

**Congress of the United States**  
**Washington, DC 20515**

May 22, 2019

The Honorable Mike Pompeo  
Secretary  
U.S. Department of State  
2201 C Street N.W.  
Washington, D.C. 20520

Dear Secretary Pompeo,

We want to express our strong disapproval over recent [reports](#) that the State Department has denied citizenship to children born to some same-sex couples abroad.

As you know, in 2015, the Supreme Court ruled that same-sex couples have the right to marry. This ruling was long overdue, affirmed American values, and gave hope and relief to millions of people in the United States and around the world. Moreover, the concept of birthright citizenship was born out of our own Civil War and reflected in the passage of the 14<sup>th</sup> Amendment<sup>1</sup>.

The State Department's decision to deny citizenship to some children of same-sex couples and those who have sought medical assistance to conceive challenges these principles and is legally tenuous and morally disgraceful.

In making these determinations, the State Department relies on its Foreign Affairs Manual (FAM), an internal regulatory document for how the State Department and its employees make decisions on everything from calculating pay to determining citizenship for individuals born abroad. The Foreign Affairs Manual was [changed](#) in 2018 to make it harder for children born to same-sex couples to gain U.S. citizenship.

According to press reports, the State Department has refused to grant citizenship to the children of same-sex couples where one parent is not a U.S. citizen- despite the fact that this fundamental right is routinely granted to children of married heterosexual couples where one parent is not an American. Multiple courts have [ruled](#) to this effect.<sup>2</sup>

While the Immigration and Nationality Act gives the State Department responsibility for regulating the granting of U.S. citizenship to babies born abroad, the State Department's 2018 FAM changes did not proceed through the normal regulatory notice and comment period. Multiple

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<sup>1</sup> <https://www.archives.gov/founding-docs/constitution>

<sup>2</sup> [Solis-Espinoza v. Gonzales, 9<sup>th</sup> Circuit, 2005](#). The plaintiff's father was a lawful permanent resident, his biological mother abandoned him; Solis-Espinoza's father was married to a natural born U.S. citizen, who took him as her own. The 9<sup>th</sup> Circuit ruled that Solis-Espinoza was not born out of wedlock, and was therefore, a natural-born U.S. citizen.

courts have [held](#) regulations found in the FAM are not legally valid when these changes do not occur through the congressionally-mandated notice and comment process.<sup>3</sup>

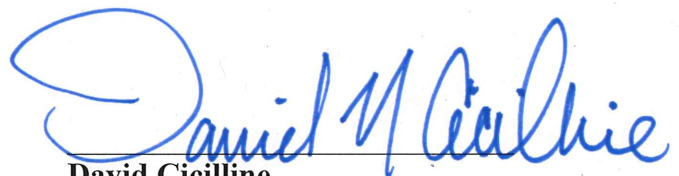
This process is critical. It allows American citizens to provide feedback on proposed changes to regulations, and therefore fulfills an important role in our democratic process. By applying these regulatory changes without public feedback, the State Department has ignored established law, and undermined public faith in our government to apply laws fairly, equally, and without prejudice or favor towards certain groups or individuals.

These onerous citizenship requirements for some children born to same-sex couples abroad threaten fundamental rights envisioned in our Constitution and subsequently affirmed by the Supreme Court. Furthermore, the manner in which they have been applied appears discriminatory. For those reasons, I urge you to reverse current policy and afford these children the same rights as children born to other American couples by granting citizenship in a consistent manner, regardless of the sexual orientation of their parents or the manner in which they were conceived.

Sincerely,



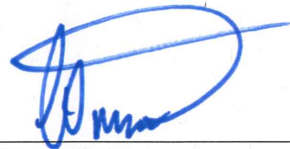
**Ami Bera, M.D.**  
Chairman  
Subcommittee on Oversight & Investigations



**David Cicilline**  
Member  
Subcommittee on Oversight & Investigations



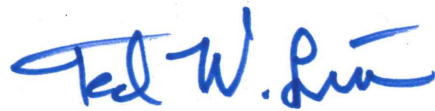
**Eliot Engel**  
Chairman  
House Foreign Affairs Committee



**Ilhan Omar**  
Member  
Subcommittee on Oversight & Investigations



**Adriano Espaillat**  
Member  
Subcommittee on Oversight & Investigations



**Ted Lieu**  
Member  
Subcommittee on Oversight & Investigations

<sup>3</sup> [Jaen v. Sessions, 2<sup>nd</sup> Circuit, 2018](#). Regarding the FAM, the Court wrote "Internal guidance documents are not binding agency authority" citing past cases that found that internal rules that did not follow the Administrative Procedures Act could not have the force of regulation.

*Tom Malinowski*

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Member

Subcommittee on Oversight &  
Investigations