

Congress of the United States

Washington, DC 20515

September 10, 2008

President George Bush
The White House
Washington, DC 20500

Dear Mr. President:

As members of Congress who strongly supported the recent passage of HR 5501, *The Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008*, we thank you for your efforts to broker a compromise agreement and ensure the passage of this critical legislation.

As you know, HR 5501 included a provision removing the current statutory ban on travel and immigration for people living with HIV/AIDS who wish to enter the United States. With removal of the statutory language, your administration now has the authority to determine whether HIV should remain on the list of diseases that automatically preclude a person from entering the United States.¹

We write to urge you to take swift action to re-evaluate this policy, and to base your determination both on public health knowledge and the recently reflected political consensus. Our concerns are outlined below.

Background

The history of the HIV travel ban is one of stigma and fear trumping public health recommendations.

The Department of Health and Human Services is charged with maintaining a list of diseases which automatically bar entry to the United States. In the 1980s, the Department was pressured to add HIV to this list, even though it cannot be spread through casual contact. After passage of the Immigration Reform Act of 1990, the Secretary of HHS was instructed to develop a new list of diseases which would serve as grounds for automatic inadmissibility. In response to this directive, in 1991 the Department proposed regulations removing HIV/AIDS from this new list. In justifying this action at the time, your father's HHS Secretary Dr. Louis W. Sullivan stated that "AIDS evokes an emotional response from many--and that's understandable—but we have been virtually the only major country to try to bar HIV-infected travelers. This policy will bring us in line with the best medical thinking, here and abroad."² However, the Department was pressured to keep HIV on the list.

¹ Elimination of the ban would not create totally unfettered immigration rights for people with HIV. If HIV is removed from the list, existing provisions within the Immigration and Nationalization Act, including those designed to bar people who may become public charges, will apply to people with HIV as they do to all other applicants.

² January 25, 1991 Press Release from the Department of Health and Human Services.

<http://www.hhs.gov/news/press/pre1995pres/910125.txt>

In the ensuing years, the Department of Health and Human Services conducted repeated analyses that found no scientifically valid public health justification for the ban's continuation, and attempted to overturn the ban multiple times. Evidence showed, and has continued to demonstrate, that the ban has provided no economic or health benefit to the United States or its citizens.

However, Congress codified the regulation in 1993, making HIV the only disease that was on the list because of a statute rather than a scientific determination by the Secretary of Health and Human Services.³

Recent Actions

Your administration has tried to minimize the burden imposed by the ban and the difficult visa waiver process on HIV positive individuals who wish to enter the United States. On World AIDS Day in December of 2006, you announced your intention to direct the Secretary of State and the Secretary of Homeland Security to create a "categorical waiver" for HIV-positive people seeking to enter the United States on short-term visas.⁴ Nearly a year later, the Bureau of Customs and Border Protection in the Department of Homeland Security issued a notice of proposed rulemaking to permit entry to individuals with HIV only on a limited basis for short-term nonimmigrant visas. This proposed rule would not eliminate all of the barriers created by the statutory ban, and to date it has not been finalized.⁵

In the meantime, your administration has continued to demonstrate support for the elimination of barriers to travel for people with HIV. During the 16th Board meeting of the Global Fund to Fight AIDS, Tuberculosis and Malaria held in 2007 in the People's Republic of China, the U.S. Delegation endorsed an official board position encouraging all countries to move rapidly towards elimination of travel/entry restrictions for people living with HIV.⁶ The US agreed that visa waiver processes do not render HIV travel restrictions acceptable.

Now, Congress has overwhelmingly voted to eliminate the statutory ban on travel and immigration for people living with HIV/AIDS who wish to enter the United States. On July 16, 2008, the Senate amended HR 5501 to include Sec. 305, which formally removed the statutory ban. The Senate subsequently approved the amended bill by a final vote of 80-16. On July 24, 2008, the House of Representatives passed HR 5501 as amended by the Senate by a vote of 303-115. You signed HR 5501 into law on July 30, 2008 and it is now Public Law No. 110-293.

³ National Institutes of Health Revitalization Act of 1993, Public Law No: 103-43.

⁴ <http://www.whitehouse.gov/news/releases/2006/12/20061201-2.html>

⁵ 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. Published in the Federal Register/Vol. 72, No. 214/November 6, 2007.

⁶ <http://www.theglobalfund.org/en/files/boardmeeting16/GF-BM16-Decisions.pdf>

The Global Fund to Fight AIDS, Tuberculosis and Malaria. Sixteenth Board Meeting, Kunming, China, 12 – 13 November 2007. Decision Point GF/B16/DP25.

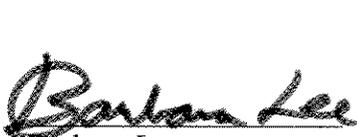
Conclusion

The enactment of HR 5501 has removed the statutory language underlying the ban. It is now within the discretion of your administration to decide whether HIV/AIDS should remain on the list of diseases that constitute automatic inadmissibility into the United States.

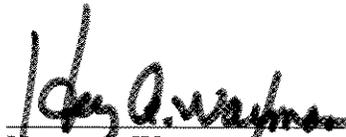
In weighing any decision to reevaluate the HIV ban, we encourage you to take into account the widespread consensus within the public health and medical community regarding the lack of evidence underpinning this policy. As the American Public Health Association (APHA) has stated, "this ban undermines individual and public health by discouraging immigrants and visitors from seeking HIV testing and deterring HIV-positive immigrants from seeking any healthcare services including HIV treatment. Moreover, there is no scientific evidence to support the claim that the ban is an effective way to prevent the spread of HIV or that it reduces costs to the public healthcare system."⁷

We urge you to take swift action on this issue.

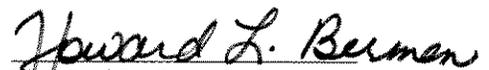
Sincerely,



Barbara Lee
Member of Congress



Henry A. Waxman
Chairman
Committee on Oversight
and Government Reform



Howard L. Berman
Chairman
Committee on Foreign Affairs



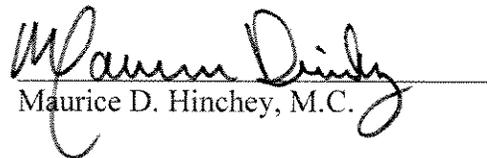
Raúl Grijalva, M.C.



John W. Olver, M.C.



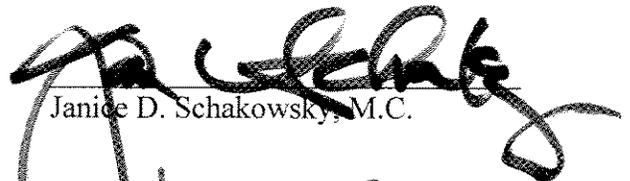
Jim McDermott, M.C.



Maurice D. Hinchey, M.C.



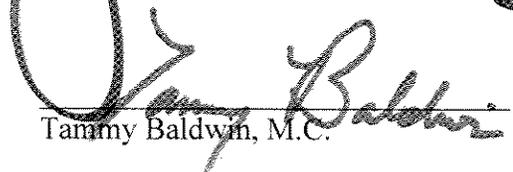
George Miller, M.C.



Janice D. Schakowsky, M.C.



Edolphus Towns, M.C.



Tammy Baldwin, M.C.

⁷ Letter from APHA to Sen. Kerry (Feb. 21, 2008).

Dennis J. Kucinich
Dennis J. Kucinich, M.C.

Keith Ellison
Keith Ellison, M.C.

Lois Capps
Lois Capps, M.C.

Bob Filner
Bob Filner, M.C.

Bobby L. Rush
Bobby L. Rush, M.C.

José E. Serrano
José E. Serrano, M.C.

Sam Farr
Sam Farr, M.C.

James P. McGovern
James P. McGovern, M.C.

Eddie Bernice Johnson
Eddie Bernice Johnson, M.C.

Forney Pete Stark
Forney Pete Stark, M.C.

Eleanor Holmes Norton
Eleanor Holmes Norton, M.C.

Doris O. Matsui
Doris O. Matsui, M.C.

Gary L. Ackerman
Gary L. Ackerman, M.C.

Danny K. Davis
Danny K. Davis, M.C.

Joseph Crowley
Joseph Crowley, M.C.

Bill Pascrell Jr.
Bill Pascrell Jr., M.C.

Gwen Moore
Gwen Moore, M.C.

Betty McCollum
Betty McCollum, M.C.

Loretta Sanchez
Loretta Sanchez, M.C.

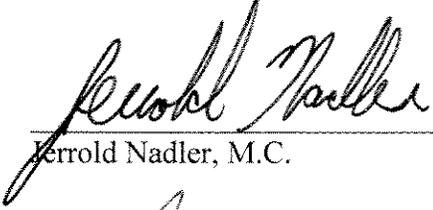
Earl Blumenauer
Earl Blumenauer, M.C.


John Lewis, M.C.

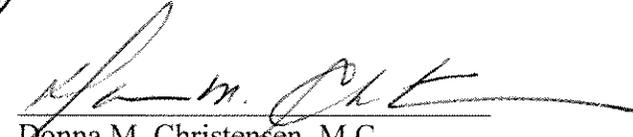

James R. Langevin, M.C.

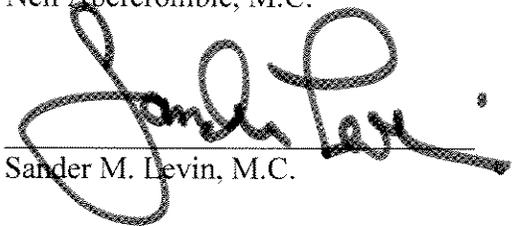

Steve Cohen, M.C.


Carolyn B. Maloney, M.C.


Ferrol Nadler, M.C.


Neil Abercrombie, M.C.

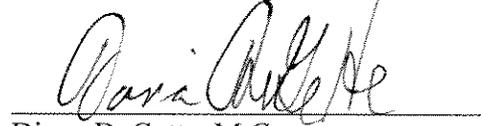

Donna M. Christensen, M.C.

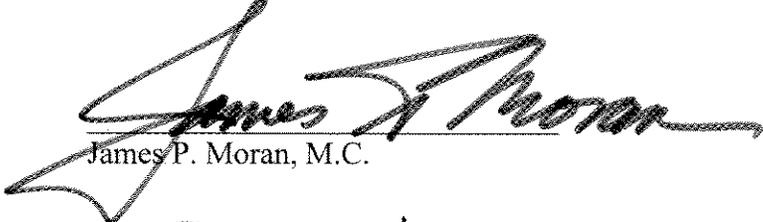

Sander M. Levin, M.C.

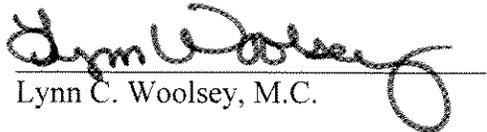

Barney Frank, M.C.


Rubén Hinojosa, M.C.


Michael M. Honda, M.C.


Diana DeGette, M.C.


James P. Moran, M.C.

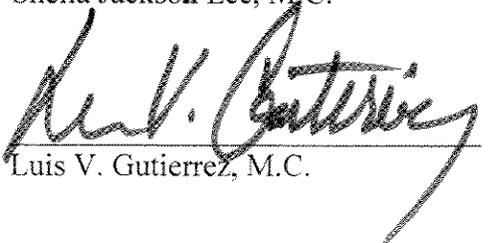

Lynn C. Woolsey, M.C.


Timothy H. Bishop, M.C.

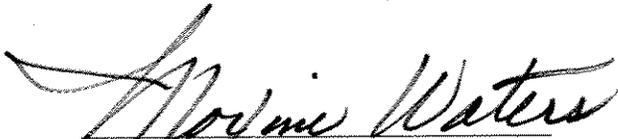

Donald M. Payne, M.C.


Sheila Jackson-Lee, M.C.


Ellen O. Tauscher, M.C.

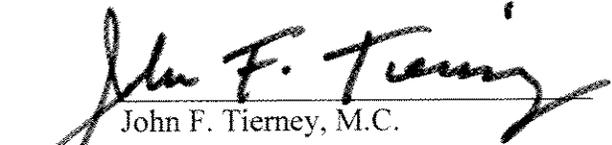

Luis V. Gutierrez, M.C.


Hilda L. Solis, M.C.


Maxine Waters, M.C.

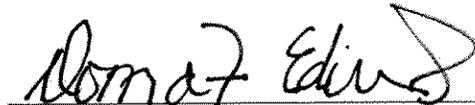

Elijah E. Cummings, M.C.


Chaka Fattah, M.C.


John F. Tierney, M.C.


Robert Wexler, M.C.


Albio Sires, M.C.


Donna F. Edwards, M.C.