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Agency Name: Bureau of Customs and Border Protection; DEPARTMENT OF HOMELAND SECURITY

December 4, 2007

Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, DC 20529

by email: rfs.regs@dhs.gov

RE: DHS Docket No. USCBP– 2007–0084

Dear Sir/Madam:

The International AIDS Society offers these general and specific comments on the above proposed DHS rule.

General Comments on the existing US entry policy for PLHIV:
Visa laws and policies in which HIV infection is grounds for denying entry of non-citizens on short-term visits were put into place many years before the development and application of current knowledge, tools and technologies on HIV transmission, prevention and treatment. More than 25 years into the global AIDS epidemic, the world's leading scientific and public health experts agree that such border laws do not reduce HIV transmission. Furthermore, experts widely agree that these types of policies only drive the epidemic underground, promoting stigma and discrimination against people living with HIV.

Additional studies based on experiences of HIV-positive people traveling to the United States under the current policy of inadmissibility of HIV infected non-citizens, have shown that laws restricting entry on the basis of HIV status have not been effective in keeping out HIV-positive people. Instead they have been

counterproductive by pushing the issue underground as many choose to lie about their status rather than risk being turned away.

Critically, the laws and policies on HIV inadmissibility do not take into account the challenge faced by the U.S. and global AIDS response – that the majority of people living with HIV do not know their status (estimated at 1 in 4 in the U.S and 1 in 10 globally). Further, according to the 2006 U.S statistics on travelers, visitors to the U.S. are predominantly from Europe, Japan and other countries that have very low levels of HIV in the general population.

Therefore the proposed ruling from the Department of Homeland Security (DHS) proposes a complex set of requirements that will not significantly impact the U.S. epidemic. It will instead, increase administrative burdens, undermine U.S. leadership in global health and deny U.S. cities from hosting major global leadership meetings on HIV/AIDS.

The proposed ruling "streamlines" bias against people from Africa, Latin America, Asia/Pacific and the Caribbean

These laws are clearly discriminatory against people from the world's poorest countries. HIV-positive persons from wealthy countries, who have visa waiver relationship with the United States are not subject to the intense scrutiny of consular officers or DHS when traveling to the United States – nor are they required to provide medical proof of their HIV Status, unless they voluntarily elect to reveal their HIV status to the US Government. In contrast, people living with HIV from African countries, Asian countries or Latin America/Caribbean countries, where HIV positive and negative persons are **required** to provide proof of their HIV status to consular officers.

Persons from Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom, are not subject to the intense scrutiny of consular officers or DHS when traveling to the United States.

The proposed ruling "streamlines" stigma, discrimination against people living with HIV

The December 1st 2006 Presidential announcement also stated that the participation of people living with HIV/AIDS was considered a critical element in the global HIV/AIDS response. This proposed rule does not address itself to possible impacts of specific requirements, conditions and criteria set forth. HIV entry restrictions create barriers that obstruct effective involvement and adequate participation of people living with HIV, whose voices are most needed in community, national and international HIV/AIDS conferences, strategic policy debates and governance of HIV programs. This "entry ban" is discriminatory and serves to reinforce the stigma attached to living with HIV/AIDS.

Discriminatory exclusion of HIV-people from entering the country not only promotes societal denial of collective responsibility for HIV/AIDS, but it also creates a false sense of security among United States residents that counteracts sound prevention efforts including raising awareness of their own risk and vulnerability.

The U.S. has not been spared from negative impacts of HIV stigma. Stigma surrounding HIV remains strong especially in many African-American communities in the United States, and persists as a challenge for service providers implementing the September 2006 HIV testing guidelines developed by the U.S. Center for Disease Control and Prevention towards a national effort to boost the numbers of people who know their HIV status.

"It's absolutely vital when we think about the current HIV/AIDS epidemic in the United States. Currently, we know that there are more than a million people living with HIV and a quarter of these individuals remain undiagnosed. And we know that those who are undiagnosed are more likely to be of a minority background; they're more likely to be young, especially young [African-American] men who have sex with men; and they're more likely to be heterosexual minorities, as well. People may have good access to HIV testing services but do not want to have their HIV status diagnosed, because of fears of having to disclose to sexual partners or to family members, or the stigma associated with being diagnosed HIV positive." Kevin Fenton, Director of the CDC's National Center for HIV, STD and TB Prevention

The proposed ruling does not reflect the scientific evidence base for HIV epidemic transmission

Travel restrictions to protect public health are relevant only in the instance of an outbreak of a highly contagious disease and casually transmitted communicable disease. However, from a public health perspective, studies have shown that the initial fear of travelers as vehicles of threat to epidemic HIV spread (probably driven by the early categorization of risk groups including Haitians) was unfounded and that the external disease threat was exaggerated, as was the likely cost burden of non-immigrants and visitors. Epidemiologists have established that epidemic transmission of HIV is dependent of several factors and specific behaviors inherent to the affected community.

Scientific evidence has established the generally low infectivity of HIV via sexual intercourse; the majority of persons in any "general population" are not at any measurable risk of contracting an HIV infection; patterns of epidemic HIV transmission in any given community are driven by definitive risks and limited by protective factors including multiple and concurrent sexual partners, presence of ulcerative sexually transmitted infections, male circumcision, condom use, etc. Critically, studies have shown that individuals newly infected are much more infectious compared with individuals who have passed the acute phase of

infection – and yet the routine tests may not detect HIV infection during this stage and individuals may therefore not be aware of their HIV status.

The proposed DHS rule ignores that responsibility for protection against HIV transmission (safer sex and safer injecting behavior) is not only in the hands of the infected, but also in those of the non-infected. Therefore, travel of HIV-positive people does not in itself entail a risk to public health.

The proposed ruling could negatively impact treatment adherence
Scientific evidence following the introduction of effective Highly Active Antiretroviral Therapy (HAART) shows that there is a significant reduction of viral load and infectivity of HIV-positive people on treatment.

The proposed DHS rule, upholds the principles of the existing policy that requires disclosure of HIV status on current visa application forms. This requirement forms a danger to public health by undermining treatment outcomes for people living with HIV on antiretroviral therapy. The fear of getting "caught" may cause HIV-positive people traveling to the United States to discontinue their medication while traveling – and such interruptions of treatment without consultation with an HIV specialist physician or pharmacist increases the chances of developing new or further mutations, and drug resistant strains of HIV, with risks of possible treatment failure (which in turn undermines the prevention value of ARV therapy given the rebound in viral load).

It is therefore in the interest of public health and a global public good to rigorously protect advances in HIV treatment by using available knowledge, tools, strategies and technologies to support ARV treatment adherence and prevent development of ARV drug resistance. There is also a strong economic argument for global efforts to extend the value of the available classes of ARV drugs / anti-HIV agents in development and preserve the scientific outcomes from public and private research investments. The gains for the United States Pharmaceutical Industry, Research Institutions including CDC and the NIH, and academic community would be best served by investing in global AIDS collaborative initiatives to monitor [toxicities / side effects] of ARV treatment for HIV positive travelers, prevent treatment interruption and mitigate against emergence of resistance.

The UNAIDS Funding report projects that by the end of 2007, spending on the global AIDS response will reach an unprecedented US$10 billion for prevention, treatment and care assistance in low- and middle-income countries. Opportunities for free treatment with antiretroviral drugs are increasingly available in home countries, with the number of people on treatment currently estimated at over 2 million, in low- and middle- income countries. It is estimated that U.S funding accounts for support to up to 2 million people on HIV treatment worldwide.

International AIDS Society Comments on the Specific Requirements outlined in the proposed ruling

Section B. 1 - Medical Etiology
This requirement is clearly discriminatory and singles out HIV over other chronic illnesses including diabetes, hypertension or cancer-related diseases. The proposed DHS rule institutionalises and authorizes Consular officers to make determinations that would demand specialist knowledge and understanding of HIV medicine. How will Consular officers determine "danger to public health" and project "possibility of transmission"? How will the DHS determine standards to guide the 'evidence provided by the applicant that satisfies reviewing officials' and that the review process adheres to guidelines as well as international scientific, public health and human rights standards?

Section B.2 - Understanding
The inclusion of the clause referring to donation of blood in immigration policy is unnecessary. This puts undue burden on the DHS when there is already in place a proper and rigorous national policy and program in the United States on donation of blood and blood components.

Section B.3 - Limited potential health danger
This requirement demonstrates yet again the undue burden on DHS. Public health would be best served by investing in HIV education and prevention in the United States. It is unclear how DHS officials will verify the applicant's knowledge of HIV transmission, and how the rule will enforce this test. IAS is also concerned that this will set precedence for other public health issues that does not reflect the principles contained in the 2005 International Health Regulations.

Section B.4 - Continuity of Health Care
There are systems already in place for travellers to demonstrate that they have adequate resources or insurance commensurate with their needs while travelling. The DHS would better serve the global response to HIV by providing a letter of support to HIV travellers that would facilitate travelling with medication. This would help HIV-positive persons to prevent interruption of treatment and emergence of drug resistance, rather than "policing" them.

Section B.5 -Temporary Admission
The proposed ruling is only for temporary admission, and therefore excludes all HIV-positive applicants from activities that cannot be undertaken in 30 days. This consideration is applied without deeper analysis on benefits or implications; and provides no rational, ethical basis or scientific evidence that justifies a blanket exclusion of people living with HIV from equal treatment with regards to entry into the United States.

Additionally, people living with HIV/AIDS from visa waiver program countries (European mainly) are asked their status when getting off the plane at customs? How does DHS expect them to respond when asked on the customs form, “Are you HIV-positive?” If they answer “No”, they can stay in the US for up to three months, if they answer “Yes”, they have to get back on the plane and go home to apply for a waiver. This is a ridiculous policy.

Section B.6 - Enforcement of the Authorization Agreement
A large number of HIV-positive people who have sought visa waivers based on their revealing their HIV status to consular officers and DHS up until now, are people living with HIV who are active in the national, regional and global AIDS response. This proposed rule, limits the rights of HIV-positive people to personal and professional opportunities. This rule demands they waive their right to equal and non discriminatory consideration for long-term study or professional development in HIV/AIDS leadership. The DHS rule is an unfair and unjust treatment of HIV-positive people on whose efforts have contributed significantly to the gains made in HIV policy, prevention, care and treatment globally.

Section B.7 – Duration
Under the proposed DHS rule, the non-immigrant visa issued will be valid for twelve months or less, and may be used for a maximum of two applications for admission. It is unclear how the DHS has come up with this determination. This proposal fundamentally only allows an applicant one free pass, and is a ridiculous and burdensome call on individual and public resources only for meaningful gains for HIV-positive people’s ability to enter the United States.

Section C. - Benefit of the Proposed Regulations
It is unclear how the new ruling “streamlines” existing law and policy. The fact is, Consular officers use individual judgement, often uniformed, to make determinations for people living with HIV. Furthermore, even when an HIV-positive applicant is granted a visa waiver from a US embassy consular office, they face further interrogation and uninformed review by border control agents who are not in communication with the Consular officers who made the original waiver determination.

This rule fails to show how this process is “streamlined”.

Section X. - Other Proposed Amendment
It is quite confusing and disturbing that DHS proposed this ruling to also make updates to U.S. immigration law on entry of foreigners who are “mentally retarded”. It is unclear whether the DHS is equating these two conditions, or is using this process of rulemaking on HIV inadmissibility as

a vehicle for proposing amendments to other issues on which fair and comprehensive public comment may not be possible.

General Recommendations for the Way Forward

The International AIDS Society urges the United States Government, through the Department of Homeland Security, to table this proposed ruling and to hold a rigorous and evidence-based public review of this statute instead of advancing a bad policy that undermines the United States leadership and credibility on HIV/AIDS.

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