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U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
90 K Street NE, 10th Floor
Washington, DC 20229-1177
Submitted via *email* to CBP_PRA@cbp.dhs.gov

RE: Trusted Traveler Programs and U.S. APEC Business Travel Card (RIN 2022-11664)

To Whom It May Concern,

We are grateful for the opportunity to provide comments to U.S. Customs and Border Protection (“CBP”) regarding its above-captioned notice proposing modifications to existing collections of data associated with its Trusted Traveler Programs. *See* 87 Fed. Reg. 33,178 (June 01, 2022).

The undersigned are scholars affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity (“SOGI”), including on the demographics and experiences of lesbian, gay, bisexual, and transgender (“LGBT”) people. The Williams Institute collects and analyzes original data, as well as analyzes governmental and private data, and has long worked with federal agencies to improve data collection on the U.S. population. These efforts include producing widely-cited best practices for the collection of SOGI information on population-based surveys.¹

We write in response to the request by CBP for comments on “[w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility”² More specifically, we write in support of CBP’s proposal that the application for its Trusted Traveler Programs be modified to add a third gender marker, X, as doing so would create consistency with the Department of State’s current gender marker options for passports and would be inclusive of and equitable for nonbinary and other applicants who would otherwise be unable to accurately report their gender identity within that system.

Under the terms of Executive Order 13985, federal agencies including CBP are mandated to engage in a “comprehensive approach to advancing equity for all, including people of color

¹ *See, e.g.*, GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf>; SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf>.

² 87 Fed. Reg. at 33,178.

and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”³ In particular, the order provides that agencies should, “consistent with applicable law, allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities.” Notably, the order expressly names “lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons” among the populations that have historically experienced denials of “consistent and systematic fair, just, and impartial treatment” by laws, policies, and institutions.⁴

LGBT-identified people comprise approximately 4.5% of the U.S. adult population.⁵ We estimate that approximately 11 million adults in the U.S. identify as LGBT, including approximately 1.3 million adults who are transgender.⁶

In announcing the availability of the X gender marker on its passport application, the Department of State disclosed having consulted with “many members of the LGBTQI+ community[,]” but in particular highlighted the anticipated value of the new marker for “non-binary, intersex, and gender non-conforming individuals.”⁷ The Williams Institute has previously conducted two large LGBTQ-specific population-based national surveys through the NIH-funded Generations (HD078526) and TransPop (HD090468) studies on sexual and gender minority people, respectively.⁸ Using data collected through these surveys, we estimate that 11.1% of LGBTQ adults (ages 18–60) identify as nonbinary.⁹ While nonbinary-identified people are found among both cisgender and transgender LGBTQ populations, we find that they comprise a larger proportion of the transgender population (32.1%) than of the cisgender LGBTQ adult population (7.5%).¹⁰

We have also used these data to estimate how many individuals are likely to seek passports with an X gender marker each year from the Department of State, finding that approximately 1.4% of the nonbinary LGBTQ population in the United States, or 16,700 people, is likely to do so.¹¹ However, we caution that this estimate is unlikely to account for all individuals who might seek to modify their passport to include an X gender marker, as not all individuals who identify as nonbinary are LGBTQ. Likewise, it is unlikely that all individuals

³ Exec. Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 20, 2021).

⁴ 86 Fed. Reg. at 7009.

⁵ KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES 1 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Jul-2020.pdf>.

⁶ JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O’NEILL, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 4 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>.

⁷ Antony J. Blinken, *X Gender Marker Available on U.S. Passports Starting April 11*, STATE.GOV <https://www.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/>.

⁸ ILAN H. MEYER, BIANCA D.M. WILSON & KATHRYN O’NEILL, WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES 1 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>.

⁹ BIANCA D.M. WILSON & ILAN H. MEYER, WILLIAMS INST., NONBINARY LGBTQ ADULTS IN THE UNITED STATES 2 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nonbinary-LGBTQ-Adults-Jun-2021.pdf>.

¹⁰ *Id.*

¹¹ JODY L. HERMAN & KATHRYN K. O’NEILL, WILLIAMS INST., DEMAND FOR X GENDER MARKER ON PASSPORTS AMONG NONBINARY LGBTQ ADULTS 2–3 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/X-Marker-Passport-Mar-2022.pdf>.

who might seek to obtain an X gender marker on their passport are nonbinary.¹² For instance, demand may also come from intersex individuals who do not identify as nonbinary. And, our estimates here are unable to account for changes in demand over time, in particular any potential increases in demand in the future due to younger age groups being more likely than older age groups to identify as nonbinary.¹³

Research has previously found links between the accurate reporting of identity information on documentation and negative outcomes related to equity, including experiences with discrimination and health disparities. For example, survey data indicate that Transportation Security Administration officers are more likely to question the name or gender of transgender people whose identification documents have not been corrected to accurately report their information.¹⁴ Likewise, studies show that possession of inaccurate identification documents has been associated with higher rates of psychological distress among transgender adults.¹⁵

As scholars with extensive experience studying LGBT populations, it is our opinion that the demand of the data collection proposed here is necessary and reasonable. In light of both the anticipated numbers of people expected to seek X gender markers on their passports and the potential harms to such individuals if they then come to apply for a Trusted Traveler Program but are forced to select a gender marker that is inconsistent with their gender identity and passport, any burden created by this proposal would be offset by the benefits to equity gained through ensuring the full inclusion of nonbinary and other individuals within CBP's systems.

Thank you for your consideration. Please direct any correspondence, including questions, to vasquezl@law.ucla.edu.

Respectfully Submitted,

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¹² HERMAN & O'NEILL, *supra* note 11, at 3–4.

¹³ WILSON & MEYER, *supra* note 9, at 3.

¹⁴ JODY L. HERMAN & KATHRYN O'NEILL, WILLIAMS INST., GENDER MARKER CHANGES ON STATE ID DOCUMENTS: STATE-LEVEL POLICY IMPACTS (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/X-Marker-Passport-Mar-2022.pdf>.

¹⁵ Ayden I. Scheim et al., *Gender-Concordant Identity Documents and Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, 5 LANCET PUB. HEALTH E196 (2020), [https://www.thelancet.com/journals/lancet/article/PIIS2468-2667\(20\)30032-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS2468-2667(20)30032-3/fulltext).

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