

1 Andrew Dvash-Banks and, by and through his guardian *ad litem*, E.J. D.-B. (“E.J.”
2 and collectively, “Plaintiffs”) and Defendants the United States Department of
3 State and the Honorable Michael R. Pompeo, in his official capacity as Secretary
4 of State (“Defendants”)—are lodging herewith their Proposed Judgments, which
5 are attached as Exhibits 1 (Plaintiffs’ Proposed Judgment) through 2 (Defendants’
6 Proposed Judgment).

7 On February 25, February 27, and February 28, 2019, the Parties exchanged
8 drafts of their proposed judgments. On February 27 and February 28, 2019, the
9 Parties met and conferred, but were unable to reach agreement on the form of the
10 proposed judgment. The parties set forth their respective positions as follows:

11 **A. PLAINTIFFS’ POSITION**

12 *First*, the parties disagree as to whether the Court’s judgment explicitly
13 should require Defendants to issue E.J. a U.S. passport and to do so within a
14 specified time and to waive any associated fees, as well as to approve an
15 application for a Consular Report of Birth Abroad (“CRBA”) submitted on E.J.’s
16 behalf and to waive any associated fees, if E.J. and Andrew and Elad appear in
17 person at a foreign embassy or consulate in connection with such an application.¹
18 Defendants assert that such relief is (i) unnecessary because the State Department
19 likely would approve an application for a U.S. passport submitted on E.J.’s behalf
20 even absent an order of this Court directing them to do so, and because (ii) a
21 CRBA is duplicative of the Court’s declaration of E.J.’s U.S. citizenship.
22 Defendants further assert that E.J.’s eligibility for those documents should be left
23 to the State Department’s discretion.

24 Plaintiffs contend that the Court’s judgment should explicitly require the
25 State Department to provide E.J. with the citizenship documentation to which he is
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27 ¹ Defendants have represented to Plaintiffs that the State Department is
28 permitted to issue a CRBA only to a person who appears in-person outside of the
United States.

1 entitled in order to ensure the State Department’s compliance with the Court’s
2 February 21, 2019 Order and to afford Plaintiffs complete relief on their claim
3 under 8 U.S.C. § 1503, as requested in the First Amended Complaint. (*See* ECF
4 No. 94 (seeking a declaration of U.S. citizenship and “such other relief as the Court
5 deems just and proper”).) *See also Brown v. Plata*, 563 U.S. 493, 538 (2011)
6 (“Once invoked, the scope of a district court’s equitable powers is broad, for
7 breadth and flexibility are inherent in equitable remedies.” (alterations and internal
8 quotation marks omitted).) Contrary to Defendants’ assertion, courts in this Circuit
9 appropriately have ordered the issuance of a U.S. passport pursuant to 8 U.S.C.
10 § 1503, *see, e.g., Acosta v. United States*, No. C14-420 (W.D. Wash. Apr. 29,
11 2015) (judgment).

12 Indeed, Plaintiffs’ position is consistent with Defendants’ arguments
13 in this action. *See, e.g.,* ECF 92-1 at 13 (“*Alsaïdi v. U.S. Dep’t of State*, 292 F.
14 Supp. 3d 320, 326 (D.D.C. 2018) (“[C]ourts have repeatedly dismissed APA
15 claims challenging the denial of a passport application or a passport revocation on
16 grounds that the holder is not a U.S. national, reasoning that . . . a judicial
17 declaration of citizenship and entitlement to a passport may be directly sought
18 through 8 U.S.C. § 1503(a).” (quoting *Villarreal v. Horn*, 203 F. Supp. 3d 765, 773
19 (S.D. Tex. 2016)).”) and ECF 112 at 5 (“To the extent that Plaintiffs still seek to
20 challenge the Department’s denials of E.J.’s CRBA and passport applications,
21 section 1503 is designed to address those concerns and can provide the
22 documentation of citizenship originally sought through E.J.’s CRBA application;
23 thus, section 1503 can provide complete relief to E.J.”). Plaintiffs further contend
24 that Federal Rule of Civil Procedure 54(c) explicitly authorizes the inclusion of
25 such a provision in the judgment. *See* Fed. Rule Civ. Proc. 54(c) (allowing courts
26 to “grant the relief to which each party is entitled, even if the party has not
27 demanded that relief in its pleadings”).

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1 Such relief is particularly appropriate here, where the Court rejected the lack
2 of a biological relationship as a basis for the denial of E.J.’s applications, and
3 where Defendants have conceded that “the adjudicating officer denied E.J.’s
4 applications on the ground that the applicants had failed to establish a biological
5 connection between E.J. and a U.S. citizen parent.” (ECF No. 101 at 3.) Because
6 the Order removed the only basis on which Defendants denied E.J.’s applications
7 for a U.S. passport and CRBA, there is no issue that appropriately should be left to
8 the State Department’s discretion regarding the issuance of those documents to E.J.
9 In a fashion typical of Defendants’ litigation of this action, Defendants nonetheless
10 seek to prolong recognition of E.J.’s U.S. citizenship and compel the Dvash-Banks
11 family to jump through still more hoops to obtain the relief to which the Court has
12 now ordered they are entitled. In particular, Defendants seek the option to
13 continue to deny a U.S. passport and CRBA to E.J. for unarticulated reasons (even
14 though they have conceded in this action that no such bases now exist) and to force
15 E.J. and his parent “at that time [to] seek further relief from the Court.” In view of
16 the parties’ contentions and the Court’s adjudication in this action, such a position
17 is meritless, inefficient and manifestly unfair.

18 *Second*, Plaintiffs’ Proposed Judgment states that the Court retains
19 jurisdiction to adjudicate any motion for attorneys’ fees and costs, as allowed by
20 law. Defendants believe that the inclusion of this statement is superfluous because
21 it is implicit in Federal Rule of Civil Procedure 54(d). Plaintiffs acknowledge that
22 this language is consistent with the Federal Rule, but include it in their proposed
23 judgment to ensure that any judgment entered would not be construed as
24 inconsistent with Plaintiffs’ right to file a forthcoming motion for attorneys’ fees
25 and costs.

26 *Third*, Plaintiffs contend that the Judgment should expressly indicate that the
27 dismissal of the Due Process Clause Claim as moot was not a final adjudication on
28 the merits and therefore was without prejudice. *See, e.g., Raybould v. JP Morgan*

1 *Chase Bank, N.A.*, 2013 WL 4786492, at *1 (D. Or. Sept. 6, 2013) (dismissing the
2 complaint as moot without prejudice and denying the defendant’s motion for
3 summary judgment because the “[c]ourts cannot take jurisdiction over a claim as to
4 which no effective relief can be granted”).

5 **B. DEFENDANTS’ POSITION**

6 This Court has granted Plaintiffs summary judgment with respect to their
7 claim brought pursuant to 8 U.S.C. § 1503, a provision of the Immigration and
8 Nationality Act allowing a person who claims his rights as a United States national
9 have been denied to “institute an action ... for a judgment declaring him to be a
10 national of the United States.” February 21, 2019 Civil Minutes at 7 (quoting
11 § 1503). Section 1503 does not authorize injunctive or mandamus relief, *see* 8
12 U.S.C. § 1503, as Plaintiffs themselves have appeared to acknowledge, *see, e.g.*,
13 Pls.’ Opp. to Defs.’ Mot. for S.J. (ECF No. 95) at 5–6 (arguing that the declaratory
14 relief available under § 1503 would be inadequate, and that were the Court to issue
15 such a declaration, it would “remain[] to be seen whether the State Department ...
16 would issue a CRBA and U.S. passport if he were to provide them with a court
17 order declaring him to be a U.S. citizen”). But the specific form of relief provided
18 by § 1503—a declaration of citizenship—represents Congress’s considered choice
19 to “both afford aggrieved persons total relief and at the same time minimize
20 judicial intrusion into the administrative decisionmaking processes.” *Cartier v.*
21 *Sec’y of State*, 506 F.2d 191, 200 (D.C. Cir. 1974); *see also, e.g., Perkins v. Elg*,
22 307 U.S. 325, 350 (1939) (modifying declaratory judgment decree to include the
23 Secretary of State, without specifically ordering the Secretary to issue a passport,
24 explaining, “The decree [as modified by the Court] would in no way interfere with
25 the exercise of the Secretary's discretion with respect to the issue of a passport but
26 would simply preclude the denial of a passport on the sole ground that Miss Elg
27 had lost her American citizenship.”).

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1 Defendants have submitted their own proposed Judgment because they
2 disagree with the inclusion of paragraphs 3, 4, and 5 of Plaintiffs’ proposed
3 Judgment. Not only does Plaintiffs’ proposed Judgment depart from relief
4 requested in the Prayer for Relief included in Plaintiffs’ First Amended Complaint
5 (Dkt. No. 94 at 22), but also it would specifically order the Department to issue a
6 U.S. passport and CRBA to E.J.—relief that is unavailable under § 1503. The
7 Court lacks authority to issue such an order at this time, and Plaintiffs’ proposal is
8 at best unnecessary and premature. Defendants do not seek to “prolong recognition
9 of E.J.’s U.S. citizenship,” *cf.* Plaintiffs’ Position Statement, *supra* at 4—
10 Defendants recognize that this Court has decided the question of E,J,’s citizenship.
11 The narrow question of law now at issue is whether Plaintiffs are presently entitled
12 to an injunction affording specific relief under § 1503. That certain results would
13 flow from the Court’s judgment does not mean an injunction should be issued.
14 Moreover, as Defendants have expressed to Plaintiffs, the Department of State
15 anticipates issuing a passport to E.J. when provided with a copy of the Court’s
16 declaratory judgment and an updated application (reflecting current address and
17 including updated passport photos), and already intends to waive the passport
18 fees.² And if the Department failed to recognize the Court’s declaration of E.J.’s
19 citizenship, Plaintiffs could at that time seek further relief from the Court; but there
20 is no present controversy allowing the Court to issue such an injunction at this
21 time, and Defendants have no reason to think that such controversy will arise.

22 Defendants do not object to the inclusion of an explicit statement that the
23 Court retains jurisdiction to consider an application for attorney’s fees or costs, but
24 Defendants have not included such a paragraph in their proposed Judgment
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27 ² Likewise, the Department anticipates it would issue a CRBA to E.J., and would
28 waive any associated fees, were the Dvash-Banks family to elect to apply in person
at a United States embassy or consulate.

1 because they think it unnecessary. *See, e.g.*, Fed. R. Civ. P. 54(d)(2) (anticipating
2 that a motion for attorney’s fees may be filed after judgment is entered).

3 Defendants disagree that the dismissal of Count I of Plaintiffs’ First
4 Amended Complaint should be without prejudice to Plaintiffs’ refileing a
5 declaratory judgment / substantive due process claim in a subsequent proceeding.
6 This Court determined that given its ruling on Plaintiffs’ section 1503 claim, it was
7 unnecessary for the Court to reach the merits of the substantive due process claim,
8 and therefore dismissed Count I as moot, February 21, 2019 Civil Minutes at 10.
9 Plaintiffs should not be allowed to revive their Count I claim by refileing a separate
10 action; “dismissal with prejudice is indicated” and “will prevent the regeneration of
11 the controversy by a reassertion of a right to litigate” the Count I claim. *See*
12 *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988).

13 ***

14 Respectfully submitted,

15 By: /s/ Alexa M. Lawson-Remer

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EXHIBIT 1

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION (LOS ANGELES)**

ANDREW MASON DVASH-
BANKS AND E.J. D.-B.,

Plaintiffs,

v.

THE UNITED STATES
DEPARTMENT OF STATE,
and THE HONORABLE
MICHAEL R. POMPEO,
Secretary of State,

Defendants.

Case No. 2:18-cv-00523-JFW-(JCx)

[PROPOSED] JUDGMENT

Pursuant to the Court’s February 21, 2019 Order Granting in Part and Denying in Part Plaintiffs’ Motion for Partial Summary Judgment and Order Granting in Part and Denying in Part Defendants’ Motion for Partial Summary Judgment (“Order”) ECF No. 123),

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT is entered in this matter as follows:

(1) Judgment on the 8 U.S.C. § 1503(a) claim is hereby entered for Plaintiffs for the reasons stated in the Court’s Order.

(2) The Court declares that Ethan Jacob Dvash-Banks is a national and citizen of the United States who acquired U.S. citizenship at birth by operation of Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g).

1 (3) The Department of State is ordered to issue to E.J. a United States
2 passport as soon as is practicable but not later than 21 days from the date of entry
3 of this Judgment.

4 (4) If E.J. and Andrew and Elad Dvash-Banks elect to apply in person
5 for a Consular Report of Birth Abroad (“CRBA”) for E.J. at the Toronto Consulate
6 General or any other Consular Office of the State Department outside of the United
7 States, the Department of State is ordered to issue to E.J. a CRBA as soon as
8 practicable but not later than 21 days from the date of the consular interview in
9 connection with that application.

10 (5) The Dvash-Banks family will not be charged any additional fees
11 by the Department of State for obtaining the aforementioned passport or CRBA,
12 having already paid these fees to the Department of State for E.J.’s initial
13 applications, which were improperly denied.

14 (6) Judgment is hereby entered in favor of Defendants with respect to
15 Plaintiffs’ Administrative Procedure Act claim.

16 (7) Plaintiffs’ claim under the Due Process Clause of the Fifth
17 Amended is moot and therefore is hereby dismissed without prejudice.

18 (8) If any elements of any of the claims asserted in this action by any
19 party were not the subject of either summary judgment motion, the Court’s Order,
20 or this Judgment, they are similarly moot and are dismissed.

21 (9) The Court retains jurisdiction to adjudicate any applications for
22 attorneys’ fees and costs as allowed by law. Plaintiffs may move this Court
23 separately for attorneys’ fees and costs.

24 It is So Ordered.

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26 Date: _____

The Honorable John F. Walter
United States District Judge

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Dated: February 28, 2019

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 10 UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

12 ANDREW MASON DVASH-
13 BANKS, et al.,

14 Plaintiffs,

15 v.

16 MICHAEL R. POMPEO, Secretary
17 of State, et al.,

18 Defendants.

Case No. CV 18-523-JFW(JCx)

Defendants' Proposed Judgment

19 Pursuant to the February 21, 2019 Order Granting in Part and Denying in
 20 Part Plaintiffs' Motion for Partial Summary Judgment (Docket No. 123) and the
 21 February 21, 2019 Order Granting in Part and Denying in Part Defendants' Motion
 22 for Partial Summary Judgment (Docket No. 123), and for the reasons stated in
 23 those Orders and the Court's Civil Minutes of February 21, 2019 (Docket No.
 24 123),

25 IT IS HEREBY ORDERED, ADJUDGED, and DECREED, that
 26 JUDGMENT is entered in this matter as follows:

27 With respect to Count II of the Amended Complaint—Plaintiffs' claim
 28 brought under Section 706(2)(A) of the Administrative Procedure Act (APA),

1 alleging violation of the APA—JUDGMENT IS HEREBY ENTERED in favor of
2 DEFENDANTS.

3 With respect to Count III of the Amended Complaint—Plaintiffs’ claim
4 brought pursuant to 8 U.S.C. § 1503, seeking a declaration that Plaintiff E.J. is and
5 was a U.S. citizen at birth—JUDGMENT IS HEREBY ENTERED in favor of
6 PLAINTIFFS, to wit: The Court DECLARES that “E.J.”—a minor child whose
7 full legal name is E [REDACTED] J [REDACTED] [REDACTED]—is a national and citizen of the
8 United States who acquired U.S. citizenship at birth by operation of Section 301(g)
9 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1401(g).

10 The Court DISMISSES Count I of the Amended Complaint as moot.

11 The Clerk of the Court is DIRECTED to enter this Judgment.

12 SO ORDERED.

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14 Dated _____

15 JOHN F. WALTER
16 UNITED STATES DISTRICT JUDGE

17 Presented, and respectfully submitted on February 28, 2019 by:

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