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

12 ANDREW MASON DVASH-
 13 BANKS and E. J. DVASH-BANKS,

14 Plaintiffs,

15 v.

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

19 Defendants.

No. CV 18-523-JFW-JC

**NOTICE OF LODGING OF
 PROPOSED STATEMENT OF
 DECISION DENYING
 PLAINTIFFS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

1 In accordance with the Court's Scheduling and Case Management Order,
2 ECF No. 52, Defendants hereby lodge their proposed statement of decision in
3 connection with Plaintiffs' motion for partial summary judgment. *See* ECF No. 83.
4

5 Presented, and respectfully submitted on January 24, 2019, by:

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CERTIFICATE OF SERVICE

Case No. CV 18-523-JFW-JC

I hereby certify that I am over the age of 18 and not a party to the above-titled action. I am employed as a Trial Attorney at the United States Department of Justice, Civil Division, Federal Programs Branch. My business address is 20 Massachusetts Ave., N.W., Washington, DC 20530.

On January 24, 2019, I served this NOTICE OF LODGING OF PROPOSED STATEMENT OF DECISION DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT on each person or entity named below by uploading an electronic version of this document to the Court’s ECF system:

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I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

Executed on January 24, 2019, at Washington, DC.

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1 On January 7, 2019, Plaintiffs Andrew Dvash-Banks and E.J. Dvash-Banks
2 (collectively, “Plaintiffs”) filed a motion for partial summary judgment on Counts I
3 and II of their First Amended Complaint. On January 14, Defendants Secretary of
4 State Michael R. Pompeo and the U.S. Department of State (collectively,
5 “Defendants”) filed their Opposition. On January 22, Plaintiffs filed a reply. After
6 considering the moving, opposing, and reply papers, and the arguments therein, the
7 Court rules as follows.

8 **FACTUAL BACKGROUND**

9 **I. The Dvash-Banks family**

10 Andrew Dvash-Banks (“Andrew”) is a United States citizen, married to Elad
11 Dvash-Banks, an Israeli citizen. Pls.’ Combined Stmt. of Facts (“PCSOF”) ¶¶ 1, 9,
12 11. Andrew and Elad used Assisted Reproductive Technology (“ART”) to
13 conceive children. *Id.* ¶¶ 4–7. In December 2015, Andrew and Elad contracted
14 with a gestational surrogate (the “Gestational Surrogate”) for the purpose of
15 carrying one or two embryos during a pregnancy (the “Surrogacy Agreement”). *Id.*
16 ¶ 17. The Gestational Surrogate became pregnant with one embryo created using
17 genetic material from Andrew and one embryo created using genetic material from
18 Elad. *Id.* ¶ 20. On September 16, 2016, the Gestational Surrogate gave birth to
19 those two children, each a boy, E.J. and A.J. *Id.* ¶ 29. On September 28, 2016, an
20 Ontario court entered an order naming Andrew and Elad the legal parents of E.J.
21 and A.J. *Id.* ¶ 41.

22 **II. Andrew and Elad go to Toronto Consulate to apply for Consular** 23 **Reports of Birth Abroad and U.S. Passports for E.J.**

24 On January 24, 2017, Andrew and Elad appeared in person at the Toronto
25 Consulate in connection with the applications for a Consular Report of Birth
26 Abroad (“CRBA”) and U.S. passport for each of their children, E.J. and A.J. *Id.* at
27 ¶ 55. A consular officer interviewed the Dvash-Banks family on January 24, 2017.
28 *Id.* ¶ 57. She adjudicated their applications, and, at a later date, made the final

1 decision on each of the applications. *Id.* ¶¶ 57, 58, 93, 98, 113. Andrew and Elad’s
2 applications indicated that they had used ART to have E.J. and A.J. *Id.* ¶ 24.
3 During the interview, the consular officer concluded that it was unclear which (if
4 either) of the children, E.J. and A.J., had a biological relationship to the U.S.
5 citizen father (Andrew). *Id.* ¶ 28. She provided them the option of submitting DNA
6 evidence to prove such relationship. *Id.* ¶¶ 29–32.

7 The Dvash-Banks family submitted DNA test results in support of E.J.’s and
8 A.J.’s applications. *Id.* ¶ 33. Ultimately, the adjudicating consular officer denied
9 E.J.’s applications on the ground that the applicants had failed to establish a
10 biological connection between E.J. and a U.S. citizen parent. *Id.* ¶¶ 35–36. She
11 granted A.J.’s applications. *Id.* ¶ 90.

12 **III. Procedural History**

13 In January 2018, Andrew Dvash-Banks filed the instant suit on behalf of
14 himself and E.J.,¹ challenging the decisions by Defendants to deny E.J.’s CRBA
15 and U.S. passport applications. On January 14, 2019, Plaintiffs filed a First
16 Amended Complaint.² In their First Amended Complaint, Plaintiffs assert three
17 claims: (1) a claim under the Declaratory Judgment Act (“DJA”) alleging
18 violations of their substantive due process rights; (2) a claim the denial of E.J.’s
19 applications violated the Administrative Procedure Act; and (3) a claim under 8
20 U.S.C. § 1503(a), which provides a mechanism for the Court to conduct a *de novo*
21 review of E.J.’s citizenship status. Plaintiffs move for summary judgment on the
22 substantive due process and § 1503 claims (Counts I and III).

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26 ¹ In December 2018, Elad was appointed guardian *ad litem* for E.J. in this action.

27 ² The First Amended Complaint removed a claim that had been included in the
28 original Complaint, but left unchanged the allegations relating to the APA and
substantive due process claims.

1 ANALYSIS

2 I. Section 1503(a) Claim (Count III)

3 Plaintiffs’ summary judgment motion challenges at length the Department of
4 State’s (“the Department”) statutory interpretation and associated actions with
5 respect to its Consular Report of Birth Abroad (“CRBA”) for Plaintiff E.J. But the
6 reasonableness of Department’s actions should not be the focus of any analysis in
7 which the Court may engage under section 1503. As Plaintiffs themselves note,
8 section 1503(a) “authorizes a *de novo* judicial determination of the status of the
9 plaintiff as a United States national.” Mem. of P. & A. in Supp. of Pl.’s Mot. for
10 Partial Summ. J. (“Pls.’ Br.”) at 14, ECF No. 83-1 (quoting *Richards v. Sec’y of*
11 *State*, 752 F.2d 1413, 1417 (9th Cir. 1985)). Therefore, “[a] suit under section
12 1503(a) is *not* one for judicial review of the agency’s action.” *Richards*, 752 F.2d
13 at 1417 (emphasis added). That is because, while the Department made the
14 citizenship determination in the first instance, “the courts make the real decisions
15 all over again, *see* 8 U.S.C. § 1503(a). This allocation charges the courts with an
16 independent and comprehensive role in determining citizenship.” *Ortega-Morales*
17 *v. Lynch*, 168 F. Supp. 3d 1228, 1240 (D. Ariz. 2016). Thus, here, where the
18 Department applied its longstanding statutory interpretations of 8 U.S.C. §§ 1401
19 and 1409 in adjudicating E.J.’s CRBA and passport adjudications abroad—where
20 Ninth Circuit law does not apply—the Court need not pass judgment on the
21 Department’s actions in evaluating Plaintiffs’ section 1503 claim. Instead, if the
22 claim is reached, 8 U.S.C. § 1503(a) requires the Court to make a *de novo*
23 determination about whether E.J. satisfies the applicable prerequisites to have
24 acquired U.S. citizenship at birth as a foreign-born child. *See Simeonov v. Ashcroft*,
25 371 F.3d 532, 538 (9th Cir. 2004) (“As a general rule courts . . . are not required to
26 make findings on issues the decision of which is unnecessary to the results they
27 reach.” (citation omitted)).

1 Here, however, Plaintiffs have another path to the relief they seek, rendering
2 judicial intervention unnecessary on this claim. Plaintiffs have now relocated to
3 within in the Ninth Circuit, Andrew is free to apply for a certificate of citizenship
4 on behalf of E.J. from U.S. Citizenship and Immigration Services (“USCIS”), *see* 8
5 U.S.C. § 1452. USCIS, as part of the Department of Homeland Security (“DHS”),
6 is charged with making citizenship determinations in the United States, *see* 8
7 U.S.C. § 1103, distinct from citizenship determinations sought by individuals
8 living abroad, the purview of the Department of State, *see* 8 U.S.C. § 1104; *see*
9 *also Scales v. INS.*, 232 F.3d 1159, 1165 (9th Cir. 2000) (“Because Petitioner is not
10 a ‘person not in the United States,’ the State Department is not the agency
11 entrusted with the determination of Petitioner’s citizenship.”). Plaintiffs’ changed
12 circumstances “have forestalled any occasion for meaningful relief” from this
13 Court, *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001) (citation
14 omitted), since they may seek the same relief from USCIS.

15 If Plaintiffs seek a certificate of citizenship from USCIS, USCIS will apply
16 Ninth Circuit case law to their case since Plaintiffs reside within the Ninth Circuit.
17 In the Ninth Circuit, USCIS follows *Scales*, 232 F.3d at 1166; PCSOF ¶¶ 173–75,
18 which construed the instant statutory provisions differently from the Department of
19 State when reviewing DHS’s actions in the context of removal proceedings that
20 occurred in the Ninth Circuit. *See Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1091
21 (9th Cir. 2005), and *Scales*, 232 F.3d at 1166. Because a certificate of citizenship is
22 proof of U.S. citizenship (here, at-birth citizenship) equivalent to both a CRBA *and*
23 a court order recognizing U.S. citizenship, *see* 22 U.S.C. § 2705, the availability of
24 USCIS’s certificate-of-citizenship process to Plaintiffs obviates the need for this
25 Court to decide Plaintiffs’ 1503 claim, at least until Plaintiffs avail themselves of
26 this alternative administrative procedure. *Cf. Nat’l Treas. Emps. Union v. United*
27 *States*, 101 F.3d 1423, 1431 (D.C. Cir. 1996) (“If we do not decide it now, we may
28 never need to. Not only does this rationale protect the expenditure of judicial

1 resources, but it comports with our theoretical role as the governmental branch of
2 last resort. Article III courts should not make decisions unless they have to.”).

3 Therefore, the Court denies without prejudice Plaintiffs’ motion for
4 summary judgment, so that Plaintiffs may apply for a certificate of citizenship
5 from USCIS.

6 **II. Plaintiffs’ Substantive Due Process Claims (Count I)**

7 Plaintiffs are not entitled to summary judgment on their substantive due
8 process claim.³ They fail to establish a fundamental right at issue, and in resolving
9 this constitutional claim the Court should find that Defendants’ actions pass
10 rational-basis review.

11 Plaintiffs’ constitutional claim is that the Department’s interpretation of
12 applicable law to require a biological relationship between the foreign-born child
13 seeking to acquire U.S. citizenship at birth and the U.S. citizen parent “denies
14 same-sex married couples and their children the panoply of rights and benefits of
15 marriage.” Pls.’ Br. at 22. But the Department’s legal interpretation distinguishes
16 between biological and non-biological parent-child relationships, *not* between
17 same-sex and opposite-sex couples. *See* 7 FAM 1131.4-1 (AR 82–84); *id.* 1100
18 App. D ¶ b (AR 77)⁴ (recognizing a child’s acquisition of citizenship at birth under
19

20 ³ Plaintiffs appear to move for summary judgment only on Andrew’s substantive
21 due process claim. To the extent E.J. raises an independent claim here, *see* Compl.
22 ¶ 76; Am. Compl. ¶ 76, ECF No. 94, Plaintiffs do not argue that Defendants’
23 actions infringed on E.J.’s fundamental rights.

24 In any event, a foreign-born individual’s right to U.S. citizenship at birth has
25 also never been recognized as an independent, fundamental right. *See Rios-*
26 *Valenzuela v. Dep’t of Homeland Sec.*, 506 F.3d 393, 401–02 (5th Cir. 2007). And
27 the Department’s policy passes rational-basis review. *See infra*.

28 ⁴ Relevant provisions of the FAM appear in the Certified Administrative Record.
As such, the Court generally cites herein to the version of each FAM provision
appearing in the Administrative Record, *i.e.*, the versions in effect at the time of
the underlying adjudication. The Court notes, however, that the FAM’s guidance
on acquisition of citizenship has since been reorganized and renumbered. An
appendix matching the cited provisions to their present-day versions appears at the
end of this opinion.

1 8 U.S.C. § 1401(g) where two women married to each other are U.S. citizens, and
2 one is the legal, gestational mother of the child and the other is the genetic
3 mother); PCSOF ¶¶ 165–66. That the biological relationship, or lack thereof, is the
4 fulcrum of this interpretation is underscored by the fact that the Department
5 approved the applications for a CRBA and passport for A.J., the biological child of
6 U.S. citizen Andrew.

7 Further, an individual’s purported right to transmit U.S. citizenship at birth
8 to a foreign-born child who has no biological relationship to the individual has not
9 been recognized as a right and benefit of marriage. Plaintiffs cite *Pavan v. Smith*,
10 137 S. Ct. 2075, 2077 (2017), in support of this argument, but *Pavan* is of no help.
11 In *Pavan*, a state law “generally require[d] the name of the mother’s male spouse
12 to appear on the child’s birth certificate,” even if “the couple conceived by means
13 of artificial insemination with the help of an anonymous sperm donor.” *Pavan*, 137
14 S. Ct. at 2077. The law, however, did not require the state to “issue birth
15 certificates including the female spouses of women who give birth in the State.” *Id.*
16 The court found that the state’s law infringed upon a right of marriage because the
17 state had “chosen to make its birth certificates more than a mere marker of
18 biological relationships,” since “when an opposite-sex couple conceives a child by
19 way of anonymous sperm donation,” just as the same-sex plaintiffs did, “state law
20 requires the placement of the birth mother’s husband on the child’s birth
21 certificate.” *Id.* at 2078. Here, however, the Department’s statutory interpretation
22 requires married U.S. citizens in both same-sex couples and opposite-sex
23 couples—and, indeed, unmarried U.S. citizens, as well—to possess a biological
24 connection to a foreign-born child for the child to acquire U.S. citizenship at birth.⁵

25 _____
26 ⁵ Plaintiffs cursorily argue that it is “beside the point” that the Department applies
27 “the FAM’s biological relationship requirement to the children of opposite-sex
28 marriages,” but they fail to meaningfully explain why the Court should ignore this
salient fact. *See* Pls.’ Br. at 24. The Department’s interpretation does not foreclose
the Department from adjudicating the CRBA or passport applications of children
of male same-sex marriages under section 1401(g), *see* PCSOF ¶¶ 165, 167, and, in

1 Thus the Department’s interpretation on this issue can be seen as “a mere marker
2 of biological relationships,” *id.*⁶

3 Nor do U.S. citizens possess a fundamental right to unconditionally transmit
4 U.S. citizenship to a foreign-born child. Plaintiffs rely on *Miller v. Albright*, 523
5 U.S. 420, 433 (1998), for this proposition. *See* Pls.’ Br. at 23. But *Miller* examined
6 a claim brought by an individual seeking to *acquire*, not transmit, U.S. citizenship.
7 Moreover, the decision recognized that “[p]ersons not born in the United States
8 acquire citizenship by birth only as provided by Acts of Congress,” *Miller*, 523
9 U.S. at 424 (Stevens, J. op.), and that “there is no doubt that ensuring reliable proof
10 of a *biological* relationship between the potential citizen and its citizen parent is an
11 important governmental objective,” *id.* at 436 (emphasis added). Indeed, the
12 various conditions that Congress imposes for foreign-born children to acquire U.S.
13 citizenship at birth, such as requiring U.S. citizen parents to have years of physical
14 presence in the United States, make clear that any right to transmission of
15 citizenship is contingent (and statutory). *See* 8 U.S.C. §§ 1401, 1409; *see also*
16 *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1687 (2017) (describing section
17 1401’s and section 1409’s physical-presence requirements).⁷ Thus, Plaintiffs fail to
18 establish that a U.S. citizen’s right to transmit U.S. citizenship to a non-biological,
19 foreign-born child is “so deeply rooted in our history and traditions, or so

20 _____
21 any event, conclusively establishes that the Department’s policy focuses on
22 biology, not marriage. *See Pavan*, 137 S. Ct. at 2078.

22 ⁶ Nor do *Scales* and *Solis-Espinoza* establish such a fundamental right; both
23 decisions engaged in statutory interpretation of sections 1401 and 1409 and did not
24 examine whether the transmission of U.S. citizenship in those circumstances was a
25 constitutionally protected fundamental right. *See Scales*, 232 F.3d at 1166; *Solis-*
26 *Espinoza*, 401 F.3d at 1094.

27 ⁷ Indeed, while *Morales-Santana* concluded that “the gender-based distinction
28 infecting §§ 1401(a)(7) and 1409(a) and (c) . . . violates the equal protection
principle,” *Morales-Santana*, 137 S. Ct. at 1700–01, “Section 1401(a)(7)’s longer
physical-presence requirement . . . must hold sway,” because Congress likely
would have eliminated the shorter physical-presence requirements for unwed
mothers over unwed fathers “had it been apprised of the constitutional infirmity,”
id. (citation omitted). This result confirms that any right to the transmission of U.S.
citizenship to a foreign-born child is, at best, provisional.

1 fundamental to our concept of constitutionally ordered liberty,” that it amounts to a
2 fundamental right for the purposes of substantive due process analysis. *Washington*
3 *v. Glucksberg*, 521 U.S. 702, 727 (1997).

4 Because Defendants’ actions do not infringe upon a fundamental right,
5 rational-basis review applies. *Kim v. United States*, 121 F.3d 1269, 1273 (9th Cir.
6 1997). Under rational-basis review, Plaintiffs “have the burden to negate every
7 conceivable basis that might support” Defendants’ position. *FCC v. Beach*
8 *Commc’ns, Inc.*, 508 U.S. 307, 307 (1993).

9 Plaintiffs claim that Defendants “fail to assert any [governmental] interest”
10 in its position, Pls.’ Br. at 25, but that is incorrect. The Department’s longstanding
11 interpretation of the language “born ... of parents” in Section 1401(g) to require a
12 biological relationship between the child seeking to acquire U.S. citizenship and
13 her married parents is rooted in its understanding that Congress has, since 1790,
14 generally required that “at least one biological parent must have been a U.S. citizen
15 when the child was born.” 7 FAM 1131.2 ¶ 1 (AR 82); PCSOF ¶ 171. The
16 Department’s interpretation is further supported by the overall text and structure of
17 the INA, which treats the non-biological children of U.S. citizens differently from
18 their biological children. *See, e.g.*, 8 U.S.C. §§ 1101(c), 1431(b), 1433(c); *see also*
19 *Acevedo v. Lynch*, 798 F.3d 1167, 1171 (9th Cir. 2015); *Dent v. Sessions*, 900 F.3d
20 1075, 1082 (9th Cir. 2018). Further, the Department has noted another
21 governmental interest at stake: it has expressed concerns that adopting a contrary
22 interpretation of Section 1401(g) would raise the frequency of fraudulent
23 citizenship claims, because it would be more difficult to identify child smuggling
24 or illegal adoption without requiring a biological link between the child applicant
25 and the transmitting parent. *See* PCSOF ¶ 172. Therefore, Defendants have
26 articulated a legitimate interest that is rationally related to its position, and
27 summary judgment for Plaintiffs should be denied on this basis. *Stormans, Inc. v.*
28 *Wiesman*, 794 F.3d 1064, 1084 (9th Cir. 2015).

1 Further, Plaintiffs gloss over the complicated issue of policy and statutory
2 interpretation at issue in this case. With the advent of ART and accompanying
3 surrogate motherhood agreements in the late 20th century and early 21st century,
4 there exist today many more scenarios and possibilities for both biological
5 parenthood and legal parenthood than when the INA was enacted, or when the
6 common law of parentage evolved. Yet at least one fact is essentially unchanged
7 from the time the INA became law through and beyond the time the Department of
8 State applied its provisions to the instant case: a human child must have a
9 biological mother and a biological father. In this case those biological parents
10 comprise a father, Elad, who is a legal parent but is *not* a U.S. citizen, and a mother
11 who is *not* a legal parent and whose citizenship is not considered relevant for the
12 purposes of E.J.’s passport and CRBA applications, either by Defendants or
13 Plaintiffs.⁸ Plaintiffs’ premise in this case, therefore, is that E.J. should have
14 acquired U.S. citizenship at birth notwithstanding the fact that *neither* of his
15 biological parents is both his legal parent and a U.S. citizen.

16 Section 1401(g) does not have the express language of section 1409(a),
17 requiring, *inter alia*, a “blood relationship between the person and the father”
18 language in order for citizenship to be acquired at birth. Nevertheless, “*born . . . of*
19 *parents*” (emphasis added) has an inherently biological connotation, and can
20 reasonably be read and understood to serve a similar function and purpose to the
21 “blood relationship” language of section 1409(a)—i.e., ensuring a biological
22 connection between a child and his or her parents. Moreover, “parents” as
23 understood by the legislature could only have meant “mother” and “father,” the
24 genetic contribution both sexes being necessary to conceive a child, a person who
25 is subsequently “born . . . of parents.” *See United States v. Marguet-Pillado*, 560

26 ⁸ *See* 7 FAM 1120 App. D ¶ a (AR 78) (“For purposes of this section, the term
27 ‘surrogate’ refers to a woman who gives birth to a child, who is not the legal parent
28 of the child at the time of the child’s birth in the location of the birth. In such a
case, the surrogate’s citizenship is irrelevant to the child’s citizenship analysis.”).

1 F.3d 1078, 1083 (9th Cir. 2009) (“There can be little doubt that the ‘born of’
2 concept generally refers to a blood relationship.”).

3 Thus, that Congress did not include language as express as “blood
4 relationship” in section 1401 should not be regarded as “demonstrat[ing] that
5 Congress intended that there be no biological relationship requirement under
6 Section 301(g),” Pls.’ Br. at 16. Rather, it is reasonable to assume that Congress—
7 at least in the context of the law on acquisition of U.S. citizenship at birth in
8 1952—saw no need to be express about circumstances that were entirely
9 unremarkable and therefore could be implicitly assumed: “born of” connoted a
10 biological connection to both parents: mother and father. “There is nothing
11 irrational or improper in the recognition that at the moment of birth—a critical
12 event in the statutory scheme and in the whole tradition of citizenship law—the
13 mother’s knowledge of the child and the *fact of parenthood* have been established
14 [],” *Nguyen v. INS*, 533 U.S. 53, 68 (2001) (emphasis added).⁹ *See also Miller*, 523
15 U.S. at 443 (op. of Stevens, J.).

16 The foregoing analysis notwithstanding, this Court recognizes that the Ninth
17 Circuit has decided, in *Scales*, that “a *straightforward* reading of § 1401 *indicates* .
18 . . . that there is no requirement of a blood relationship,” *Scales*, 232 F.3d at 1164
19 (emphasis added); *see also Solis-Espinoza*, 401 F.3d at 1094.¹⁰ Neither of those
20 cases, however, involved a child born through the use of ART, or addressed the
21 constitutional claim raised here. Indeed, given the novel facts presented by ART,
22 this constitutional claim can be seen in some ways as a matter of first impression,

23 _____
24 ⁹ The Court in *Nguyen* – a case that this Circuit’s *Scales* decision did not take
25 account of since *Nguyen* was decided a year later – made the statement in the
26 context of its analysis of section 1409, but nothing in the Court’s opinion suggests
27 that it considered the biological parent-child relationship to be exclusively limited
28 to section 1409. *See Nguyen*, 533 U.S. at 68.

¹⁰ Plaintiffs also cite *Jaen v. Sessions*, 899 F.3d 182 (2d Cir. 2018). As a decision
of the Second Circuit, *Jaen* does not bind this jurisdiction, and in any event, it too
did not involve ART. Further, *Jaen* had not been decided at the time of the
adjudications at issue in this case.

1 concerning who counts as a “parent” for purposes of acquisition of citizenship in
2 the light of reproductive technologies of the 21st century. In the absence of new
3 legislation by Congress that would expressly address a law and policy question of
4 such import and complexity, it is fitting that the judicial branch proceed with
5 caution. Plaintiffs’ motion for summary judgment on their constitutional
6 substantive due process claim is therefore denied.

7 **CONCLUSION**

8 For all the foregoing reasons, Plaintiffs’ motion for partial summary
9 judgment is DENIED.

10 IT IS SO ORDERED.

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12 Dated _____

13 **JOHN F. WALTER**
UNITED STATES DISTRICT JUDGE

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1 Presented, and respectfully submitted on January 24, 2019, by:

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[Proposed] Appendix A

The following chart shows the current numbering of the Foreign Affairs Manual (“FAM”) provisions cited in this decision. Current versions of the FAM may be found online, on the Department of State’s website, <https://fam.state.gov>:

<i>Cited Provision</i>		<i>Current Version</i>
7 FAM 1100 App. D	(AR 77–80)	8 FAM 304.3
7 FAM 1120 App. D	(AR 78)	8 FAM 304.3-2
7 FAM 1131.2	(AR 82)	8 FAM 301.4-1(B)
7 FAM 1131.4-1	(AR 82–84)	8 FAM 301.4-1(D)(1)
7 FAM 1100 App. E	(AR 88–94)	8 FAM 304.1
7 FAM 1140 App. E	(AR 91)	8 FAM 304.1-2

CERTIFICATE OF SERVICE

Case No. CV 18-523-JFW-JC

I hereby certify that I am over the age of 18 and not a party to the above-titled action. I am employed as a Trial Attorney at the United States Department of Justice, Civil Division, Federal Programs Branch. My business address is 20 Massachusetts Ave., N.W., Washington, DC 20530.

On January 24, 2019, I served this STATEMENT OF PROPOSED ORDER DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT on each person or entity named below by uploading an electronic version of this document to the Court's ECF system:

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I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

Executed on January 24, 2019, at Washington, DC.

By: s/Vinita B. Andrapalliyal
VINITA B. ANDRAPALLIYAL

Trial Attorney
United States Department of Justice
Civil Division

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