

1 SULLIVAN & CROMWELL LLP
Alexa M. Lawson-Remer (268855)
2 *lawsonr@sullcrom.com*
1888 Century Park East, Suite 2100
3 Los Angeles, CA 90067-1725
Telephone: (310) 712-6600
4 Facsimile: (310) 712-8800

5 Theodore Edelman (*pro hac vice*)
edelmant@sullcrom.com
6 Jessica Klein (*pro hac vice*)
kleinj@sullcrom.com
7 125 Broad Street
New York, NY 10004-2498
8 Telephone: (212) 558-4000
Facsimile: (212) 558-3588

9 IMMIGRATION EQUALITY
10 Aaron C. Morris (*pro hac vice*)
amorris@immigrationequality.org
11 40 Exchange Place, Suite 1300
New York, New York 10005-2744
12 Telephone: (212) 714-2904

13 *Attorneys for Plaintiffs*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 ANDREW MASON DVASH-
17 BANKS and ETHAN JACOB
DVASH-BANKS,
18
19 Plaintiffs,

20 v.

21 THE UNITED STATES
DEPARTMENT OF STATE,
and THE HONORABLE
22 MICHAEL R. POMPEO,
Secretary of State,
23

24 Defendants.

Case No. 2:18-cv-00523-JFW-JCx
JOINT RULE 26(f) REPORT FOR
SCHEDULING CONFERENCE
August 27, 2018 at 1:15 P.M.
350 W. 1st St, Los Angeles, CA 90012
Courtroom 7A
Judge: Honorable John F. Walter

1 Plaintiffs Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks
2 (jointly, “Plaintiffs”), together with Defendants the United States Department of
3 State (“State Department”) and the Hon. Michael R. Pompeo, in his official
4 capacity as Secretary of the U.S. Department of State (jointly, “Defendants” and,
5 together with Plaintiffs, “the Parties”), respectfully submit this Joint Rule 26(f)
6 Report in accordance with Federal Rule of Civil Procedure (“Rule”) 26(f) and the
7 Local Rules for the Central District of California (“Local Rules”).

8 **Rule 26(f) Conference:**

9 The Parties conducted the Rule 26(f) Conference on August 6, 2018.
10 Subsequent to the conference, the parties had follow-up communications regarding
11 the subjects addressed below.

12 **Rule 26(f) Report:**

13 **I. Jurisdiction and Service**

14 Although Defendants challenge the Court’s subject matter jurisdiction
15 over Plaintiffs’ claims, the parties agree that no issues presently exist regarding
16 *personal jurisdiction* or venue, and no parties remain to be served at this time.

17 PLAINTIFFS’ POSITION: This Court has subject matter jurisdiction
18 over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 and 8 U.S.C. § 1503.

19 DEFENDANTS’ POSITION: This Court lacks subject-matter
20 jurisdiction over Plaintiffs’ claim under the Administrative Procedure Act (“APA”)
21 (Complaint Count III), 5 U.S.C. § 701 *et seq.*, because 8 U.S.C. § 1503, under
22 which Plaintiffs have brought a separate claim (*i.e.*, Complaint Count IV), provides
23 an adequate alternative remedy at law. *Ortega-Morales. v. Lynch*, 168 F. Supp. 3d
24 1228 (D. Az. 2016); *De La Garza Gutierrez v. Pompeo*, --- Fed. App’x --- 2018
25 WL 3454835 (5th Cir. July 17, 2018); *Tuscon Airport Auth. v. Gen. Dynamics*
26 *Corp.*, 136 F.3d 641, 644–45 (9th Cir. 1998). Plaintiffs’ purported direct claims
27 under the Declaratory Judgment Act (Complaint Counts I and II) also fail for lack
28 of subject matter jurisdiction because that statute does not on its own operate as a

1 waiver of sovereign immunity. *See, e.g., North Cty. Comm’s Corp. v. Ca. Catalog*
2 *& Tech.*, 594 F.3d 1149, 1154 (9th Cir. 2010); *Gov’t Empls. Ins. Co. v. Dizol*, 133
3 F.3d 1220, 1222–23 (9th Cir. 1998) (“A lawsuit seeking federal declaratory relief
4 must first present an actual case or controversy within the meaning of Article III ...
5 [and] must also fulfill statutory jurisdictional prerequisites.”); *see also FDIC v.*
6 *Meyer*, 510 U.S. 471, 475 (1994) (“Absent a waiver, sovereign immunity shields
7 the Federal Government and its agencies from suit[;] ... [s]overeign immunity is
8 jurisdictional in nature.”) (citations omitted).

9 **II. Factual Chronology and Issues**

10 PLAINTIFFS’ STATEMENT: The above-captioned action
11 (“Action”) is a challenge to the application to plaintiff Ethan Jacob Dvash-Banks
12 (“Ethan”) of a policy of the State Department relating to recognition of U.S.
13 citizenship at birth. Specifically, the Action challenges the State Department’s
14 reliance on that policy to deny recognition of Ethan as a United States citizen by
15 birth because of its interpretation and application of Sections 301(g) and 309 of the
16 Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1409 (“Section 301(g)”
17 and “Section 309”) to require that a child’s “biological parents [have been] married
18 to each other at the time of the birth” in order for the child to acquire U.S.
19 citizenship at birth. *See Foreign Affairs Manual*, 1140 App’x E (ECF No. 1-1).
20 Section 301(g) entitles a person born outside of the United States to citizenship at
21 birth if one of that person’s married parents is a United States citizen and the other
22 is a foreign national, as long as the U.S. citizen satisfies certain residency
23 requirements. This interpretation and Defendants’ application of it to Ethan’s
24 claims of U.S. citizenship at birth conflict with the text and purpose of Section
25 301(g) and relevant case law, including binding Ninth Circuit precedent, and
26 bedrock principles of common law. The text of Section 301(g) contains no
27 biological requirement, and the Ninth Circuit has rejected efforts to read such a
28 requirement into that provision. In contrast, Section 309 applies only to children

1 “born out of wedlock.” Section 309 includes a requirement that the U.S. citizen
2 parent be biologically related to a child born out of wedlock in order for that child
3 to be recognized as a United States citizen at birth.

4 Andrew Mason Dvash-Banks (“Andrew”) is a U.S. citizen who has
5 lived in the United States for more than 24 years and thus satisfies the residency
6 requirements of Section 301(g). His husband, Elad Dvash-Banks (“Elad”), is an
7 Israeli citizen. They were lawfully married on August 19, 2010 in Canada and
8 now legally reside in the United States.

9 Andrew and Elad have twin sons, Ethan and Aiden James
10 Dvash-Banks (“Aiden”). Both Ethan and Aiden were conceived and born during
11 Andrew’s marriage to Elad. Andrew and Elad conceived the twins using their own
12 sperm and eggs from the same anonymous donor. They used Andrew’s sperm to
13 conceive Aiden and Elad’s sperm to conceive Ethan. A surrogate carried the twins
14 together in her womb and gave birth to them on September 16, 2016 in Ontario,
15 Canada. Andrew and Elad have been the twins’ legal parents from the day they
16 were born. No other person is named as a parent of either child or has claimed any
17 parental rights with respect to them. The Dvash-Banks family currently resides in
18 California.

19 When Andrew and Elad applied at the U.S. Embassy in Toronto for
20 Consular Reports of Birth Abroad and U.S. passports for their sons shortly after
21 they were born in the fall of 2016, the State Department applied its policy to deny a
22 Consular Report of Birth Abroad (“CRBA”) and U.S. passport to Ethan, who
23 Defendants determined was not a U.S. citizen, notwithstanding that both Ethan and
24 his twin brother were born during Andrew’s and Elad’s marriage. In contrast,
25 Defendants recognized the U.S. citizenship of Ethan’s twin brother, Aiden, and
26 issued to Aiden a CRBA and a U.S. passport. In reaching these determinations the
27 State Department focused on the biological relationship between each child and the
28 parent whose sperm was used to conceive him. In imposing a biological

1 requirement, Defendants have treated Ethan and Aiden as children born “out of
2 wedlock.” Plaintiffs assert that Defendants wrongly considered Ethan and Aiden
3 to have been born “out of wedlock” and therefore erroneously concluded they
4 could qualify for citizenship at birth only pursuant to provisions applicable to the
5 children of unwed parents.

6 DEFENDANTS’ STATEMENT: In Defendants’ view, the principal
7 disputes between the parties at this stage regard issues of law, not issues of fact.
8 This Action challenges the Department of State’s denial of applications for
9 documentation of U.S. citizenship. Specifically, the Action challenges the State
10 Department’s longstanding legal interpretation and application of Sections 301(g)
11 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1409
12 (“Section 301(g)” and “Section 309”), as requiring that a child’s “biological
13 parents [have been] married to each other at the time of the birth”; the Action also
14 implicates the Department’s longstanding requirement that at least one biological
15 parent have been a U.S. citizen when a child was born for the child to acquire U.S.
16 citizenship at birth. *See* 7 Foreign Affairs Manual, 1140 App’x E (ECF No. 1-1); 7
17 Foreign Affairs Manual 1131.2, 1131.4, 1100 Appendix D.

18 In accordance with its legal interpretation of the applicable statutes,
19 the State Department denied plaintiff Andrew’s applications for a CRBA and for a
20 U.S. passport filed on behalf of minor plaintiff Ethan. Ethan was born outside of
21 the country; his biological father is Andrew’s husband, who is not a U.S. citizen,
22 and his biological mother is an anonymous egg donor.

23 Plaintiffs challenge the State Department’s denials by bringing
24 purported claims under the Declaratory Judgment Act (for violations of the Fifth
25 Amendment’s Due Process Clause and its Equal Protection component); the APA
26 (arguing that Defendants’ interpretation of Sections 301 and 309 conflict with the
27 INA’s statutory language); and 8 U.S.C. § 1503, which in certain circumstances
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1 denials to married same-sex parents the same constellation of rights and benefits of
2 marriage available to married opposite-sex parents.

3 DEFENDANTS' STATEMENT: The Action involves legal questions
4 of federal public law regarding the acquisition of citizenship at birth by children
5 born outside the United States who are not biologically related to their U.S. citizen
6 parent. As indicated in the State Department's Foreign Affairs Manual,
7 Defendants consistently apply the provisions of INA's Sections 301 and 309 with
8 respect to all non-biological children seeking to be documented as U.S. citizens
9 (other than adopted children, for which a different legal framework applies),
10 irrespective of the sexual orientation of the parents of such children.

11 **IV. Prior Motions**

12 The Parties previously filed three joint motions for extension of time
13 (ECF Nos. 35, 40, 44), the first two of which the Court granted and the last it
14 denied; all extensions have expired and, on July 16, 2018, Defendants answered
15 the Complaint (ECF No. 46).

16 **V. Additional Parties and Amendment of Pleadings**

17 At this time, Plaintiffs do not anticipate amending the pleadings or
18 joining additional, or dismissing current, parties. To the extent the need arises,
19 however, any motions for such measures will be filed and served within thirty days
20 of the date of the scheduling order entered by the Court pursuant to Rule 16(b)
21 ("Scheduling Order"), and noticed for hearing within sixty days of the Scheduling
22 Order.

23 **VI. Discovery**

24 **A. Initial Disclosures**

25 The Parties have exchanged timely and compliant initial disclosures.
26 Plaintiffs served their initial disclosures on August 14, 2018. Defendants served
27 their initial disclosures on August 16, 2018.

28

B. Discovery Plan

1 **B. Discovery Plan**
2 PLAINTIFFS' POSITION: In an effort to move this Action
3 forward in an orderly and efficient manner, Plaintiffs have commenced discovery
4 by serving both detailed initial disclosures and document requests focused
5 principally on Defendants' determinations with respect to the CRBA applications
6 for Ethan, Defendants' construction of Sections 301(g) and 309, the Foreign
7 Affairs Manual (on which Defendants appear to rely as the centerpiece, if not sole
8 basis, for the determinations and conduct at issue in the Action), and Defendants'
9 policies and practices relating to CRBA applications by children born outside the
10 United States in circumstances similar to Ethan's. On August 14, 2018, Plaintiffs
11 served on Defendants Plaintiffs' first set of requests for the production of
12 documents. Plaintiffs also intend to serve interrogatories relating to, and expect to
13 seek depositions of individuals with knowledge of, the matters at issue in the
14 Action. In general, the subjects of discovery will relate to the factual and legal
15 issues set forth above.

16 On the other hand, Defendants seek to have matters both ways with
17 respect to discovery: They apparently rely almost exclusively on the Foreign
18 Affairs Manual as the justification for denying recognition of Ethan's having
19 acquired U.S. citizenship at birth, while at the same time are trying to prevent
20 Plaintiffs and the Court from having any insight into how and why Defendants
21 have interpreted the relevant statute as they have, in conflict with the language and
22 purpose of the legislation and Ninth Circuit law. Further, although in addressing
23 the factual matters at issue in this Action, Defendants assert in Section III of this
24 Report that "Defendants consistently apply the provisions of INA's Sections 301
25 and 309 with respect to all non-biological children seeking to be documented as
26 U.S. citizens (other than adopted children, for which a different legal framework
27 applies), irrespective of the sexual orientation of the parents of such children," they
28 seek to foreclose any discovery into the basis and validity of that assertion and of

1 the procedures it addresses. To that end, Defendants have even declined to provide
2 basic information in their initial disclosures from which the Parties and the Court
3 could determine the appropriate scope and focus of discovery in this Action,
4 relying instead on the “passport file” in their possession and offers to stipulate to
5 some basic background facts. Defendants’ reliance on the Foreign Affairs Manual
6 reflects that they considered factors outside of the “passport file.” Further,
7 although Defendants have stated that they are willing to stipulate to certain
8 “material facts regarding Ethan and the citizenship applications made on his
9 behalf,” this does not obviate the need for discovery on these fundamental matters.
10 Defendants should not be permitted both to defend their actions by reliance on a
11 supposed “longstanding requirement” imposed by the State Department and
12 foreclose any discovery into the terms, scope, purpose, basis and application of that
13 requirement.

14 Notwithstanding these considerations, Plaintiffs continue to seek to
15 have this matter resolved in the most efficient possible manner. Indeed, Plaintiffs
16 were willing to defer proceeding for more than five months in response to repeated
17 indications from Defendants that they were considering means of resolving the
18 Action without the need for litigation. Plaintiffs remain willing to have this Action
19 adjudicated in a manner that reasonably limits the burdens and imposition on the
20 Court and the Parties. Consistently with this approach, if the Court determines that
21 it would be more efficient to proceed to endeavor to address as a threshold matter
22 whether to order a declaration of Ethan’s U.S. citizenship at birth pursuant to
23 Plaintiff’s claim under 8 U.S.C. §1503, Plaintiffs would be willing to proceed in
24 that fashion as long as there is not a stay of discovery (and determinations as to the
25 scope of, and schedule for, discovery) while adjudication of that claim is pending.
26 Plaintiffs take this position because if discovery were stayed and Plaintiffs
27 somehow, despite controlling Ninth Circuit law, did not prevail on their 1503
28

1 claim, it would be prejudicial to Plaintiffs to endure months of additional delay in
2 first obtaining the discovery relevant to their constitutional claims.

3 DEFENDANTS' POSITION: Discovery is not appropriate or
4 necessary in this case. This action concerns the validity of the Department of
5 State's legal interpretation of 8 U.S.C. §§ 1401 and 1409, as manifested in the
6 denials of Plaintiffs' CRBA and U.S. passport applications and in the Department's
7 publicly-available Foreign Affairs Manual, whose guidance embodies the
8 Department of State's interpretations of the relevant statutes. To the extent they
9 are viable, Plaintiffs' declaratory judgment claims and their APA claim would be
10 subject to record review pursuant to the APA, the avenue Congress has provided
11 for judicial review of agency actions. *See Evans v. Salazar*, No. C08-0372-JCC,
12 2010 WL 11565108, at *2 (W.D. Wash. July 7, 2010). Therefore, Plaintiffs' claim
13 under 8 U.S.C. § 1503, which allows an individual to seek a judgment declaring
14 the individual to be a U.S. citizen, is the only claim for which discovery would
15 potentially be necessary.

16 However, Defendants are willing to stipulate to the material facts regarding
17 Ethan and the applications made on his behalf, because, again, this dispute centers
18 on the State Department's statutory interpretation. Thus, there are no disputed
19 material facts preventing the Court from deciding whether Plaintiff Ethan Dvash-
20 Banks should be accorded judgment declaring him to be "a national of the United
21 States."¹ 8 U.S.C. § 1503. Defendants' position comports with applicable law and
22 ensures that Plaintiffs' claims will be adjudicated in a timely fashion, without
23 wasting time and resources on improper and disproportionate discovery.

24
25 ¹ Plaintiffs are reviewing and considering Defendants' proposed stipulated
26 facts. Defendants have offered to stipulate to everything admitted in their
27 answer, the documents comprising Plaintiffs' application and the State
28 Department's denials as contained in Ethan Dvash-Banks's passport file, and
all statements in the Foreign Affairs Manual pertaining to the State
Department's interpretation of 8 U.S.C. §§ 1401 and 1409.

C. Discovery Limits

PLAINTIFFS' POSITION:

1. The Parties shall serve no more than 30 interrogatories per side, without leave of the Court.
2. Each side may take fact depositions with a cumulative time of 70 hours, with that time allotted between as many witnesses as necessary. The foregoing shall not supplant the application of Rule 30(d)(1).
3. The Parties shall serve no more than 40 requests for the production of documents.²
4. The Parties shall serve no more than 25 requests for admission.

DEFENDANTS' POSITION: If the Parties cannot agree to a set of stipulated facts on which to proceed to summary judgment on Plaintiffs' Section 1503 claim, Defendants alternatively propose the following discovery limits:

1. A side may serve the other side no more than 10 requests for the production of documents.
2. A side may serve the other side no more than 10 requests for admission.
3. A side may serve the other side no more than 15 interrogatories.
4. Each side shall take no more than five depositions.

VII. Case Management Schedule

PLAINTIFFS' POSITION: Plaintiffs asked Defendants to specify the purported grounds for a motion for judgment on the pleadings; but prior to the statements in this Report, Defendants have not done so; and even now apparently

² Plaintiffs' first set of requests for the production of documents included 24 requests.

1 decline to identify the full grounds on which they intend to move. Plaintiffs
2 contend that discovery should not be stayed and a case management schedule
3 should be put in place pending resolution of Defendants’ forthcoming motion. The
4 Federal Rules of Civil Procedure contemplate the “just, speedy, and inexpensive
5 determination of every action and proceeding.” Fed. R. Civ. P. 1. The Complaint
6 was filed on January 22, 2018. Defendants had every opportunity to move for
7 dismissal in the more than five months following the filing of the Complaint, but
8 instead repeatedly sought extensions of time to respond to the Complaint. (*See,*
9 *e.g.*, ECF Nos. 40, 44.) Plaintiffs agreed to join in these requests for extensions
10 because Defendants repeatedly advised Plaintiffs, without making any concession
11 as to the merits of Plaintiffs’ claims, that Defendants “were engaged in internal
12 discussions regarding approaches which could resolve the issues in dispute for
13 resolution by this Court” (*See, e.g.*, ECF 40.) Plaintiffs also offered to
14 engage in discussions with Defendants regarding the approaches Defendants said
15 they were considering, but Defendants declined those offers. On July 30, 2018,
16 Defendants summarily informed Plaintiffs that Defendants now believe the
17 litigation should proceed. Plaintiffs contend that no further delay of this case is
18 warranted.

19 DEFENDANTS’ MOTION: Defendants intend to move for judgment
20 on the pleadings in accordance with Fed. R. Civ. P. 12(c) to, at minimum, dismiss
21 Plaintiff’s APA claim because 8 U.S.C. §1503 provides an adequate alternative
22 remedy at law. *Ortega-Morales. v. Lynch*, 168 F.Supp. 3d 1228 (D. Az. 2016); *De*
23 *La Garza Gutierrez v. Pompeo*, --- Fed. App’x ----2018 WL 3454835 (5th Cir. July
24 17, 2018). Defendants believe that a schedule should be decided only after the
25 Court has adjudicated that motion. Defendants’ proposal would ensure that this
26 case is litigated most efficiently, and ensures that Defendants are not penalized for
27 focusing their efforts on attempting to reach non-judicial resolution before drafting
28 a dispositive motion.

* * * *

If the Court directs that discovery proceed, the Parties propose the following schedules for the remainder of the litigation:

PLAINTIFFS’ PROPOSAL:

EVENT	DATE
Last day to file motion to amend pleadings and/or add parties without Court order	The later of September 10, 2018, or 30 days from date of entry of the Scheduling Order
Hearing on motions to amend pleadings or add parties	The later of October 10, 2018 or 60 days from date of entry of the Scheduling Order
Deadline for the Parties to complete their document productions	November 1, 2018
Deadline for final production of privilege logs	December 3, 2018
Deadline to disclose identity of experts and areas of expert testimony	December 31, 2018
Deadline to complete fact discovery (depositions must be scheduled to commence at least five working days prior to cut-off)	March 1, 2019
Last day to file discovery motions ³	March 22, 2019
Deadline for Plaintiffs to submit opening expert reports	April 5, 2019
Deadline for Defendants to submit rebuttal expert reports	May 6, 2019
Deadline for Plaintiffs to submit reply expert reports	May 20, 2019
Merits experts deposition period	June 3–June 12, 2019

³ To expedite the hearing and resolution of discovery motions in this Action, Plaintiffs respectfully request that the Court enter an order permitting the Parties to file discovery motions under Local Rule 37 that are noticed to be heard 14 days after the filing of the motion (instead of 21 days as provided in Local Rule 37-3), subject to the Court’s schedule and availability.

Defendants object to this proposal. There is no reason to treat discovery motions in this case any differently from how they are treated under the Local Rules.

1	Close of expert discovery	June 12, 2019
2	Deadline for Defendants to file motion for summary judgment	June 24, 2019
3	Deadline for Plaintiffs to oppose/cross-move for summary judgment	August 8, 2019
4	Deadline for Defendants' reply in support of summary judgment/opposition to Plaintiffs' cross-motion	September 9, 2019
5		
6	Deadline for Plaintiffs' reply in support of cross-motion	September 30, 2019
7		
8	Summary judgment hearing and motion cut-off date	October 14, 2019
9	Last day to conduct private mediation	October 28, 2019
10	Deadlines for motions <i>in limine</i> (including <i>Daubert</i> motions)	Briefed under Local Rules for noticed motions, to be heard at or before the final pretrial conference
11		
12	Deadline for other pre-trial filings, disclosures, and productions (witness and exhibit lists, exhibits, memoranda of contentions, final pretrial order, trial briefs, etc.)	Per deadlines set out in Local Rules
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16	Final Pretrial Conference	November 11, 2019
17	Trial	November 18-21, 2019

DEFENDANTS' PROPOSAL:

Event	Date
Last day to file motion to amend pleadings and/or add parties without Court order	The later of September 10, 2018, or 30 days from date of entry of the Scheduling Order
Close of fact discovery	December 14, 2018
Plaintiffs' expert reports due ⁴	December 21, 2018
Defendants' rebuttal reports due	January 31, 2019
Close of expert discovery	February 15, 2019

⁴ Defendants do not anticipate using expert testimony to support their claims and defenses, as explained *infra*. They offer dates regarding expert discovery only to the extent the Court finds it necessary to impose expert discovery deadlines in its scheduling order.

1	Defendants' motion for summary judgment	No later than February 28, 2019
2	Plaintiffs' opposition to Defendants' motion for summary judgment/cross-motion for summary judgment	No later than March 29, 2019
3		
4		
5	Defendants' reply in support of summary judgment/opposition to Plaintiffs' cross-motion	No later than April 12, 2019
6		
7	Plaintiffs' reply in support of cross-motion	No later than April 26, 2019
8		

9 Defendants' schedule should be adopted. First, as stated above, no
10 discovery is necessary. Second, to the extent the Court believes that some
11 discovery would be appropriate, Defendants' alternative schedule is appropriate
12 because it ensures the efficient adjudication of the legal issues in this case.
13 Plaintiffs' proposal envisions nearly two years of district-court litigation, which is
14 excessive, and expansive discovery disproportional to the issues in and needs of
15 this case.

16 **VIII. Related Cases**

17 There are no related cases pursuant to Rule 42(a).

18 Plaintiffs' counsel, Sullivan & Cromwell LLP and Immigration
19 Equality, represent Allison Dawn Blixt, a U.S. citizen currently living outside of
20 the United States, and her son, Lucas Alexander Zaccari-Blixt, in a separate action,
21 *Blixt v. Pompeo* (D.D.C. 1:18-cv-00124-EGS), against Defendants pending in the
22 United States District Court for the District of Columbia. That action involves
23 similar legal issues. Defendants intend to submit a dispositive motion pursuant to
24 Rule 12(b) in that action on or before September 3, 2018. Plaintiffs asked
25 Defendants to specify the purported grounds for that motion; but thus far,
26 Defendants have not done so.

27 **IX. Relief**

28 Plaintiffs seek the following relief from the Court:

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1. Declare Ethan a U.S. citizen at birth;
2. Declare unconstitutional, and a violation of Section 301(g), the State Department’s policy of classifying the children of same-sex married couples as “children born out of wedlock,” and its consequent refusal to recognize Ethan’s citizenship status on that basis, both on its face and as applied to Andrew and Ethan;
3. Permanently enjoin Defendants from continuing to discriminate against Plaintiffs by classifying the children of same-sex married couples as “children born out of wedlock,” and denying the children of same-sex married couples the right to acquire citizenship at birth pursuant to Section 301(g) on that basis; and
4. Award Plaintiffs attorneys’ fees and costs as allowed by law, and such other relief as the Court deems just and proper, including an award of reasonable litigation costs incurred in this proceeding pursuant to 28 U.S.C. § 2412.
5. Plaintiffs do not seek money damages.

X. Notice of Interested Parties

Plaintiffs have filed their Certification as to Interested Parties (ECF No. 5), of which there are none. Defendants are governmental parties and are thus exempt under Local Rule 7.1-1 from filing such a certificate.

XI. Trial

PLAINTIFFS’ POSITION: Plaintiffs do not request a jury trial. Plaintiffs estimate the trial will span approximately four full days, subject to revision following the close of fact and expert discovery.

DEFENDANTS’ POSITION: Defendants do not believe that a trial is necessary or appropriate. Because Plaintiffs are challenging the State Department’s legal interpretation of a statute, the legality of that interpretation

1 should be decided on a dispositive motion. There are no issues of material fact
2 regarding Ethan Dvash-Banks's claim to citizenship.

3 **XII. Settlement and ADR**

4 Defendants previously advised Plaintiffs that, without making any
5 concessions as to the merits of Plaintiffs' claims, Defendants were considering
6 approaches that could resolve the Action. On that basis, the Parties agreed three
7 times—which the Court twice approved—to extend the deadline for Defendants'
8 response to the Complaint. On July 30, 2018, Defendants informed Plaintiffs that
9 Defendants now believe the Litigation should proceed.

10 The Parties will confer on the appropriateness and/or potential
11 benefits of ADR as the Action progresses.

12 In accordance with Local Rules 16-15.4 and 26-1(c), Plaintiffs
13 contend that the Parties should appear before Judge Walter or Magistrate Judge
14 Chooljian for such settlement proceedings as the judges may conduct or direct.
15 Defendants contend that the Parties should appear before a neutral selected from
16 the Court's Mediation Panel.

17 Because important issues of federal public law predominate in this
18 Action and the Plaintiffs seek no monetary damages, the Parties request that the
19 Court waive the requirement of Local Rule 16-15.2 that the Parties participate in
20 an ADR process no later than forty-five days before the final pretrial conference.

21 **XIII. Complex Cases**

22 This Action is not a complex case and thus the parties do not
23 anticipate needing any modifications of the procedures in the Manual for Complex
24 Litigation.

25 **XIV. Motions**

26 No dispositive motions have been filed in the Action. Although the
27 Parties believe that it is premature to anticipate all potential motion practice,
28 Plaintiffs currently anticipate, at a minimum, potential motions for summary

1 judgment and motions *in limine*—deadlines for which are reflected in the proposed
2 schedule set out above. Defendants do not anticipate filing motions *in limine*
3 because this case concerns the validity of the State Department’s legal
4 interpretations and should be adjudicated on dispositive motions.

5 Defendants also anticipate filing a motion for judgment on the
6 pleadings, in accordance with Fed. R. Civ. P. 12(c). At a minimum, the motion
7 would seek to dismiss Plaintiffs’ APA claim (Count III), because 8 U.S.C. §1503
8 provides an adequate alternative remedy at law. *Ortega-Morales v. Lynch*, 168 F.
9 Supp. 3d 1228 (D. Az. 2016); *De La Garza Gutierrez v. Pompeo*, --- Fed. App’x --
10 --2018 WL 3454835 (5th Cir. July 17, 2018). The motion would also seek to
11 dismiss Plaintiffs’ purported direct claims under the Declaratory Judgment Act
12 (Complaint Counts I and II), because that statute does not on its own operate as a
13 waiver of sovereign immunity. *See, e.g., North Cty. Comm’s Corp. v. Ca. Catalog*
14 *& Tech.*, 594 F.3d 1149, 1154 (9th Cir. 2010); *Gov’t Empls. Ins. Co. v. Dizol*, 133
15 F.3d 1220, 1222–23 (9th Cir. 1998); *see also FDIC v. Meyer*, 510 U.S. 471, 475
16 (1994).

17 **XV. Severance, Bifurcation, and Ordering of Proof**

18 The Parties make no recommendation for severance, bifurcation, or
19 the ordering of proof.

20 **XVI. Lead Trial Counsel**

21 Plaintiffs’ Lead Trial Counsel, Theodore Edelman, is registered as an
22 ECF User; his e-mail address of record is edelmant@sullcrom.com. Defendants’
23 Lead Trial Counsel, Vinita Andrapalliyal, is registered as an ECF User; her e-mail
24 address of record is vinita.b.andrapalliyal@usdoj.gov.

25 **XVII. Disclosure, Discovery, or Preservation of ESI**

26 The Parties anticipate that disclosure and discovery in this case will
27 involve electronically stored information and information or records maintained in
28 electronic form (“ESI”). At this time, the Parties do not know of any issues

1 surrounding production and preservation of ESI. The Parties intend to negotiate
2 an agreement setting forth a specific ESI protocol.

3 **XVIII. Preservation of Discoverable Information**

4 The Parties understand their obligations to have taken all reasonable
5 and necessary steps to preserve evidence.

6 **XIX. Expert Discovery**

7 PLAINTIFFS' POSITION: Plaintiffs anticipate using expert
8 testimony in support of their claims and defenses. At this time, Plaintiffs believe
9 that any limitation on the use or number of expert witnesses is premature. All
10 experts will be disclosed in accordance with the schedule proposed in the chart
11 above, Section VII, *supra*.

12 DEFENDANTS' POSITION: Defendants do not believe that expert
13 testimony is necessary or appropriate in this case, since it solely concerns the
14 validity of the State Department's statutory interpretations.

15 **XX. Privilege**

16 The Parties agree that (i) any materials prepared or assembled by
17 counsel in anticipation of litigation are protected from discovery under the work
18 product doctrine, and (ii) the attorney client privilege also applies to certain
19 communications made in connection with requests or provision of legal advice.

20 The Parties also agree that, unless there exists a sound legal basis not
21 to do so, with respect to a particular document or item, the Parties should identify
22 with specificity any responsive documents that are being withheld on the basis of
23 work product, attorney-client privilege, deliberative process privilege, or any other
24 privilege or immunity (in addition to asserting an objection to disclosure in the
25 response), such that the requesting party may be able to make an assessment of the
26 responding party's assertion of privilege and decide whether to challenge that
27 assertion. However, the Parties agree that any documents protected from
28 disclosure under the work product doctrine, attorney-client privilege, deliberative

1 process privilege, or any other privilege or immunity that post-date the filing of the
2 Complaint do not need to be included in a privilege log.

3 The Parties agree to address issues arising from the withholding of
4 privileged documents or communications during the normal course of discovery.

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1 Dated: August 20, 2018
2 New York, New York

/s/ Theodore Edelman
Theodore Edelman (*pro hac vice*)
edelmant@sullcrom.com
Jessica Klein (*pro hac vice*)
(kleinj@sullcrom.com)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Alexa Lawson-Remer
lawsonr@sullcrom.com
State Bar No. 268855
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, CA 90067
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

Aaron C. Morris (*pro hac vice*)
amorris@immigrationequality.org
IMMIGRATION EQUALITY
40 Exchange Place, Suite 1300
New York, NY 10005
(212) 714-2904

Attorneys for Plaintiffs

Chad A. Readler
Acting Assistant Attorney General

Nicola T. Hanna
United States Attorney

Joshua E. Gardner
Assistant Director

/s/ Vinita B. Andrapalliyal
Vinita B. Andrapalliyal
vinita.b.andrapalliyal@usdoj.gov
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION
OFFICE OF IMMIGRATION
LITIGATION
DISTRICT COURT SECTION
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-0845
Fax: (202) 616-8470

Attorneys for Defendants

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CERTIFICATE OF SERVICE

On August 20, 2018, I served the above *Joint 26(f) Report* and *Request: ADR Procedure Selection* attached thereto on each person or entity named below by uploading an electronic version of this document to the Court's ECF system:

VINITA B. ANDRAPALLIYAL
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 883
Washington, D.C. 20044
Tel: (202) 305-0845
vinita.b.andrapalliyal@usdoj.gov

I am over the age of 18 and am not a party to the action. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 20, 2018 at
Palo Alto, CA.


Sara L. Carrico

Name, Address and Telephone Number of Attorney(s):

Theodore Edelman (pro hac vice)
 125 Broad Street
 New York, NY 10004
 Telephone: (212) 558-4000

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

ANDREW MASON DVASH-BANKS and ETHAN
 JACOB DVASH-BANKS,

 v. Plaintiff(s)

CASE NUMBER

2:18-cv-00523-JFW-JCx

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

 Defendant(s).

**REQUEST:
 ADR PROCEDURE SELECTION**

Pursuant to L.R. 16-15, the parties request that the Court approve the following ADR procedure:

- ADR PROCEDURE NO. 1** - The parties shall appear before the
 - magistrate judge assigned to the case *or* the magistrate judge in Santa Barbara for such settlement proceedings as the judge may conduct or direct.
- ADR PROCEDURE NO. 2** - The parties shall appear before a neutral selected from the Court's Mediation Panel.
- ADR PROCEDURE NO. 3** - The parties shall participate in a private dispute resolution proceeding.

SEE ATTACHED ADDENDUM

Dated: August 20, 2018 /s/ Theodore Edelman
 Attorney for Plaintiff Theodore Edelman

Dated: _____
 Attorney for Plaintiff _____

Dated: August 20, 2018 /s/ Vinita B. Andrapalliyal
 Attorney for Defendant Vinita B. Andrapalliyal

Dated: _____
 Attorney for Defendant _____

NOTE: If additional signatures are required, attach an additional page to this request. SEE ATTACHED ADDENDUM.

Addendum to ADR-01, Request: ADR Procedure Selection

The Parties were unable to agree on an ADR procedure.

Plaintiffs request that the Court approve ADR Procedure No. 1. Specifically, they request that the Parties appear before Judge Walter or Magistrate Judge Chooljian for such settlement proceedings as the judges may conduct or direct.

Defendants request that the Court approve ADR Procedure No. 2. Specifically, they request that the Parties appear before a neutral selected from the Court's Mediation Panel.