

Congress of the United States

Washington, DC 20515

December 6, 2007

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington DC, 20528

Re: Bureau of Customs and Border Protection, Proposed Rule for Issuance of a Visa and Authorization for Temporary Admission into the United States for Certain Nonimmigrant Aliens Afflicted with HIV Infection.
Docket ID: USCBP-2007-0084.

Dear Secretary Chertoff,

As Members of Congress we write to express our profound disagreement and concern with the current unjustified and discriminatory statute banning travel and immigration for people living with HIV/AIDS. We are further troubled by the issuance of this new proposed rule related to temporary (nonimmigrant) entry, which creates the impression that the ill-conceived policy in the underlying statute can somehow be mitigated. Simply put the HIV/AIDS statutory travel ban is a violation of human rights, has no basis in public health, and should be repealed.

The initial ban on travel and immigration for people living with HIV/AIDS was enacted in 1987 amid a climate of stigma, fear, and limited public understanding about how HIV was spread. Much has changed about our knowledge of HIV/AIDS and public perceptions of people living with the disease in the last twenty years; it is well known that HIV cannot be spread through casual contact, and that people with HIV are able and entitled to lead full lives. And, in fact, the ban has not been shown to reduce transmission of HIV or provide any economic benefit to the United States.

However, the ban remains in effect. Despite repeated analyses by the Department of Health and Human Services finding no scientifically valid public health justification for its continuation, and as pointed out in the proposed rule, despite repeated attempts by the Department to overturn the ban, Congress codified the regulation in 1993.

Apart from lacking any basis in public health, the travel and immigration ban, and the existing visa waiver process that accompanies it, create an exceptional, discriminatory and undue burden on people living with HIV/AIDS who seek admission into the United States. People living with HIV/AIDS are required to publicly disclose their HIV status as a condition of entry, and if they are positive, their HIV status becomes a permanent part of their record, which may place them at further risk of discrimination. HIV positive individuals applying for a visa waiver must also provide documentation to demonstrate that they are of minimal danger to the public health, that their possibility of transmitting the virus is minimal, and that they will not incur any economic cost to the government.

The proposed rule for a “categorical waiver” does not appear to lessen any of these requirements, only shifting decision-making authority away from the Secretary of Homeland Security to the Secretary of State and local consular officers who may lack the appropriate medical expertise. Applicants would still have to somehow persuade an official that they are of minimal danger, will not transmit the virus, and will not cost the government money. There would be no appeal process. Selecting this pathway would also require applicants to waive any right to readjust their status once in the United States – a waiver not required under current policy.

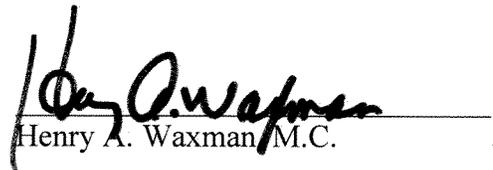
By comparison, there are no such requirements for other common and costly diseases that afflict comparable numbers of people. Furthermore, HIV/AIDS is the only disease that was placed by statute on the list of communicable diseases which trigger denial of admission into the United States. Apart from HIV/AIDS, current law provides the Secretary of Health and Human Services with the discretion to determine whether any other disease may be grounds for non-admission into the United States.

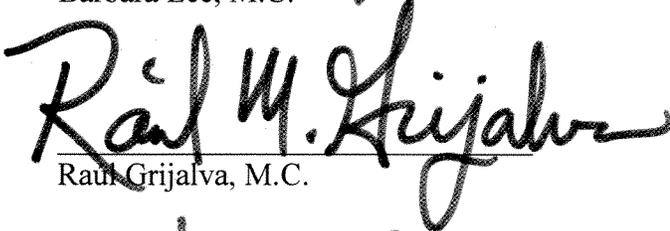
In taking away the discretion of the Secretary to make a scientifically-grounded determination on HIV/AIDS, it is our view that Congress committed a grievous error that cannot be fixed by regulation. We strongly believe that the only credible solution is for Congress to take action and repeal this unjust and discriminatory statutory ban and return to the Secretary of Health the authority to make this public health decision.

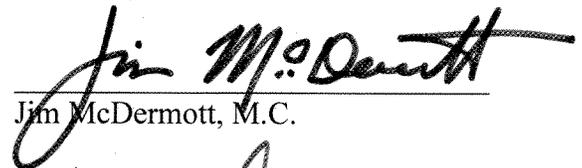
Rather than continue forward with this rulemaking process, we encourage you and the President to join us in calling for an immediate repeal of the underlying statutory language.

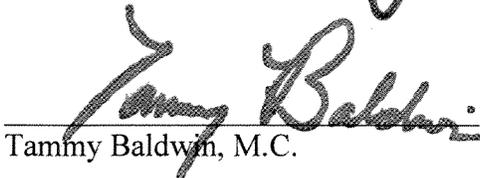
Sincerely,


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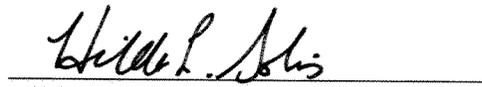
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