Chriss, and follow SLC's social media for updates as the situation progresses (IG: @southernlegalcounsel, FB: @Southern Legal Counsel, Inc.).

Additionally, the ACLU has an incredible helpful Q&A that is regularly updated to reflect the most current information regarding the passport ban and the *Orr v. Trump* case, and can be found **here.**

Finally, the State Department's passport website also contains a "Frequently Asked Questions" section that provides helpful guidance, and can be found **here.**



Please remember...

"When Injustice Becomes Law, Resistance Becomes Duty"

And right now, for so many people, the courage to exist and to live authentically is itself an act of resistance. You are not alone, you will not be erased, and I promise that the oppression you are facing is not going unchallenged.

In solidarity,

Simone Chriss
Director of SLC's Transgender Rights Initiative