No. _____

In The
Supreme Court of the United States

David Alan Carmichael and Lawrence Donald Lewis
Petitioners

v.

Marco Rubio, Secretary of State,
in his official capacity
United States
United States Department of State
Unnamed Conspirators, in their individual capacity
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit and the District Court, District of Columbia

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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No. _____

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APPENDIX PREFACE

Areas relevant to the issue of damages, the raising of the rule established in *Uzuegbunam v. Precewski*, among others in the Petitioners petition are emphasized with underline that is not in the original document. That emphasis will be followed by the caveat **[Emphasis Added]** in bold and with brackets.

Emphasis that is original may be in parenthesis but will not use brackets. New page numbers of the original documents will be shown with brackets, ie., [p. 15-16 of 33] which refers to the page numbering applied by the clerk with the docketing of the document.

United States Court of Appeals
For The District of Columbia Circuit

No. 23-5111 **September Term, 2024**

Filed On: January 14, 2025

David Alan Carmichael and Lawrence Donald Lewis

Appellants

William Pakosz,

Appellee

Antony J. Blinken, in his official capacity as Secretary of State, of the United States of America and United States of America,

Appellees

Before: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan and Garcia, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, which the court construes as including a motion to recall the mandate, and the absence of a request by any member of the court for a vote on the petition, it is

ORDERED that the petition be denied. It is

FURTHER ORDERED that the motion to recall the mandate be denied. The court's inherent power to recall its mandate "can be exercised only in extraordinary circumstances." Calderon v. Thompson, 523 U.S. 538, 549-50 (1998). Appellants have shown no such circumstances in this case, as they have not provided "even a hint of a suggestion" that they might succeed on the merits of their appeal. See Thomas v. Holder, 750 F.3d 899, 904 (D.C. Cir. 2014) (internal quotation marks omitted).

The Clerk is directed to accept no further filings from appellants in this closed case.

Per Curiam

FOR THE COURT:
Clifton B. Cislak,
Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit

No. 23-5111 **September Term, 2024**

Filed On: September 18, 2024

David Alan Carmichael and Lawrence Donald Lewis

Appellants

William Pakosz,

Appellee

Antony J. Blinken, in his official capacity as Secretary of State, of the United States of America and United States of America,

Appellees

Before: Wilkins, Childs, and Pan Circuit Judges

ORDER

Upon consideration of the petition for rehearing and the supplement thereto, and the motion to stay the mandate, it is

ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the motion to stay the mandate be denied. See D.C. Cir. Rule 41(a)(1).

Per Curiam

FOR THE
COURT: Mark J. Langer,
Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk

23-5111, Doc. No. 1208627747

THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 23-5111 September Term, 2023

1:19-cv-02316-RC

Filed on May, 30, 2024

David Alan Carmichael and Lawrence Donald Lewis,

Appellants

William Pakosz,

Appellee

Anthony J. Blinken, in his official capacity as Secretary of State, of the United States of America and United States of America

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Wilkins, Childs, and Pan, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, the motion to supplement the appendix, the opposition thereto, and the lodged supplemental appendix; and the unopposed motion to exceed the word limit, it is

ORDERED that the motion to supplement the appendix be denied. The documents in the lodged supplemental appendix are not part of the record on appeal. See Fed. R. App. P. 10(a) (defining contents of record on appeal). Nor have appellants shown that supplementing the record "would establish beyond any doubt the proper resolution of the pending issues" or otherwise would be "in the interests of justice." See Colbert v. Potter, 471 F.3d 158, 166 (D.C. Cir. 2006) (citation omitted). It is

FURTHER ORDERED that the motion to exceed the word limit be granted. The Clerk is directed to file the final opening brief lodged by appellants. It is

FURTHER ORDERED AND ADJUDGED that the district court's orders entered March 25, 2022, May 25, 2022, and March 20, 2023 be affirmed. The district court correctly concluded that appellants' receipt of valid passports mooted their claims for equitable and declaratory relief. See McBryde v. Comm. to Review, 264 F.3d 52, 55 (D.C. Cir. 2001) ("If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot."). Appellant

Carmichael has not shown that reinstating his prior passport would provide him with any "meaningful relief." See id. Nor can appellants avoid mootness by alleging injury from being "harangued" by third parties, which is not an alleged injury upon which their complaint is based. See Clarke v. United States, 915 F.2d 699, 703 (D.C. Cir. 1990) (plaintiffs resisting a mootness claim "must be estopped to assert a broader notion of their injury than the one on which they originally sought relief"). Moreover, appellants' allegations of injury to third parties do not show that an exception to mootness applies. See Sands v. NLRB, 825 F.3d 778, 784 (D.C. Cir. 2016) (stating that appellant "cannot avoid mootness by asserting the rights of third parties when she herself fails to meet Article III's requirements"); see also Clarke, 915 F.2d at 704 (capable of repetition yet evading review exception requires showing of "a reasonable expectation that the same complaining party would be subjected to the same action again") (citation omitted) (emphasis added). Similarly, appellants have not shown that there remains a "substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." See Preiser v. Newkirk, 422 U.S. 395, 402 (1975) (cleaned up).

Additionally, the district court correctly dismissed appellants' claim for damages under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, because appellants failed to identify a waiver of sovereign immunity for that claim. See Webman v. Fed. Bureau of Prisons, 441 F.3d 1022, 1026 (D.C. Cir. 2006) (stating that

"RFRA does not waive the federal government's sovereign immunity for damages").

Furthermore, Carmichael has not supported his argument that the district court abused its discretion in directing him to indicate how he would take possession of the passport that he mailed to the district court clerk's office. Carmichael has pointed to no authority that the court was required to hold his passport.

Finally, appellants have forfeited any challenge to the district court's dismissal of their claims for damages under the Privacy Act, 5 U.S.C. § 552a, and the Fifth Amendment Due Process Clause. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) ("Ordinarily, arguments that parties do not make on appeal are deemed to have been waived."). It is

FURTHER ORDERED AND ADJUDGED that the appeal be dismissed as moot as to the district court's orders entered January 20, 2021 and April 19, 2021, and as to the May 7, 2021 order entering a dispositive motions schedule. Appellants' receipt of valid passports means the court can provide no "meaningful relief" as to these orders. See McBryde, 264 F.3d at 55. It is

FURTHER ORDERED AND ADJUDGED that the district court's order entered August 28, 2020 be affirmed in part and that the appeal of that order be dismissed as moot in part. Appellants have forfeited any challenge to the district court's dismissal of their claims for damages under 42

U.S.C. § 408 and 18 U.S.C. § 241, and the order is affirmed as to the dismissal of those claims. See Gov't of Manitoba v. Bernhardt, 923 F.3d 173, 179 (D.C. Cir. 2019) ("A party forfeits an argument by mentioning it only in the most skeletal way . . . .") (internal quotation marks omitted). Additionally, the appeal of the order is moot insofar as the district court dismissed appellants' claims that appellees violated 22 U.S.C. § 2721 and Executive Order 13,798, their claim that 22 C.F.R. §§ 51.60 and 51.70 are unconstitutionally overbroad in violation of the Fifth Amendment, and their claim that appellees violated the First, Fifth, and Ninth Amendments by refusing to disclose the names of the employees who were involved in reviewing appellants' passport applications. Appellants did not assert any right to damages arising from these claims. Nor did they assert any right to equitable or declaratory relief arising from these claims other than the request for a valid passport and a declaration that the government's passport policy was unlawful. Accordingly, any request for equitable or declaratory relief for these claims was mooted by appellants' receipt of valid passports. See McBryde, 264 F.3d at 55.

Finally, appellants argue on appeal that they asserted a claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b). However, appellants waived this argument by not asserting an FTCA claim in district court. See Keepseagle v. Perdue, 856 F.3d 1039, 1053 (D.C. Cir. 2017) ("It is well settled that issues and legal theories not asserted at the District Court level ordinarily will not be heard on appeal.") (citation omitted).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

1:19-cv-02316, Docket No. 149, Mar. 20, 2023

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID ALAN CARMICHAEL, *et al.*,	:	
Plaintiffs,	:	Civil Action No.: 19-2136 (RC)
v.	:	
ANTONY J. BLINKEN, Secretary of State, *et al.*	:	Re Doc. Nos.: 140, 143
Defendants,	:	

ORDER

GRANTING DEFENDANTS' MOTION TO DISMISS; DENYING PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT

For the reasons stated in the Court's Memorandum Opinion separately and contemporaneously issued, Defendants' motion to dismiss (ECF No. 140) is **GRANTED** and Plaintiffs' Motion for Leave to Amend the Complaint (ECF No. 143) is **DENIED**. It is hereby **ORDERED** that this action is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

Dated: March 20, 2023

RUDOLPH CONTRERAS
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID ALAN CARMICHAEL, *et al.*	:	
Plaintiffs,	:	Civil Action No.: 19-2316 (RC)
v.	:	
ANTONY J. BLINKEN, Secretary of State, *et al.*	:	Re Doc. Nos: 140, 143
Defendants,	:	

MEMORANDUM OPINION

GRANTING DEFENDANTS' MOTION TO DISMISS; DENYING PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT

I. INTRODUCTION

Plaintiffs David Alan Carmichael and Lawrence Donald Lewis bring this case against Defendants Antony J. Blinken, in his official capacity as Secretary of State, and the U.S. State Department ("Defendants") regarding Plaintiffs' attempts to obtain passports without providing social security numbers. Plaintiffs assert that identifying with a social security number is prohibited by their Christian faith and requested religious

accommodations. After nearly four years of litigation, Plaintiffs have now received valid passports from Defendants without having to provide them their social security numbers. Yet they still refuse to take Defendants' "yes" for an answer. Defendants move to dismiss this case as moot. For the reasons explained below, the Court will grant the motion.

II. BACKGROUND

The Court assumes familiarity with the facts of this long-running dispute. *See Carmichael v. Blinken* ("*Carmichael II*"), No. 19-cv-2316, 2022 WL 888177, at *1–3 (D.D.C. Mar. 25, 2022); *Carmichael v. Pompeo* ("*Carmichael I*"), 486 F. Supp. 3d 360, 365–66 (D.D.C. [p. 2 of 8] 2020). This Opinion picks up where *Carmichael II* left off. In *Carmichael II*, the Court considered Defendants' motion to dismiss Plaintiffs' remaining three causes of action: the Religious Freedom Restoration Act ("RFRA"), the Fifth Amendment, and the Privacy Act. *Carmichael II*, 2022 WL 888177, at *1. Defendants argued that these claims were moot. *Id.* at *11. The Court, however, found that Defendants had not met their burden to show mootness. *Id.* at *11–12. With respect to Mr. Lewis, Defendants argued that they had granted Mr. Lewis's request to obtain a passport without providing his social security number. But Defendants still required Mr. Lewis to submit a photograph taken within six months of the issue date. *Id.* at *11. Mr. Lewis, however, maintained that his photograph only needed to be taken within six months of the application date, and the photograph that he already submitted satisfied

this requirement. *Id.* The Court noted that the sources Defendants relied on did not appear to support their position concerning the photograph, and thus "the source of Defendants' insistence on requiring an updated photograph for Lewis—and, therefore, one of the roadblocks to Lewis receiving his passport—[wa]s unclear." *Id.*

With respect to Mr. Carmichael, Defendants argued that because they had mailed Mr. Carmichael a replacement passport (without asking for his social security number) during the Court-ordered remand period that occurred in between Carmichael I and Carmichael II, the issue was moot. *Id.* at *12. But Mr. Carmichael declined to accept and sign the replacement passport; he argued that Defendants should have voided the cancellation of his original passport rather than issue him a replacement passport. *Id.* He appeared to argue that Defendants' "regulations only allow replacement passports for certain reasons that are not applicable to him." *Id.* Because "Defendants' briefs d[id] not address the propriety of issuing Carmichael a replacement passport rather than voiding the cancellation" of the original passport, the Court could not be [p. 3 of 8] sure that the dispute was moot. *Id.* If, "hypothetically," the replacement passport was the product of "an obviously invalid process," then Mr. Carmichael would still have a live claim. *Id.* Although the Court found that Defendants had not shown that Plaintiffs' claims were moot, it noted that "it appears that Defendants have all intentions of providing Plaintiffs passports without Plaintiffs providing social security numbers and there may be an opportunity to resolve this issue without further litigation." *Id.* Thus, the Court

ordered Defendants to "reevaluate their positions on the appropriate ways, consistent with federal law and regulations, to get Plaintiffs their passports" and also ordered the parties to file a joint status report within 60 days of the opinion. *Id.*1 Now, having taken further actions with respect to Mr. Lewis and Mr. Carmichael, Defendants once again move to dismiss Plaintiffs' claims as moot.

III. LEGAL STANDARD

Federal courts have subject-matter jurisdiction where a claim "arises under" federal law. Merrell Dow *Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). "Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction . . . [and] the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (quoting *Agrocomplect, AD v. Republic of Iraq*, 524 F. Supp. 2d 16, 21 (D.D.C. 2007)). Subject-matter jurisdiction cannot be waived, and "[w]hile pro se complaints

[FN1] *In Carmichael II, the Court agreed with Defendants that Plaintiffs failed to plead damages because RFRA and the Fifth Amendment do not waive sovereign immunity for damages and Plaintiffs did not plead any connection between the alleged Privacy Act violations and damages. Id. at *12–14. And the Court declined to consider Plaintiffs' due process claim because there was no remaining claim for damages and there was a nontrivial chance that the parties could resolve the equitable relief issue without further litigation. Id. at *12. Plaintiffs subsequently appealed this decision to the D.C. Circuit, which (as relevant here) dismissed their appeal because Mr. Carmichael's equitable claim remained pending in this Court and therefore the order on review was not an appealable final*

*order. See Carmichael v. Blinken, No. 22-5143, 2022 WL 3568058, at *1 (D.C. Cir. Aug. 11, 2022).*

[p. 4 of 8] are held to a less stringent standard than other complaints, even a pro se plaintiff [ ] bears the burden of establishing that the Court has subject matter jurisdiction." *Id.* at 33 (citations and internal quotations omitted); see also Jathoul v. Clinton, 880 F. Supp. 2d 168, 170 (D.D.C. 2012) ("To survive a motion to dismiss under Rule 12(b)(1), Plaintiff bears the burden of proving that the Court has subject-matter jurisdiction to hear her claims."). To evaluate "a motion to dismiss under Rule 12(b)(1), [courts] must treat the complaint's factual allegations as true . . . [granting] plaintiff the benefit of all inferences that can be derived from the facts alleged." *Clinton*, 880 F. Supp. 2d at 169 (internal quotations omitted) (quoting *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000)). Courts are not required to accept "legal conclusion[s] couched as factual allegations[s]" as true. *Id.* (quoting *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 193 (D.C. Cir. 2006)).

To invoke federal jurisdiction, a plaintiff must demonstrate the existence of an actual and concrete dispute. *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018). If, at any point before or during the proceedings, the case becomes moot, then such a case is no longer within the jurisdiction of the federal courts. *Id.* The D.C. Circuit has explained that "[f]ederal courts lack [subject matter] jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies." *Larsen v. U.S. Navy*, 525 F.3d 1, 4 (D.C. Cir. 2008) (quoting *Iron Arrow Honor Soc'y v.*

Heckler, 464 U.S. 67, 70 (1983)); see also *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (noting that a court has "no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it") (citations omitted)). A case becomes constitutionally moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome," *Conservation Force, Inc. v.*
[p. 5 of 8] *Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013), or when "intervening events make it impossible to grant the prevailing party effective relief," *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (quoting *Burlington N. R.R. Co. v. Surface Transp. Bd.*, 75 F.3d 685, 688 (D.C. Cir. 1996)). "Corrective action by an agency is one type of subsequent development that can moot a previously justiciable issue." *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 680 F.2d 810, 814 (D.C. Cir. 1982); see also *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 79 (D.C. Cir. 2011) (finding as moot superseded agency Record of Decision that had "no current force or effect"). "The initial 'heavy burden' of establishing mootness lies with the party asserting a case is moot." *Honeywell Int'l, Inc. v. Nuclear Regul. Comm'n*, 628 F.3d 568, 576 (D.C. Cir. 2010) (citation omitted). The party opposing mootness has the burden of showing an exception to the mootness doctrine. *Id.*

IV. ANALYSIS

In this case, Defendants "have in fact provided

passports to Plaintiffs" and thus "the requests for equitable relief [are] moot because 'intervening events [have made] it impossible to grant the prevailing party effective relief.'" Carmichael II, 2022 WL 888177, at *11 (quoting *Lemon*, 514 F.3d at 1315–16). With respect to Mr. Lewis, following Carmichael II, Defendants determined pursuant to their own regulations that they could accept the photograph that he previously submitted with his application. See 2d Peek Decl. ¶¶ 1–6, ECF No. 140-3. Accordingly, Defendants mailed a copy of Mr. Lewis's passport to him and he received it on June 1, 2022. Ex. 1 to 2d Peek Decl. at 5, ECF No. 140-3. Mr. Lewis's case is therefore moot.

The same result holds for Mr. Carmichael. Defendants have now explained that they adhered to agency procedures by sending Mr. Carmichael a replacement passport rather than voiding the cancellation of his original passport. 1st Peek Decl. ¶¶ 1–15, ECF No. 140-2. Mr. [p. 6 of 8] Peek, the Director of Passport Services' Office of Adjudication at the State Department, stated that "[u]nder its' [sic] own regulations and policies, the [State] Department's only option is to issue Mr. Carmichael a replacement passport." *Id.* ¶ 5. "Pursuant to 22 C.F.R. §§ 51.10 and 51.54(a), the Department 'may issue a replacement passport . . . [t]o correct an error or rectify a mistake of the Department.'" *Id.* ¶ 7. A replacement passport contains an endorsement code that "links the new, replacement passport (issued with a new passport number) with the old passport number so that any visa and/or other information associated with the passport holder carries over to the replacement passport." *Id.* ¶ 8. Mr. Peek stated that "[i]t is the Department's

practice to issue replacement passports in this manner." *Id.* ¶ 11. Mr. Peek further explained that "when a passport has been revoked, the Department notifies other U.S. agencies and foreign countries"; thus, "voiding the revocation of a passport years after the fact . . . could lead to an individual being detained or delayed overseas or domestically for travelling on what might be believed is an invalid and/or revoked passport." *Id.* ¶ 14.

Despite the fact that Defendants issued Mr. Carmichael a replacement passport under their standard procedures, he still disputes its validity. Mr. Carmichael now avers that the replacement passport is defective because it "does not comply with the ICAO photograph instructions." Pls.' Combined Response to Defs.' 3d Mot. to Dismiss ("Opp'n") at 8, ECF No. 144. But that argument is unavailing because Defendants have already approved the replacement passport without requiring a new photograph; in fact, they sent this replacement passport to Mr. Carmichael nearly two years ago. Carmichael II, 2022 WL 888177, at *3. The Court will not entertain Mr. Carmichael's attempts to prolong this moot case further by manufacturing new reasons to reject the relief that Defendants have provided. Because Defendants have taken "[c]orrective action" and provided Mr. Carmichael a valid passport without requiring his social [p. 7 of 8] security number, this case is moot. *Id.* at *9 (quoting *Nat. Res. Def. Council, Inc. v. U. S. Nuclear Regul. Comm'n*, 680 F.2d 810, 814 (D.C. Cir. 1982)).

The Court is not persuaded by Mr. Carmichael that this case meets an exception to mootness. Mr. Carmichael argues that this case is not moot

because he will be "harangued" by other individuals seeking his assistance who purportedly share similar religious beliefs as he and are purportedly denied passports by Defendants. Opp'n at 18. Notably, Mr. Carmichael does not argue that he himself will likely be directly injured by Defendants in the future—nor could he. Defendants represent that there is no reasonable expectation of future injury to Plaintiffs because the State Department can accommodate their sincerely-held religious beliefs, "notated in its records" their accommodation request, and "will reference those notations when adjudicating any future passport applications." Defs.' Mot. to Dismiss at 9, ECF No. 140; Watkins Decl. ¶¶ 5–6, ECF No. 99-3. The mere possibility that Defendants' passport policies may injure other individuals who are not parties to this suit at some future date is not only purely speculative but also legally insufficient to save this case from mootness. *See City of Houston v. Dep't of Hous. & Urb. Dev.*, 24 F.3d 1421, 1429 (D.C. Cir. 1994) ("[T]his circuit's case law provides that if a plaintiff's specific claim has been mooted, it may nevertheless seek declaratory relief forbidding an agency from imposing a disputed policy in the future, so long as the plaintiff has standing to bring such a forward-looking challenge and the request for declaratory relief is ripe." (emphasis added)); accord *Del Monte Fresh Produce Co. v. United States*, 570 F.3d 316, 321 (D.C. Cir. 2009).[2]

[FN2] The Court denies Plaintiffs' motion for leave to amend the complaint, ECF No. 143. This would-be third amended complaint comes too late in the game, nearly four years into this litigation after the original claims had become moot and

the case was at its end, and thus would prejudice Defendants. See Mowrer v. U.S. Dep't of Transportation, 14 F.4th 723, 732 (D.C. Cir. 2021). In addition, Plaintiffs' motion failed to comply with the Local Rules because they did not

[p. 8 of 8]

V. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss (ECF No. 140) is granted and Plaintiffs' Motion for Leave to Amend Complaint (ECF No. 143) is denied. This action is dismissed with prejudice. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: March 20, 2023

RUDOLPH CONTRERAS
United States District Judge

[FN2 - Continued] *provide a copy of the proposed amended complaint. See Local Civil Rule 15.1 ("A motion for leave to file an amended pleading shall attach, as an exhibit, a copy of the proposed pleading as amended."); IMAPizza, LLC v. At Pizza Ltd., 965 F.3d 871, 876 (D.C. Cir. 2020) (holding that district court did not abuse discretion in denying leave to amend for failure to follow this rule).*

THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5143 September Term, **2021**

1:19-cv-02316-RC

Filed On: August 11, 2022

David Alan Carmichael, et al.,

Appellants

v.

Anthony J. Blinken, in his official capacity as Secretary of State, of the United States of America and United States of America

Appellees

Michelle Boulton and Rick Dale Hollingsworth, Appellants

BEFORE: Henderson, Pillard, and Katsas, Circuit Judges

ORDER

Upon consideration of the motions for stay, the response thereto, and the reply; the motion to

dismiss the appeal, the response thereto, and the reply, which withdraws the motion to dismiss as to the denial of appellant Boulton's motion for intervention and also requests that the appeal be held in abeyance; the motion for permission to file electronically; the motion to compel discovery; and the motion to amend the complaint, it is

ORDERED that the motions for stay be denied. Appellants have not satisfied the stringent requirements for a stay pending appeal. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2021). It is

FURTHER ORDERED that the motion to dismiss be referred in part to the panel to which this case is assigned, with respect to appellant Hollingsworth's appeal of the district court's denial of his motion to substitute parties. It is FURTHER ORDERED that the motion to dismiss be granted as to appellants

Carmichael and Lewis. This court has jurisdiction to review "all final decisions" of the district court. 28 U.S.C. § 1291. An order that adjudicates fewer than all claims or resolves matters as to fewer than all parties is generally not an appealable final order. See, e.g., Capitol Sprinkler Inspection, Inc. v. Guest

Servs., Inc., 630 F.3d 217, 221 (D.C. Cir. 2011). Because appellant Carmichael's claim for equitable relief remains pending before the district court, and the order on review thus did not resolve all of the claims of all of the parties, it is not an appealable final order, except with respect to the immediately-appealable denial of appellant Boulton's motion for intervention as of right, see Alternative Research & Dev. Foundation v. Veneman, 262 F.3d 406, 410 (D.C. Cir. 2001), and possibly with respect to the denial of appellant Hollingsworth's motion to substitute himself for a deceased plaintiff. None of the exceptions to the finality requirement of 28 U.S.C. § 1291 invoked by appellants applies in the present case. It is

FURTHER ORDERED that the motion for permission to file electronically be denied. The appellants request that this court allow appellant Carmichael, who is not an attorney, to file submissions on their behalf. A pro se litigant may not represent another person in court. See, e.g., Georgiades v. Martin-Trigona, 729 F.2d 831, 834 (D.C. Cir. 1984). Insofar as the appellants merely seek permission to have one appellant electronically file submissions that have been signed by all appellants, they may file a motion to that effect. It is

FURTHER ORDERED that the motions to compel discovery and to amend the complaint be denied. Appellants have not demonstrated that they are entitled to the relief requested. It is

FURTHER ORDERED that appellees' request to hold this appeal in abeyance pending completion of proceedings before the district court be denied. The Clerk is directed to enter a briefing schedule.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amanda Himes
Deputy Clerk

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1:19-cv-02316, Minute Order, May 25, 2022

Minute Order by Judge Rudolph Contreras
Published by Docket Report

MINUTE ORDER: It is hereby ORDERED that the Government send Mr. Lewis his passport at the address he provided in ECF No. 137-3. It is FURTHER ORDERED that Mr. Carmichael convey how he wants to take possession of his passport which is in the possession of the Clerk's Office. It is FURTHER ORDERED that 136 the Government's request for a stay is DENIED. It is FURTHER ORDERED that the Government file any dispositive motion, on mootness or other grounds, by June 24, 2022. SO ORDERED. Signed by Judge Rudolph Contreras on 5-25-2022. (lcrc3)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID ALAN CARMICHAEL, *et al.*, *Et al.*	:	
Plaintiffs,	:	Civil Action No.: 19-v-
v.	:	2316 (RC)
ANTONY J. BLINKEN, Secretary of State, *et al.*	:	Re Doc. Nos: 72, 75, 76, 84, 86
Defendants,	:	92-94, 99 101, 107, 108, 113, 120, 121

ORDER

DENYING PLAINTIFFS' MOTIONS CONCERNING REMAND (ECF NOS. 72, 75, 76, 86);
DENYING PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO ISSUE PASSPORT RENEWALS TO LEWIS AND PAKOSZ (ECF NO. 84);
DENYING PLAINTIFFS' AND BOULTON'S MOTIONS CONCERNING INTERVENTION AND JOINDER (ECF NOS. 92, 93, 94);

GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT (ECF NO. 99); DENYING PLAINTIFF CARMICHAEL'S MOTION FOR COURT TO MAINTAIN CUSTODY OF REPLACEMENT PASSPORT IN EVIDENCE (ECF NO. 101); GRANTING PLAINTIFF CARMICHAEL'S MOTION FOR LEAVE OF LATE FILING OF STATEMENT OF FACTS (ECF NO. 107); DENYING PLAINTIFFS' COMBINED MOTION FOR RELIEF (ECF NO. 108); DENYING CARMICHAEL'S AND HOLLINGSWORTH'S MOTIONS REGARDING SUBSTITUTION (ECF NOS. 113, 120); DENYING BOULTON'S MOTION FOR SANCTIONS (ECF NO. 121)

For the reasons stated in the Court's Memorandum Opinion separately and contemporaneously issued, the party's motions are decided as follows:

- Plaintiffs' motions concerning the remand (ECF Nos. 72, 75, 76, 86) are **DENIED**.

- Plaintiffs' Motion to Compel Defendants to Issue Passport Renewals to Lewis and Pakosz (ECF No. 84) is **DENIED**.

- Plaintiffs' and Boulton's motions concerning Boulton's intervention and joinder (ECF Nos. 92, 93, 94) are **DENIED**.

- Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 99) is **GRANTED IN PART** with respect to Plaintiffs' damages claims and otherwise **DENIED IN PART**. Defendants are **ORDERED** to reevaluate their positions on the appropriate ways, consistent with federal law and regulations, to get Plaintiffs their passports in light of Plaintiffs' arguments and this opinion. The parties are **ORDERED** to file a joint status report within 60 days of the issuance of this opinion either describing Defendants' progress toward complying with Plaintiffs' proposed procedures or proposing a briefing schedule to resolve these issues. Such briefing must address at least Plaintiffs' existing objections to the procedures used by Defendants and Defendants' authority authorizing their chosen procedures.

- Plaintiff Carmichael's Motion for Court to Maintain Custody of Replacement Passport in Evidence (ECF No. 101) is **DENIED**. The parties shall explain in their next status report how they would like to handle getting this passport to Carmichael, e.g., if the Clerk of Court should mail it to Carmichael's address listed in his signature blocks, or if Carmichael will come collect it from the Clerk of Court.

- Plaintiff Carmichael's Motion for Leave of Late Filing of Statement of Facts (ECF No. 107) is **GRANTED**.

- Plaintiffs' Combined Motion for Relief from Order of August 28, 2020 and Memorandum in Support (ECF No. 108) is **DENIED**. Carmichael's

and Hollingsworth's motions regarding substitution for Pakosz (ECF Nos. 113, 120) are **DENIED**.

• Boulton's Motion for Sanctions (ECF No. 121) is **DENIED**.

SO ORDERED.

Dated: March 25, 2022

RUDOLPH CONTRERAS
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID ALAN CARMICHAEL, *et al.*, *Et al.*	:	
Plaintiffs,	:	Civil Action No.: 19-cv-
v.	:	2316 (RC)
ANTONY J. BLINKEN, Secretary of State, *et al.*	:	Re Doc. Nos: 72, 75, 76, 84, 86
Defendants,	:	92-94, 99 101, 107, 108, 113, 120, 121

MEMORANDUM OPINION

DENYING PLAINTIFFS' MOTIONS CONCERNING REMAND (ECF NOS. 72, 75, 76, 86); DENYING PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO ISSUE PASSPORT RENEWALS TO LEWIS AND PAKOSZ (ECF NO. 84); DENYING PLAINTIFFS' AND BOULTON'S MOTIONS CONCERNING INTERVENTION AND JOINDER (ECF NOS. 92, 93, 94);

GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT (ECF NO. 99); DENYING PLAINTIFF CARMICHAEL'S MOTION FOR COURT TO MAINTAIN CUSTODY OF REPLACEMENT PASSPORT IN EVIDENCE (ECF NO. 101); GRANTING PLAINTIFF CARMICHAEL'S MOTION FOR LEAVE OF LATE FILING OF STATEMENT OF FACTS (ECF NO. 107); DENYING PLAINTIFFS' COMBINED MOTION FOR RELIEF (ECF NO. 108); DENYING CARMICHAEL'S AND HOLLINGSWORTH'S MOTIONS REGARDING SUBSTITUTION (ECF NOS. 113, 120); DENYING BOULTON'S MOTION FOR SANCTIONS (ECF NO. 121)

I. INTRODUCTION

Plaintiffs David Alan Carmichael, Lawrence Donald Lewis, and Mitchell Pakosz bring this case against Defendants Antony J. Blinken, in his official capacity as Secretary of State, and the U.S. State Department regarding Plaintiffs' attempts to obtain passports without providing social security numbers. Plaintiffs assert that identifying with a social security number is prohibited by their Christian faith and requested religious accommodations. They initially brought nine causes of action against Defendants under various federal laws. Three causes of [p. 2 of 33] action remained after the Court's opinion resolving Defendants'

earlier motion: the Religious Freedom Restoration Act ("RFRA"), the Fifth Amendment, and the Privacy Act. As explained below, Plaintiffs' claims for damages are dismissed, Defendants' motion regarding mootness is denied, and the parties are ordered to file a joint status report within 60 days either describing Defendants' progress toward complying with Plaintiffs' proposed procedures or proposing a briefing schedule to resolve the remaining mootness issues.

II. BACKGROUND

A. Background Leading up to Previous Opinion[1]

In 2007, Plaintiffs Carmichael and Pakosz applied for U.S. passports and both asked for a religious accommodation exempting them from the requirement that they provide their social security numbers on the application. Am. Compl. ¶¶ 16–17, ECF No. 15. Plaintiff Lewis did the same in 2008. *Id.* ¶ 18. All three plaintiffs received passports despite not including their social security numbers on their passport applications. *Id.* ¶¶ 16–18. Carmichael, Lewis, and Pakosz assert that they are "prohibited from identifying with a Social Security Number . . . on the basis of the Christian religion" and "[a]ny demand for either of them to identify with a [social security number] places a substantial burden upon their religion." *Id.* ¶ 14. While Carmichael, Lewis, and Pakosz allege that they were granted a religious accommodation when they were originally issued passports, *see id.* ¶¶ 16–18, the Government asserts that "[t]here was no

(reproducing the statement as an undisputed fact). The "Privacy Act Statement" also included a statement that, while providing the requested information was voluntary, failing to provide that information could result in a processing delay or application denial. Am. Compl. ¶ 104; *see also Pls.*' Mem. ¶ 57(ii).

Carmichael's passport renewal was approved, and his renewed passport was issued in January 2018 without Carmichael providing his social security number on his application. Am. Compl. ¶ 19. However, the government contacted Lewis and Pakosz, asking each to either provide their social security number or sign a statement that they had never been issued one. *Id.* ¶¶ 46, 56. Both Lewis and Pakosz responded that they could not sign a statement that they had [p. 4 of 33] never been issued a social security number and reiterated their request for a religious accommodation. *See id.* ¶¶ 47, 56–67. Both Lewis and Pakosz's passport renewal applications were subsequently denied. *Id.* ¶¶ 49, 68. Neither Lewis nor Pakosz was given the opportunity to appeal the denial. *Id.* ¶¶ 26, 82; see also *id.* ¶ 124 (asserting that all three Plaintiffs were denied an appeal process).

After Pakosz's application was denied, Pakosz contacted Carmichael for assistance and, on Pakosz's behalf, Carmichael spoke to an employee of the government who stated that there was no appeal process for the denial of a religious accommodation. *Id.* ¶¶ 26–27. Carmichael and Pakosz then filed Freedom of Information Act requests for the names and contact information of Department employees involved in processing passport applications, *see id.* ¶¶ 29, 73, and sent letters to various politicians,

including President Donald Trump and Vice President Mike Pence, among others, further explaining their request for a religious accommodation, *id.* ¶¶ 31, 69–71, 76–79, 86. Enclosed with one letter to the government, Pakosz states that he "sent information that explains the SSN offence against religion in a document called 'The Mark of The Beast . . . It Is Here, Now.'" *Id.* ¶ 69.

Approximately three months later, Carmichael received a letter from the government stating that his renewed passport had been issued erroneously because he did not provide his social security number in his passport renewal application, that his passport had been revoked pursuant to 22 C.F.R. § 51.62(a)(2), and that he could request an appeal hearing. *Id.* ¶ 33. Carmichael seemingly did not request a hearing. Def. Mot. Dismiss at 20, ECF No. 24; *see also* Am. Compl. (nowhere mentioning that Carmichael availed himself of this opportunity for a hearing).

[p. 5 of 33] Carmichael brought this action on July 31, 2019, *see* Compl., ECF No. 1, and Plaintiffs Lewis and Pakosz were added to this action in November 2019, see Order, ECF No. 11. Carmichael, Lewis, and Pakosz filed their amended complaint in December 2019, in which they raised nine causes of action under the United States Constitution and various federal laws. *See* Am. Compl. Defendants moved to dismiss or, in the alternative, for summary judgment, on all nine causes of action. Carmichael, Lewis, and Pakosz moved for partial summary judgment and requested an injunction on their first cause of action under the Foreign Relations Authorization Act. *See Pls.* Mem.

B. Background Since Previous Opinion

The Court denied Plaintiffs' motion for partial summary judgment, granted Defendants' motion to dismiss on several grounds, and denied Defendants' motion on three grounds. *Carmichael*, 486 F. Supp. 3d at 377. Remaining after that opinion were Plaintiffs' second, fourth (with respect to Lewis and Pakosz), and seventh causes of action, which concern RFRA, the Fifth Amendment Due Process Clause, and the Privacy Act, respectively. *Id.* Plaintiffs were granted leave to file an amended complaint regarding Carmichael's claim for a Fifth Amendment violation, *id.*, and they did so, 2d Am. Compl., ECF No. 51.

A few months later, Defendants moved to voluntarily remand this matter to the State Department so it could "reconsider its prior renewal and revocation actions," after "acknowledge[ing] that it did not previously consider Plaintiffs' religious accommodation requests." Defs.' Mot. Voluntary Remand at 1, 5, ECF No. 61. The Court granted this motion over Plaintiffs' objection and remanded the passport applications to the State Department for 90 days. Min. Order (Jan. 20, 2021). The Court encouraged Plaintiffs "to comply with Defendants' reasonable requests for further information in furtherance of Defendants' efforts on remand." *Id.*

[p. 6 of 33] During the remand period, Plaintiffs filed several motions objecting to the remand, which are discussed below. After most of these were filed, the Court denied one of these motions and stated that "[t]he Court does not intend to dissolve the

remand order." Min. Order (Apr. 19, 2021). The Court noted that "Plaintiffs brought this case in order to obtain Passports without having to identify with a Social Security Number," Defendants were offering them that opportunity, and Plaintiffs' "refusal to take advantage of that opportunity" was "perplex[ing]." *Id.* Also, the Court assured Plaintiffs that if they still had viable damages claims after the passports were issued, the case would not necessarily be moot. *Id.*

During the remand period, Defendants alerted the Court that they were satisfied with the sincerity of Plaintiffs' religious beliefs, stated that Plaintiffs would not need to identify any social security numbers to receive passports, and invited Plaintiffs to submit U.S. Passport Renewal Applications for Eligible Individuals with new photographs. Joint Status Report ¶¶ 9 10, ECF No. 87. Defendants also sent a replacement passport to Carmichael without requiring a new photograph. *Id.* ¶ 14. Lewis and Pakosz objected that, among other things, new photographs were not necessary under the relevant rules and accordingly did not send them. *Id.* ¶ 11. Defendants denied Lewis's and Pakosz's applications for failure to submit new photographs. *Id.* ¶ 14. Carmichael objected to the procedure used to issue his new passport and refused to sign it, as discussed below.

Shortly after the Court confirmed that it would not dissolve the remand order, Plaintiffs filed what they styled as their Motion to Compel Defendants to Issue Passport Renewals to Lewis and Pakosz ("Mot. Compel"), ECF No. 84. The Court then set a briefing schedule for responses to the motion to compel and Defendants' forthcoming dispositive motions. Min.

Order (May 7, 2021). The briefing was somewhat scattered, but the issues appear to be fully [p. 7 of 33]
briefed.[2] Defendants argue that Plaintiffs' claims for equitable relief are moot after Defendants granted the religious accommodations, Plaintiffs' Due Process claims fail on the merits, and Plaintiffs' damages claims fail because no damages are available under RFRA or the Fifth Amendment for official-capacity claims or the Privacy Act given the facts alleged. *See* Defs.' Mem.

Plaintiffs filed several additional motions while these motions were being briefed: Plaintiffs and a proposed intervenor, Michelle Boulton, moved for joinder and intervention and to allow Carmichael to file Boulton's documents electronically. *See* ECF Nos. 92–94. Carmichael moved the Court to maintain custody of the replacement passport he was sent. Pl. Carmichael Mot. Court Maintain Custody of Replacement Passport in Evidence ("Custody Mot."), ECF No. 101. Plaintiffs moved for reconsideration of the Court's earlier opinion. Pls.' Carmichael & Lewis Combined Mot. Relief from Order of Aug. 28, 2020 & Mem. Supp. ("Mot. Reconsideration"), ECF No. 108. And there are motions to substitute Pakosz's son-in-law or, in the alternative, Carmichael, for Pakosz after his death. Mot. Substitute Pl. Pakosz, ECF No. 113; Pl. Carmichael's Mot. Grant Pl. Carmichael Powers as the Alternative Pakosz Substitute, ECF No. 120.

III. PRELIMINARY MOTIONS

A. Motion to Compel Passports

Shortly before the parties' main substantive briefing began regarding Defendants' motion discussed below in Section V, Plaintiffs filed a short motion asking the Court to compel

[Fn2] See Mem. P. & A. Supp. Defs.' Mot. Dismiss or, in the Alternative, for Summ. J. ("Defs.' Mem."), ECF No. 99-1; Pl. Lewis's Reply at 2, ECF No. 102; Pls. Carmichael & Lewis Combined Resp. Opp'n to Defs.' Mot. Dismiss or, in the Alternative, for Summ. J. ("Pls.' Opp'n"), ECF No. 106; Defs.' Reply Supp. Mot. Dismiss or, in the Alternative, Summ. J. & Opp'n Pls.' Mot. Reconsideration, ECF Nos. 117, 118.

[p. 8 of 33] Defendants to issue passport renewals to Lewis and Pakosz. Mot. Compel. Neither the motion nor its supporting memorandum of points and authorities identifies the legal basis for the motion, e.g., a Federal Rule of Civil Procedure under which the motion was brought. *See* Mot. Compel & ECF No. 84-2. Plaintiffs argue essentially that they should not need to provide the new photographs requested by Defendants because Defendants are mistaken that photographs must be taken within six months of the passport's issue date, as opposed to within six months of the passport application date. *See* Mot. Compel at 2. Defendants acknowledge this motion in their motion to dismiss or, in the alternative, for summary judgment, but do not discuss it in detail. See Defs.' Mem. at 4 (citing ECF No. 84). But they do address the relevant issue by reaffirming that they require passports photographs that are "taken within the six months preceding the issue date." *Id.* at 12. Plaintiff Lewis filed a reply responding to the parts of Defendants' motion "which reach the motion to compel." Pl. Lewis's Reply at 2.

The Court construes this motion as a motion for summary judgment on Lewis and Pakosz's claims for equitable relief, i.e., issuing renewed passports, because they are asking the Court to "compel" Defendants to do exactly what they request in their complaint's prayer for relief. *See* 2d Am. Compl. ¶ 142(1) (demanding that the Court "compel renewal of their passport applications"). Under that interpretation, the motion clearly fails. Plaintiffs' five-page memorandum and its attachments, which do not even explain which causes of actions are relied on, do not demonstrate entitlement to judgment in Plaintiffs' favor beyond any genuine dispute of material fact. Regardless, the main issue of the motion—whether Lewis and Pakosz must submit new photographs—is addressed below regarding mootness.
[p. 9 of 33]

B. Substitution for Pakosz

Plaintiff Pakosz died during this litigation and his son-in-law, Rick Dale Hollingsworth, moves to be substituted. Mot. Substitute Pl. Pakosz, ECF No. 113. Defendants object for several reasons, including that passports may not be issued to the deceased (albeit without citation). Defs.' Resp. Mot. Substitute Pl. Pakosz, ECF No. 114 at 3 n.2. Hollingsworth's reply does not contest that passports may only be issued to living persons. *See* Pl.'s Reply Mot. Substitute Pl. Pakosz, ECF No. 115. Plaintiff Carmichael later moved to become Pakosz's alternate substitute. Pl. Carmichael's Mot. Grant Pl. Carmichael Powers as the Alternative Pakosz Substitute, ECF No. 120.

Federal Rule of Civil Procedure 25(a)(1) provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of a proper party or by the decedent's successor or representative." Fed. R. Civ. P. 25(a)(1). As explained below, Defendants' motion is granted as to all damages claims, and with the equitable claim for Pakosz's passport no longer available due to his death, there appears to be no remaining claim. The motions for substitution are therefore denied.

C. Remand

Plaintiffs have several outstanding motions regarding this Court's remand to the State Department, which began January 20, 2021, and ended 90 days later. *See* Min. Order (Jan. 20, 2021); Pl.'s Mot. for Recons. & Rescission, Stay of Remand, & Mot. Certify for Interlocutory Appeal ("Remand Mot."), ECF No. 72; Pl.'s Mot. Declaratory J. or Partial Finding of Facts & Conclusions of Law Regarding Remand Order of Jan. 19, 2021, ECF No. 75-1 ("Mot. Declaratory J."); Pl. Carmichael's Mot. Immediate Lifting of Stay, ECF No. 76; Pls.' Request for Relief from Apr. 19, 2021 Order, ECF No. 86; *see* also Pl.'s Reply Defs.' Opp'n Pls.' Mot. [p. 10 of 33] Remand, Stay, Certification for Interlocutory Appeal, ECF No. 78. Plaintiffs also addressed the remand in their opposition to Defendants' motion to dismiss or, in the alternative, for summary judgment. *See* Pls.' Opp'n at 20–24. After most of those motions were filed, Plaintiffs moved for a hearing to discuss, among other things, whether the Court would rescind its remand order. *See* Pl. Carmichael's Mot. for Status Conference at

1, ECF No. 83 (stating that "we need to determine" if recent "admission[s]" were "sufficient to motivate the Court to rescind its remand order" and, if not, whether the Court will act on "Plaintiffs' Motion For Declaratory Judgment Or Partial Finding Of Facts And Conclusions Of Law Regarding Remand Order Of January 19, 2021," ECF No. 75-1). The Court denied Plaintiffs' motion for a hearing by minute order, stating that "[t]he Court does not intend to dissolve the remand order." Min. Order (Apr. 19, 2021). Although this minute order did not officially deny Plaintiffs' motions seeking reversal of the remand, the Court holds the same view today despite Plaintiffs' briefing.

The clearest justification for denying these motions is that the remand period concluded many months ago, rendering this issue moot. *See* Min. Order (Jan. 20, 2021) ("After conclusion of the remand period, the parties shall submit a joint status report on or before May 6, 2021 . . . ."). In fact, we now know that the remand was largely productive because the State Department concluded that it could issue passports to Plaintiffs without them submitting social security numbers. *See* Joint Status Report ¶ 16 (Defendants stating that "the State Department granted Plaintiffs' religious accommodation requests during the remand period"). The parties' briefs do not address mootness because they were filed before the end of the remand period, i.e., before the issue became moot. But reversing the remand order at this point would have no effect.

[p. 11 of 33] Upon review of the parties' briefs, the Court does not see any reason to doubt the legality or propriety of the remand order. "A district

court has broad discretion to decide whether and when to grant an agency's request for a voluntary remand. But a voluntary remand is typically appropriate only when the agency intends to revisit the challenged agency decision on review." *Limnia, Inc. v. U.S. Dep't of Energy*, 857 F.3d 379, 381 (D.C. Cir. 2017); *see* also *id.* at 387 (explaining that agency need not "confess error or impropriety in order to obtain a voluntary remand[,] [b]ut the agency ordinarily does at least need to profess intention to reconsider, re review, or modify the original agency decision that is the subject of the legal challenge"). Here, Defendants sought a remand "to reconsider its prior renewal and revocation actions relevant to this action." Defs.' Mot. Voluntary Remand at 1. We now know that Defendants did reconsider their prior decisions during the remand because they did not previously consider Plaintiffs' religious accommodation requests yet have now granted them and will allow Plaintiffs to obtain passports without identifying with social security numbers. Joint Status Report ¶¶ 5, 10. Despite any remaining issues about whether existing passports or applications are appropriate versus new passports or applications, Defendants clearly revisited their original decision not to allow (or consider) Plaintiffs' religious accommodation.

Plaintiffs' first motion is for reconsideration of the remand order. Remand Mot. at 5. They do not specify the rule under which they bring the motion for reconsideration, and Defendants suggest Federal Rule of Civil Procedure 59(e), Def.'s Opp'n Pls.' Mot. Remand, Stay, & Certification for Interlocutory Appeal at 2, ECF No. 77, but Rule 54(b) is the

relevant rule, *see* Fed. R. Civ. P. 54(b) ("[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the [p. 12 of 33] entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."). Relief pursuant to Rule 54(b) is to be provided "as justice requires," and may be warranted when a court has "patently misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or where a controlling or significant change in the law has occurred." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012) (cleaned up); *see* also *Cobell v. Norton*, 224 F.R.D. 266, 272 (D.D.C. 2004). "These considerations leave a great deal of room for the court's discretion and, accordingly, the 'as justice requires' standard amounts to determining 'whether [relief upon] reconsideration is necessary under the relevant circumstances.'" *Lewis v. District of Columbia*, 736 F. Supp. 2d 98, 102 (D.D.C. 2010) (alteration in original) (quoting Cobell, 224 F.R.D. at 272). Here, reconsideration is not necessary under the relevant circumstances because the Court continues to believe that the order under reconsideration was correct. Plaintiffs' complaint that the Court did not consider one of their filings before entering the remand order is irrelevant because that filing was in response to a different motion; the Court did consider Plaintiffs' opposition to Defendants' motion for remand. *See* Pls.' Resp. in Opp'n to Defs.' Mot.

Voluntary Remand, ECF No. 65 (filed several weeks before remand order). Plaintiffs then move the Court to certify this question for interlocutory appeal under 28 U.S.C. § 1292. Remand Mot. at 5. That statute requires at least that the Court "shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). This is not met at least [p. 13 of 33] because the mootness of this question ensures that certifying it to the court of appeals would not materially advance the ultimate termination of the litigation.

Plaintiffs also move for a stay of the remand order to allow the Court to consider their motion for declaratory judgment or judgment on partial findings "on the matter of whether the court has any lawful power to remand to the agency." Remand Mot. at 5. The request for a stay is denied as moot given the conclusion of the remand period. Regarding the related motion itself, which Plaintiffs filed shortly after moving for a stay, Plaintiffs make a dizzying number of arguments in this paper styled "Plaintiffs' Motion for Declaratory Judgment or Partial Finding of Facts and Conclusions of Law Regarding Remand Order of January 19, 2021."[3] See, e.g., Mot. Declaratory J. at 12 (arguing that the Federal Rules of Civil Procedure do not provide for a remand); *id.* at 16 (arguing that the APA does not empower the Court to abdicate its powers through a remand); *id.* at 31 (arguing that the Privacy Act "does not say that the Court may remand the action without ordering the agency to correct the record").

But none refute that the D.C. Circuit has clearly endorsed this Court's authority to remand matters to agencies, nor show that this Court abused its discretion by ordering remand here. *See Limnia, Inc.*, 857 F.3d at 381 ("A district court has broad discretion to decide whether and when to grant an agency's request for a voluntary remand. But a voluntary remand is typically appropriate only when the agency intends to revisit the challenged agency decision on review."). Despite this precedent, Plaintiffs maintain that the remand procedure is unlawful. *See* Mot. Declaratory J. at 1 ("The statutes and rules give adjudication remedy and relief powers to the Court as a matter of law, and remand is not provided for as a matter of the law of this case."); Pls.' Request for Relief from Apr. 19,

([Fn 3]) Plaintiffs also moved the Court to lift the "stay," referring to the remand order, to allow the Court to consider this motion. Pl. Carmichael's Mot. Immediate Lifting of Stay, ECF No. 76. It is denied for the same reason as the request for a stay—the remand has concluded so there is nothing left to stay.

[p. 14 of 33] 2021 Order at 5 ("In our search of the Judicial Procedure statutes and the Rules of Appellate Procedure and Civil Procedure, we cannot find the authority or power for the remand order."). This Court disagrees. But, even if it did not, it must follow binding circuit precedent.

Finally, after the Court's minute order on April 19, 2021, confirming that it did not intend to dissolve the remand order, Plaintiffs filed a motion requesting relief from that April 19, 2021 minute order under Federal Rule of Civil Procedure 60(b). Pls.' Request for Relief from Apr. 19, 2021 Order at

11. However, Rule 54(b) is again the relevant standard to reconsider an interlocutory order. Because nothing in this motion convinces the Court that the remand was unlawful or that the Court erred in denying Plaintiffs' request for a hearing, reconsideration is again not necessary under the relevant circumstances. The motion touches on other issues, such as the rules governing passport photo currency and whether new forms must be submitted, *id.* at 3, 7–8, but those issues are dealt with in other motions discussed below.

D. Joinder and Intervention

Michelle Boulton moves for leave to intervene as a plaintiff. Mot. Leave Intervene, ECF No. 94. Plaintiffs move to join her as well. Pls.' Combined Mot. Join Michelle Boulton, ECF No. 92. Boulton argues that intervention is justified as a matter of right under Federal Rule of Civil Procedure 24 because her claims "relat[e] to the transactions that are the subject of the action." Mot. Leave Intervene at 2. Defendants oppose intervention or joinder because Boulton and Plaintiffs failed to confer with Defendants before filing their motions, Boulton's passport application was not denied, and the motions are untimely given the stage of this litigation. Defs.' Opp'n Mot. Intervene & Mot. Joinder of Boulton at 1, ECF No. 95. After the parties' briefs were filed, and in response to the Court's request, Defendants filed a status report with an update about Boulton's passport application: the processing of Boulton's application had completed and [p. 15 of 33] her passport had been issued. Defs.' Status Report at 2, ECF No. 105.

Boulton confirmed that she received her passport on August 20, 2021, without submitting a social security number. Boulton's Resp. Defs.' Status Report ¶ 24, ECF No. 109.

Boulton does not have standing for equitable relief because she already has her passport. And, as explained below, there are no live claims for damages. Therefore, even if Boulton were joined as a plaintiff in this case, she would not have standing for any relief. The motions for leave to intervene, for joinder, and to file documents on behalf of Boulton, ECF No. 93, are therefore denied.

E. Sanctions

Boulton moves for Rule 11 sanctions against Defendants, a State Department declarant whose declarations were used to support Defendants' positions, and the Assistant U.S. Attorney who signed Defendants' briefs. Boulton's Mot. Sanctions & Mem. Supp. ("Sanctions Mot."), ECF No. 121.[4] She argues that Defendants misrepresented three facts about her passport applications process. The facts seem largely undisputed even though the parties' interpretations of them differ. Although Boulton's complaints are somewhat understandable given Defendants' descriptions of the facts, sanctions are not justified.

Boulton received an email from the State Department on March 12, 2021, informing her that her passport application lacked a social security number and that "if an applicant has been issued a Social Security Number and either cannot or refuses to provide it for whatever reason, they are only eligible for a direct return passport." See Boulton's

Resp. Defs.' Status Report Ex. ([Fn 4]) Boulton also asks the Court to appoint a special prosecutor or otherwise cause an investigation and prosecution for violations of 18 U.S.C. § 1001. Sanctions Mot. at 7. The Court will not do so at least because, as Defendants point out, Section 1001 "does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding." 18 U.S.C. § 1001(b).

[p. 16 of 33] 1, ECF No. 109-1. It said that her application "will remain pending for 90 days" and said Boulton should let them know if she wished to proceed with a direct return passport or if she wished to email them her social security number to process her application. *Id.* After receiving that email, Boulton "reiterated" her request for a religious accommodation. Sanctions Mot. at 4. On March 30, Boulton received another email from the State Department confirming receipt of her reiterated request. See Boulton's Resp. Defs.' Status Report Ex. 2, ECF No. 109-2. The State Department said that "[t]he situation remains unchanged," her application would remain pending for 90 days, and "[i]f the required information is not received within the 90-day period, the application will be denied." *Id.*

A declaration dated June 3, 2021, submitted by Defendants in support of their opposition to Boulton's motion to intervene stated that the declarant was familiar with Boulton and her application. Defs.' Opp'n Mot. Intervene & Mot. Joinder of Boulton Decl. ¶ 2, ECF No. 95-1. It stated that, on or around March 9, the State Department "requested that Ms. Boulton provide additional information regarding her identi[t]y" and gave her 90 days to respond. *Id.* ¶ 4. Finally, it said that

Boulton's application was open, pending review, and had not been denied. *Id.* ¶ 5. On August 10, 2021, the State Department emailed Boulton saying that her passport has been issued. *See* Boulton's Resp. Defs.' Status Report Ex. 8, ECF No. 109-8. Boulton picked up her passport on August 20. Boulton's Resp. Defs.' Status Report ¶ 24. On October 11, in Defendants' reply supporting their motion to dismiss or, in the alternative, for summary judgment, they state that Boulton's passport was issued "[a]fter Ms. Boulton submitted additional information." Defs.' Reply Supp. Mot. Dismiss or, in the Alternative, Summ. J. & Opp'n Pls.' Mot. Reconsideration at 9.

[p. 17 of 33] By presenting to the court a pleading, written motion, or other paper[,] . . . an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[,] . . . the factual contentions have evidentiary support . . . and . . . the denials of factual contentions are warranted on the evidence." Fed. R. Civ. P. 11(b). If a "court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction." Fed. R. Civ. P. 11(c)(1). A motion for sanctions under Rule 11 must be served before being filed to allow 21 days for "the challenged paper, claim, defense, contention, or denial [to be] withdrawn or appropriately corrected." Fed. R. Civ. P. 11(c)(2); *see Dixon v. Midland Mortg. Co.*, No. 09-CV-1789 (RLW), 2013 WL 5350906, at *2 (D.D.C. Sept. 25, 2013) ("Pursuant to the Rule's 'safe-harbor' provision, a motion for sanctions may not be filed until at least 21 days after serving the motion on the offending party.").

Courts impose "an objective standard of reasonable inquiry on represented parties who sign papers or pleadings." *Bus. Guides, Inc. v. Chromatic Commc'ns Enters.*, 498 U.S. 533, 554 (1991). And courts have "discretion to determine both whether a Rule 11 violation has occurred and what sanctions should be imposed if there has been a violation." *Cobell v. Norton*, 211 F.R.D. 7, 10 (D.D.C. 2002) (internal quotations omitted). Rule 11 sanctions are an extreme punishment for filings that frustrate judicial proceedings. *See Henok v. Chase Home Fin., LLC*, 926 F. Supp. 2d 100, 104 (D.D.C. 2013); *see* also *Robinson-Reeder v. Am. Council on Educ.*, 626 F. Supp. 2d 11, 18 (D.D.C. 2009) ("The Court must also take into consideration that Rule 11 sanctions are a harsh punishment, and what effect, if any, the alleged violations may have had on judicial proceedings." (internal quotation marks omitted)).

Preliminarily, sanctions are not warranted because Boulton did not comply with Rule 11's procedural requirement to serve the motion for sanctions 21 days before filing to allow the [p. 18 of 33] accused offender to correct the problem. See Fed. R. Civ. P. 11(c)(2). Boulton does not argue that she served the motion on Defendants at least 21 days before filing. She instead argues that she put Defendants "on notice of their Rule 11 violation" several months earlier when she described Defendants' supposed lies in earlier filings. Boulton's Reply Supp. Mot. Sanctions at 6–7, ECF No. 123. Boulton invokes the purpose behind the rule—providing an opportunity to "repent." *Id.* at 7. But purpose cannot override the rule's unambiguous provisions.

Even if the motion were procedurally proper, it would still fail. Boulton argues that Defendants made three false statements: (1) Boulton's application was not denied, Sanctions Mot. at 2; (2) the State Department sought some "further information" other than a social security number, *id.* at 5; and (3) Boulton submitted some "additional information" that allowed her passport approval, *id.* at 6. None of these succeed.

Boulton argues that her application was denied either when the State Department gave her 90 days to provide her social security number or, alternatively, when those 90 days ran out. Boulton's Reply Supp. Mot. Sanctions at 2. For support, she cites a State Department regulation: "An application for a passport . . . will be denied if an applicant . . . does not provide additional information as requested by the Department within the time provided in the notification by the Department that additional information is required." 22 C.F.R. § 51.65(b). Although the State Department said that it would deny Boulton's application absent her providing a social security number, that is not the same as going through with the denial. In fact, the same regulation cited by Boulton says that "[t]he Department will send notice in writing to any person whose application for issuance of a passport or Consular Report of Birth Abroad has been denied." *Id.* § 51.65(a) (emphasis added). Boulton's apprehension of a denial was understandable, but Boulton points to no notice informing her that her application had been denied.

[p. 19 of 33] The latter two accusations can be analyzed together. Boulton's argument seems to be that Defendants are trying to make their actions

sound more defensible by claiming that they needed "further information" (when they really meant social security number) and that Boulton provided "additional information" to justify granting her application (when they really mean information they already had). Her complaints are not unreasonable. Defendants do not explain in detail what "further information" or "additional information" they refer to. They do cite one document dated March 3, 2021, Defs.' Opp'n Boulton's Mot. Sanctions at 6, ECF No. 122, but they do not say what in this document constitutes the additional information. Also, it is a stretch to claim that Defendants approved the application in October *because* of this document that had been in their possession since March. But that is what Defendants seem to be implying when they say that "[t]his information was *eventually* considered by the Department." *Id.* (emphasis added).

Even if these were attempts to save face, they were at worst misleading and ultimately harmless given the stakes of this particular factual dispute and Boulton's access to the evidence allowing her to call out her concerns (e.g., emails sent to her by the State Department). Boulton's theory is that Defendants are "providing a false narrative" to keep her out of the case, Boulton's Reply Supp. Mot. Sanctions at 3, but her motion to intervene is denied regardless of any supposedly false statements, as explained above. Therefore, even if there were false statements here, the Court would exercise its discretion against imposing sanctions.

F. Reconsideration

Exactly one year after this Court issued its earlier opinion resolving the parties' motions for partial summary judgment and to dismiss, Plaintiffs moved for reconsideration of that opinion under Federal Rule of Civil Procedure 60, Mot. Reconsideration, although, again, Rule [p. 20 of 33] 54(b) is the relevant reconsideration standard. Specifically, Plaintiffs focus on their first cause of action—violation of 22 U.S.C. § 2721, which prohibits denying or revoking passports because of, among other things, belief that is protected by the First Amendment. *Id.* at 1. In the earlier opinion, the Court granted Defendants' motion to dismiss this cause of action because Plaintiffs did "not cite any facts suggesting that the Government . . . denied and revoked [Plaintiffs'] passports because of their religious belief," as opposed to alleging that Plaintiffs' religious beliefs were burdened by having to provide their social security numbers, the latter being covered by the RFRA claim. *Carmichael v. Pompeo*, 486 F. Supp. 3d 360, 368 (D.D.C. 2020). Plaintiffs argue that this was wrong because they have "sufficiently alleged . . . that the activity for which the Defendants denied and revoked our passports was motivated by our religious belief." Mot. Reconsideration at 2. But their only support is the (uncited) facts that Plaintiffs' reason for not identifying with social security numbers was their religion and that this was communicated to Defendants. *Id.* This does not demonstrate allegations that the denials or revocations were "because of" Plaintiffs' beliefs. 22 U.S.C. § 2721. As with the motions for reconsideration discussed

above, the Court maintains that its earlier decision was correct and again concludes that reconsideration is not necessary under the relevant circumstances. This motion is therefore denied.

Plaintiffs also include a short reference to their other causes of action, arguing that they "warrant the Plaintiffs having the opportunity to prove their case applying ordinary discovery." Mot. Reconsideration at 3. This bare reference is insufficient to be considered a motion for reconsideration relating to these other causes of action.

[p. 21 of 33]

G. Motion for Court to Maintain Custody of Replacement Passport

Carmichael moves the Court to maintain custody of the replacement passport he received in the mail because it is, according to him, evidence relevant to Lewis and Pakosz's claims. Custody Mot. at 2–3. To support this motion, Carmichael cites Federal Rule of Civil Procedure 79(a)(2)(A). Custody Mot. at Proposed Order. Carmichael interprets this rule to allow the Clerk of Court "to keep records of the papers filed with the Clerk." *Id.* But that rule provides that "papers filed with the clerk" "must be marked with the file number and entered chronologically on the docket." Fed. R. Civ. P. 79(a)(2)(A). It does not appear to require the Clerk to maintain custody of a party's potential evidence. With no citation to a rule requiring the Court to maintain custody of this replacement passport, Carmichael's motion is denied. The parties shall explain in their next status report how they would like to handle transporting this passport to

Carmichael, e.g., if the Clerk of Court should mail it to Carmichael's address listed in his signature blocks, or if Carmichael will collect it from the Clerk of Court.

IV. LEGAL STANDARD

Federal courts have subject-matter jurisdiction where a claim "arises under" federal law. *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). "Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction . . . [and] the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (quoting *Agrocomplect, AD v. Republic of Iraq*, 524 F. Supp. 2d 16, 21 (D.D.C. 2007)). Subject-matter jurisdiction cannot be waived, and "[w]hile pro se complaints are held to a less stringent standard than other complaints, even a pro se plaintiff bears the burden of establishing that the Court has subject-matter jurisdiction." *Id.* at 33 (citations and internal quotations omitted); *see* also *Jathoul v. Clinton*, 880 F. Supp. 2d 168, 170 (D.D.C. 2012) [p. 22 of 33] ("To survive a motion to dismiss under Rule 12(b)(1), Plaintiff bears the burden of proving that the Court has subject-matter jurisdiction to hear her claims."). To evaluate "a motion to dismiss under Rule 12(b)(1), [courts] must treat the complaint's factual allegations as true . . . [granting] plaintiff the benefit of all inferences that can be derived from the facts alleged." *Clinton*, 880 F. Supp. 2d at 169 (internal quotations omitted) (quoting *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000)). Courts are not required

to accept "legal conclusion[s] couched as factual allegations[s]" as true. *Id.* (quoting *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 193 (D.C. Cir. 2006)). To invoke federal jurisdiction, a plaintiff must demonstrate the existence of an actual and concrete dispute. *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018). If, at any point before or during the proceedings, the case becomes moot, then such a case is no longer within the jurisdiction of the federal courts. *Id.* The D.C. Circuit has explained that "[f]ederal courts lack [subject matter] jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies." *Larsen v. U.S. Navy*, 525 F.3d 1, 4 (D.C. Cir. 2008) (quoting *Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70 (1983)); *see* also *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (noting that a court has "no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it") (citations omitted). A case becomes constitutionally moot when "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome," *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013), or when "intervening events make it impossible to grant the prevailing party effective relief," *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (quoting *Burlington N. R.R. Co. v. Surface Transp. Bd.*, 75 F.3d 685, 688 (D.C. Cir. 1996)). [p. 23 of 33] "Corrective action by an agency is one type of subsequent development that can moot a previously justiciable issue." *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 680 F.2d 810,

814 (D.C. Cir. 1982); *see* also *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 79 (D.C. Cir. 2011) (finding as moot superseded agency Record of Decision that had "no current force or effect"). "The initial 'heavy burden' of establishing mootness lies with the party asserting a case is moot." *Honeywell Int'l, Inc. v. Nuclear Regul. Comm'n*, 628 F.3d 568, 576 (D.C. Cir. 2010). The party opposing mootness has the burden of showing an exception to the mootness doctrine. *Id.*

The Federal Rules of Civil Procedure require a complaint to contain "a short and plain statement of the claim" to give the defendant fair notice of the claim and the grounds upon which it rests. Fed. R. Civ. P. 8(a)(2); accord *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam). A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a complaint" under that standard; it asks whether the plaintiff has properly stated a claim. *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This means that a plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555–56 (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are therefore insufficient to withstand a motion to dismiss. *Iqbal*, 556 U.S. at 678. A court need not accept a plaintiff's legal

conclusions as true, *see id.*, nor must a court presume the veracity of legal conclusions that are couched as factual allegations, see *Twombly*, 550 U.S. at 555. [p. 24 of 33] However, a court considering a motion to dismiss presumes that the complaint's factual allegations are true and construes them liberally in the plaintiff's favor. See, e.g., *United States v. Philip Morris, Inc.*, 116 F. Supp. 2d 131, 135 (D.D.C. 2000).

A court may grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "material" fact is one capable of affecting the substantive outcome of the litigation, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), while a dispute is "genuine" if there is enough evidence for a reasonable jury to return a verdict for the non movant, see *Scott v. Harris*, 550 U.S. 372, 380 (2007). The principal purpose of summary judgment is to streamline litigation by disposing of factually unsupported claims or defenses and determining whether there is a genuine need for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). The movant bears the initial burden of identifying portions of the record that demonstrate the absence of any genuine issue of material fact. See Fed. R. Civ. P. 56(c)(1); *Celotex*, 477 U.S. at 323. In response, the non-movant must point to specific facts in the record that reveal a genuine issue that is suitable for trial. *See Celotex*, 477 U.S. at 324. In considering a motion for summary judgment, a court cannot make credibility determinations or weigh the evidence. *See Czekalski v. Peters*, 475 F.3d 360, 363 (D.C. Cir. 2007). All underlying facts and inferences

must be analyzed in the light most favorable to the non-movant. *See Anderson*, 477 U.S. at 255. That said, conclusory assertions offered without any evidentiary support do not establish a genuine issue for trial. *See Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999).

V. ANALYSIS

The main substantive motion at this time is Defendants' motion to dismiss or, in the alternative, for summary judgment. Defendants argue that (1) Plaintiffs' claims for equitable [p. 25 of 33] relief of issuance of their passports are moot because the State Department has granted their requests to obtain passports without having to identify with a social security number, Defs.' Mem. at 7; (2) Carmichael still fails to state a claim for a Fifth Amendment Due Process violation even after amending the complaint, *id.* at 13–14, (3) Lewis and Pakosz's Fifth Amendment Due Process claims fail in light of "the State Department's action during the remand period," *id.* at 14, (4) neither RFRA nor the Fifth Amendment allow damages claims for official capacity suits, *id.* at 17, and (5) Plaintiffs have no viable claim for damages under the Privacy Act, *id.* at 18. As explained below, Defendants' motion regarding mootness is denied and the parties are ordered to file a joint status report within 60 days either describing Defendants' progress toward complying with Plaintiffs' proposed procedures or proposing a briefing schedule to resolve the remaining mootness issues. Defendants' motion is granted with respect to damages claims under the three causes of action.

A. Mootness

Defendants move to dismiss Plaintiffs' claims as moot to the extent Plaintiffs seek the equitable relief of obtaining their passports without providing social security numbers. *Id.* at 7. If Defendants have in fact provided passports to Plaintiffs, then the requests for equitable relief would be moot because "intervening events [will have made] it impossible to grant the prevailing party effective relief." *Lemon*, 514 F.3d at 1315–16 (quoting *Burlington N. R.R. Co.*, 75 F.3d at 688). But the parties do not squarely address each other's arguments.

Defendants argue that they have granted Plaintiffs' request "to obtain passports without having to identify with a social security number" such that Plaintiffs' related request for equitable relief is now moot. Defs.' Mem. at 7. According to Defendants, "the State Department reversed its prior revocation of Carmichael's passport and invited Lewis and Pakosz to update [p. 26 of 33] their photographs to allow the State Department to adjudicate their renewal applications without the need to submit their social security numbers." *Id.* at 8. Although Plaintiffs dispute the propriety of the procedures followed by Defendants, Plaintiffs do not dispute that Defendants communicated to Plaintiffs that their religious accommodations would be granted to allow them to receive passports, one way or another, without providing social security numbers. *See* Pls.' Dispute Defs.' Statement of Material Facts ¶¶ 5–11, ECF No. 107-1.[5] Defendants also argue that no mootness exception applies, Defs.' Mem. at 9–11, that Carmichael cannot manufacture standing "based on his subjective apprehensions

regarding how his passport was reissued," *id.* at 11, and that, "notwithstanding Plaintiffs' tortured reading of the State Department's regulations and requirements regarding the submission of photographs, the State Department's request for updated photographs was reasonable," *id.* at 12. The last one concerns Defendants' insistence "that passport photographs must be 'taken within the six months preceding the *issue date*.'" *Id.* (emphasis added) (citing "https://travel.state.gov/content/travel /en/passports/how apply/photos.html, 8 FAM 402.1, and ICAO Machine Readable Travel Document 9303 3.9.1").

Lewis argues that Defendants' requirement that the photograph be taken within six months of the passport's issue date is incorrect; instead, according to Lewis, the photograph needs to be taken within six months of the *application*, and the photograph he already submitted meets this requirement. Pl. Lewis's Reply at 6. Indeed, the sources cited by Defendants for this proposition do not seem to support their proposed issue-date limitation, despite Defendants purporting to quote that phrase from one of their sources. The first source—a State Department website—only states that "[y]our passport photo needs to have been taken within the last 6

[FN 5] Plaintiffs moved for leave to file their response to Defendants' statement of undisputed material facts one day late. Pl. Carmichael's Mot. Leave Late Filing Statement of Facts, ECF No. 107. Seeing no opposition from Defendants, the motion is granted.

[p. 27 of 33] months." The second source—the Foreign Affairs Manual—appears to state that a "photograph must be taken within the past six months (ICAO 9303 Section 3.9), be a good likeness of and satisfactorily identify the applicant *at the time of the application*." 8 FAM 402.1-2: Passport Photograph Requirements, ECF No. 84-8 (emphasis added). The third source—an International Civil Aviation Organization document—appears to require that "[a] submitted portrait shall have been captured within the last six months before *application*." (emphasis added). International Civil Aviation Organization, *Machine Readable Travel Documents*: Part 3: Specifications Common to all MRTDs, § 3.9.1.2 (2021), https://www.icao.int/publications/Documents/9303_p3_cons_en.pdf.[6] Accordingly, the source of Defendants' insistence on requiring an updated photograph for Lewis—and, therefore, one of the roadblocks to Lewis receiving his passport—is unclear.

Plaintiffs' opposition does not explain Carmichael's objections to accepting and signing the passport that was sent to him, but it does argue that the revocation of his passport should be declared void. Pls.' Opp'n at 2. Carmichael explained his objection in earlier filings. He seems to want Defendants to void the cancelation of his passport rather than issue a replacement passport. Pl. Carmichael Resp. Opp'n 2d Min. Order ¶¶ 3, 5, ECF No. 90. His justifications seem to be that the regulations only allow replacement passports for certain reasons that are not applicable to him, the relief he requested was voiding the earlier cancelation, and Defendants stated that the revocation of his passport would be rescinded. *Id.*

Defendants' briefs do not address the propriety of issuing Carmichael a replacement passport rather than voiding the cancelation. And Defendants' argument that this is irrelevant because "Plaintiffs' operative

[FN6] Although it appears to be the document referenced by Defendants, it is possible that the document cited here by the Court is not the one intended by Defendants; the Court could not locate a copy of the ICAO standard in the parties' attachments. If a party believes that this is the incorrect document, it can be addressed in further briefing.

[p. 28. 33] complaint contains no claim with respect to the process by which Carmichael's passport was reissued, nor would Plaintiffs have standing to raise such a claim," Defs.' Mem. at 11, is misplaced because that process is relevant to whether the claims are moot. Defendants must appreciate that, hypothetically, providing Carmichael a passport issued via an obviously invalid process—likely rendering that hypothetical passport ineffective—would not moot this case. Yet Defendants' argument about the complaint's contents would apply equally to such a scenario.

On one hand, Plaintiffs have received the major part of the equitable relief requested and their objections now turn on issues unrelated to their religious accommodation. They have been given relatively low-burden pathways to obtaining passports without providing social security numbers. On the other hand, Plaintiffs raise arguments about the processes followed by Defendants that are not clearly incorrect. In light of the issues raised by Plaintiffs, Defendants have not convincingly shown that the requests for equitable

relief have become moot based on their actions during the remand. Defendants' motion is therefore denied on that ground.

However, based on Defendants' representations and actions in this litigation, including them granting Plaintiffs' religious accommodation requests, it appears that Defendants have all intentions of providing Plaintiffs passports without Plaintiffs providing social security numbers and there may be an opportunity to resolve this issue without further litigation. Defendants are ordered to reevaluate their positions on the appropriate ways, consistent with federal law and regulations, to get Plaintiffs their passports in light of Plaintiffs' arguments and this opinion. The parties are ordered to file a joint status report within 60 days of the issuance of this opinion either describing Defendants' progress toward complying with Plaintiffs' proposed procedures or proposing a briefing schedule to resolve these issues. Such briefing must address at least [p. 29 of 33] Plaintiffs' existing objections to the procedures used by Defendants and Defendants' authority authorizing their chosen procedures.

B. Due Process

It is not necessary at this time to address Defendants' motion with respect to due process because there appears to be a nontrivial chance that the equitable relief issues can be resolved without further litigation and, as explained below, there are no remaining claims for damages.

C. Damages

Defendants move to dismiss or, in the alternative, for summary judgment on, Plaintiffs' claims for damages. For RFRA and the Fifth Amendment claims, Defendants argue that sovereign immunity is not waived for damages on official-capacity claims. Defs.' Mem. at 16. For the Privacy Act, Defendants argue that "Plaintiffs have failed to plead any viable claim for damages." *Id.* The Court agrees.

1. RFRA

Defendants argue that "RFRA does not supply a damages remedy" in official-capacity suits. *Id.* at 17. Indeed, "RFRA does not waive the federal government's sovereign immunity for damages." *Simpson v. Fed. Bureau of Prisons*, No. 19-CV-03173 (CJN), 2020 WL 95814, at *2 (D.D.C. Jan. 8, 2020) (quoting *Webman v. Fed. Bureau of Prisons*, 441 F.3d 1022, 1026 (D.C. Cir. 2006)). The Supreme Court recently "clarified in *Tanzin* that monetary damages are available for individual-capacity RFRA claims," but this did not disturb "Circuit precedent" that RFRA does not waive sovereign immunity for damages. *Driever v. United States*, No. CV 19 1807 (TJK), 2021 WL 1946391, at *3 (D.D.C. May 14, 2021). The Court stated in *Tanzin* that "this case features a suit against individuals, who do not enjoy sovereign immunity." *Tanzin v. Tanvir*, 141 S. Ct. 486, 493 (2020). Plaintiffs do not cite anything to the contrary. They suggest [p. 30 of 33] that *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021), supports their argument, but, as Plaintiffs

acknowledge, that case concerned Article III standing, not sovereign immunity. Pls.' Opp'n at 44. Defendants' motion to dismiss Plaintiffs' damages claims under RFRA is therefore granted.

2. Fifth Amendment

Defendants argue that sovereign immunity bars Plaintiffs' official-capacity claims for damages under the Fifth Amendment. Defs.' Mem. at 17. "The D.C. Circuit's decision in *Clark* bars suits for money damages against officials for actions taken in their official capacity absent a waiver." *Williams v. Veneman*, No. CV 03-2245(CKK), 2005 WL 8177882, at *4 (D.D.C. July 5, 2005); see *Clark v. Library of Cong.*, 750 F.2d 89, 103 (D.C. Cir. 1984) ("Sovereign immunity . . . does bar suits for money damages against officials in their official capacity absent a specific waiver by the government."). Plaintiffs do not point to an applicable waiver. Therefore, Defendants' motion to dismiss Plaintiffs' damages claims under the Fifth Amendment is granted.

3. Privacy Act

Defendants argue that "Plaintiffs have failed to establish any plausible claim for damages under the Privacy Act." Defs.' Mem. at 23. The Court's previous opinion laid out its understanding of Plaintiffs' Privacy Act claim:

> Plaintiffs' Privacy Act claim pertains to the requirements under 5 U.S.C. § 552a(e)(3), which states in relevant part that agencies must "inform each individual whom it asks to supply

> information . . . whether disclosure of such information is mandatory or voluntary." 5 U.S.C. § 552a(e)(3)(A). Plaintiffs allege that the Privacy Act Statement that they received failed "to correctly state in what conditions make [disclosure of a social security number] voluntary and what make[s] [disclosure] mandatory." See Am. Compl. ¶ 133. The Court understands Plaintiffs' claim to be that while the Privacy Act Statement indicates that providing a social security number is voluntary, it is in fact mandatory and, therefore, the Government has not complied with the statutory requirements.

Carmichael, 486 F. Supp. 3d at 375 (alterations in original). The Court then denied Defendants' motion to dismiss because Plaintiffs alleged that "disclosure of a social security number is [p. 31 of 33] mandatory to obtain a passport and yet the Privacy Act Statement says disclosure is voluntary," and Defendants' briefing suggested that providing a social security number was indeed mandatory. *Id.*

Defendants make several arguments for why Plaintiffs' Privacy Act claim cannot support a damages award: (1) given Defendants' subsequent decision to allow Plaintiffs' to obtain passports without identifying with social security numbers, the Privacy Act Statement correctly stated that providing a social security number was voluntary, Defs.' Mem. at 20; (2) Plaintiffs do not allege that the violations were intentional or willful, as required by the Privacy Act, *id.*, (3) the Privacy Act requires proving actual damages and Plaintiffs' alleged damages do not qualify, *id.* at 20–22; and (4) Plaintiffs "fail to plead any causal link between [the

alleged losses] and the alleged Privacy Act violations, let alone plead such a link with 'particularity' as required by Rule 9(g)," *id.* at 22. Several of these may be correct, but the last is most obviously correct.

The relevant civil remedies provision of the Privacy Act states that an individual may bring a civil action against an agency for "fail[ure] to comply with any other provision of this section . . . in such a way as to have an adverse effect on an individual." 5 U.S.C. § 552a(g)(1)(D). "[T]he reference in § 552a(g)(1)(D) to 'adverse effect' acts as a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue." *Doe v. Chao*, 540 U.S. 614, 624 (2004).

Here, Plaintiffs do not plead any connection between the alleged Privacy Act violations and any adverse effects or damages. The section of the operative complaint stating the Privacy Act cause of action lists these injuries: unlawful denial of passport or cancelation of passport, expenses and injury to property right in passport application and its process; injury to "property [p. 32 of 33] and liberty rights in travel and the applied-for passport necessary to that travel," and "monetary suffering in the amounts and ways set forth in the demand for relief below." 2d Am. Compl. ¶ 134. All of these are traced to Defendants' decisions not to issue passports, not to the Privacy Act Statements. See, e.g., Pls.' Opp'n at 41 ("Plaintiffs Lewis and Pakosz spent pre-litigation money which would not have been necessary had the defendants issued his

passport rather than unlawfully deny it."). As best the Court can tell, no material facts would have changed based on any hypothetical change to the contents of the Privacy Act Statement, as opposed to changes to Defendants' actual decisions or policies about how to handle passport applications. Accordingly, Defendants' motion to dismiss Plaintiffs' damages claims under the Privacy Act is granted.

VI. CONCLUSION

For the foregoing reasons, the parties' motions are decided as follows:

- Plaintiffs' motions concerning the remand (ECF Nos. 72, 75, 76, 86) are **DENIED**.
- Plaintiffs' Motion to Compel Defendants to Issue Passport Renewals to Lewis and Pakosz (ECF No. 84) is **DENIED**.
- Plaintiffs' and Boulton's motions concerning Boulton's intervention and joinder (ECF Nos. 92, 93, 94) are **DENIED**.
- Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 99) is **GRANTED IN PART** with respect to Plaintiffs' damages claims and otherwise **DENIED IN PART**. Defendants are **ORDERED** to reevaluate their positions on the appropriate ways, consistent with federal law and regulations, to get Plaintiffs their passports in light of Plaintiffs' arguments and this opinion. The parties are **ORDERED** to file a joint status report within 60 [p. 33 of 33] days of the issuance of this opinion either describing

Defendants' progress toward complying with Plaintiffs' proposed procedures or proposing a briefing schedule to resolve these issues. Such briefing must address at least Plaintiffs' existing objections to the procedures used by Defendants and Defendants' authority authorizing their chosen procedures.

- Plaintiff Carmichael's Motion for Court to Maintain Custody of Replacement Passport in Evidence (ECF No. 101) is **DENIED**. The parties shall explain in their next status report how they would like to handle getting this passport to Carmichael, e.g., if the Clerk of Court should mail it to Carmichael's address listed in his signature blocks, or if Carmichael will come collect it from the Clerk of Court.
- Plaintiff Carmichael's Motion for Leave of Late Filing of Statement of Facts (ECF No. 107) is **GRANTED**.
- Plaintiffs' Combined Motion for Relief from Order of August 28, 2020 and Memorandum in Support (ECF No. 108) is **DENIED**.
- Carmichael's and Hollingsworth's motions regarding substitution for Pakosz (ECF Nos. 113, 120) are **DENIED**.
- Boulton's Motion for Sanctions (ECF No. 121) is **DENIED**. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: March 25, 2022

RUDOLPH CONTRERAS
United States District Judge

**UNITED STATES
DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID ALAN CARMICHAEL, *et al.*, Et al.	:
Plaintiffs,	: Civil Action : No.: 19-2316
v.	: (RC)
MICHAEL RICHARD POMPEO, in his Official capacity as Secretary of State, et al.,	: Re Document : Nos.: 24, 28
Defendants.	:

ORDER

GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS; DENYING PLAINTIFFS' PARTIAL MOTION FOR SUMMARY JUDGMENT AND INJUNCTION; DENYING PLAINTIFFS' ADDITIONAL PENDING MOTIONS

For the reasons stated in the Court's Memorandum Opinion separately and contemporaneously issued, the Government's motion to dismiss (ECF No. 24) is **GRANTED** with respect to Plaintiffs' first, third, fourth (with respect to Carmichael), fifth, sixth, eighth, and ninth causes of

action; it is **DENIED** with respect to Plaintiffs' second, fourth (with respect to Lewis and Pakosz), and seventh causes of action. The Government's motion in the alternative for summary judgment is **DENIED**. Plaintiffs' motion for partial summary judgment and injunction (ECF No. 28) is **DENIED**. Plaintiffs' other pending motions (ECF Nos. 14, 21, 23, 33, 36, 37, 40) are **DENIED**. It is hereby:

ORDERED that Plaintiffs may file an amended complaint with respect to their fourth cause of action within thirty days.

SO ORDERED

Dated: August 28, 2020 RUDOLPH CONTREREAS
United States District Judge

**UNITED STATES
DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID ALAN CARMICHAEL, *et al.*, Et al.	:
Plaintiffs,	: Civil Action
	: No.: 19-2316
v.	: (RC)
MICHAEL RICHARD POMPEO,	: Re Document
	: Nos.: 24, 28
in his Official capacity as Secretary of State, et al.,	:
Defendants.	:

MEMORANDUM OPINION

GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS; DENYING PLAINTIFFS' PARTIAL MOTION FOR SUMMARY JUDGMENT AND INJUNCTION; DENYING PLAINTIFFS' ADDITIONAL PENDING MOTIONS

I. INTRODUCTION

This case concerns Plaintiffs David Alan Carmichael, Lawrence Donald Lewis, and Mitchell Pakosz ("Plaintiffs") and Defendants Michael Richard Pompeo, sued in his official capacity as

Secretary of State, and the U.S. Department of State ("the Government"). Carmichael, Lewis, and Pakosz attempted to renew their U.S. passports in 2018, 2019, and 2017 respectively, and each requested a religious accommodation from the requirement that they provide their social security numbers on their passport renewal applications. Carmichael, Lewis, and Pakosz assert that identifying with a social security number is prohibited by their Christian faith. While Carmichael's renewed passport was initially granted, it was later revoked after the Government determined that Carmichael had not provided his social security number in his renewal application, and his passport had thus been issued erroneously. Lewis and Pakosz's passport renewal applications were denied for failure to provide social security numbers.

[p. 2 of 24] Carmichael, Lewis, and Pakosz brought nine causes of action against the Government under the U.S. Constitution and various federal statutes, including the First Amendment, the Fifth Amendment, the Ninth Amendment, the Foreign Relations Authorization Act, the Religious Freedom Restoration Act, the Privacy Act, Executive Order 13798, and federal criminal statutes. The Government has moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim, or, in the alternative, for summary judgment. In response, Carmichael, Lewis, and Pakosz move for partial summary judgment and ask for an injunction on their first cause of action under the Foreign Relations Authorization Act. For the reasons set forth below, the Court largely grants the Government's motion to

dismiss and denies Plaintiffs' motion for partial summary judgment. However, the Court finds that Plaintiffs state a proper claim under the Religious Freedom Restoration Act and that the Government is not entitled to summary judgment on that claim. Additionally, the Court finds that Plaintiffs have properly stated a claim under the Privacy Act.

II. FACTUAL BACKGROUND

In 2007 Plaintiffs Carmichael and Pakosz applied for U.S. passports, and both men asked for a religious accommodation exempting them from the requirement that they provide their social security number on the application. Am. Compl. ¶¶ 16-17, ECF No. 15. Plaintiff Lewis did the same in 2008. *Id.* ¶ 18. All three plaintiffs received passports, despite not including their social security numbers on their passport applications. *Id.* ¶¶ 16-18. Carmichael, Lewis, and Pakosz assert that they are "prohibited from identifying with a Social Security Number . . . on the basis of the Christian religion" and "[a]ny demand for either of them to identify with a [social security number] places a substantial burden upon their religion." *Id.* ¶ 14. While Carmichael, Lewis, and Pakosz allege that they were granted a religious accommodation when they were [p. 3 of 24] originally issued passports, *see id.* ¶¶ 16-18, the Government asserts that "[t]here was no consideration of [a] claim for a religious accommodation," and applicants were not required to provide social security numbers in their passport applications at that time, Rolbin Decl. ¶ 4, ECF No. 24-2. However, The Government notes that the Fixing America's Surface Transportation ("FAST")

Act, enacted in 2015, granted the Government the authority to "deny a passport application if the applicant fails to provide their [social security number]." *Id.*

In 2018, Carmichael applied to renew his passport, and, again, he requested a religious accommodation to the requirement that he provide his social security number in his passport renewal application. Am. Compl. ¶ 19. Lewis and Pakosz applied to renew their passports, also including a request for a religious accommodation, in 2019 and 2017, respectively. *Id.* ¶¶ 20-21. With their passport renewal applications, Carmichael, Lewis, and Pakosz sent letters to the Government explaining why identifying with a social security number violated their religious beliefs. *See id.* ¶¶ 19, 42-43, 55, 57. Plaintiffs' passport renewal applications were also accompanied by a "Privacy Act Statement" from the Government that outlined the authority under which the Government requested Plaintiffs' social security numbers, the purpose of requesting the social security numbers, and a non-exhaustive list of routine uses for information collected from passport renewal applications. *Id.* ¶ 104; *see also* Pls.' Mem. Supp. Resp. Mot. Dismiss and Cross Mot. Summ. J. ("Pls.' Mem."), ¶ 57(ii), ECF No. 27-1 (reproducing the statement as an undisputed fact). The "Privacy Act Statement" also included a statement that, while providing the requested information was voluntary, failing to provide that information could result in a processing delay or application denial. Am. Compl. ¶ 104; *see also* Pls.' Mem. ¶ 57(ii).

[p. 4 of 24] Carmichael's passport renewal was approved, and his renewed passport was issued in

January 2018 without Carmichael providing his social security number on his application. Am. Compl. ¶ 19. However, the Government contacted Lewis and Pakosz, asking each to either provide his social security number or sign a statement that he had never been issued one. *Id.* ¶¶ 46, 56. Both Lewis and Pakosz responded that they could not sign a statement that they had never been issued a social security number and reiterated their request for a religious accommodation. *See id.* ¶¶ 47, 56-67. Both Lewis and Pakosz's passport renewal applications were subsequently denied. *Id.* ¶¶ 49, 68. Neither Lewis nor Pakosz was given the opportunity to appeal the denial. *Id.* ¶¶ 26, 82; *see also id.* ¶ 124 (asserting that all three Plaintiffs were denied an appeal process).

After Pakosz's application was denied, Pakosz contacted Carmichael for assistance, and, on Pakosz's behalf, Carmichael spoke to an employee of the Government who stated that there was no appeal process for the denial of a religious accommodation. *Id.* ¶¶ 26-27. Carmichael and Pakosz then filed Freedom of Information Act ("FOIA") requests for the names and contact information of Department employees involved in processing passport applications, *see id.* ¶¶ 29, 73, and sent letters to various politicians, including President Donald Trump and Vice President Mike Pence, among others, further explaining their request for a religious accommodation, *id.* ¶¶ 31, 69-71, 76-79, 86. Enclosed with one letter to the Government, Pakosz states that he "sent information that explains the SSN offence against religion in a document called 'The Mark of The Beast . . . It Is Here, Now.'" *Id.* ¶ 69.

Approximately three months later, Carmichael received a letter from the Government stating that his renewed passport had been issued erroneously because he did not provide his social security number in his passport renewal application, that his passport had been revoked [p. 5 of 24] pursuant to 22 C.F.R. § 51.62(a)(2), and that he could request an appeal hearing. *Id.* ¶ 33. Carmichael seemingly did not request a hearing. Def. Mot. Dismiss ("Gov't Mot.") at 20, ECF No. 24; *see also* Am. Compl. (nowhere mentioning that Carmichael availed himself of this opportunity for a hearing).

Carmichael brought this action on July 31, 2019, *see* Compl., ECF No. 1, and Plaintiffs Lewis and Pakosz were added to this action in November 2019, *see* Order, ECF, No. 11. Carmichael, Lewis, and Pakosz filed their amended complaint in December 2019, in which they raise nine causes of action under the United States Constitution and various federal laws. *See* Am. Compl. The Government now moves to dismiss, or in the alternative for summary judgment, on all nine causes. *See* Gov't Mot. Carmichael, Lewis, and Pakosz move for partial summary judgment and request an injunction on their first cause of action under the Foreign Relations Authorization Act. *See* Pls. Mem.

III. LEGAL STANDARD

Federal courts have subject-matter jurisdiction where a claim "arises under" federal law. *Merrell Dow Pharm. Inc., v. Thompson*, 478 U.S. 804, 808 (1986). "Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction . . . [and] the

Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (quoting *Agrocomplect, AD v. Republic of Iraq*, 524 F. Supp. 2d 16, 21 (D.D.C. 2007)). Subject-matter jurisdiction cannot be waived, and "[w]hile pro se complaints are held to a less stringent standard than other complaints, even a pro se plaintiff bears the burden of establishing that the Court has subject-matter jurisdiction." *Id.* at 33 (citations and internal quotations omitted); *see also Jathoul v. Clinton*, 880 F. Supp. 2d 168, 170 (D.D.C. 2012) [p. 6 of 24] ("To survive a motion to dismiss under Rule 12(b)(1), Plaintiff bears the burden of proving that the Court has subject-matter jurisdiction to hear her claims.").

To evaluate "a motion to dismiss under Rule 12(b)(1), [courts] must treat the complaint's factual allegations as true . . . [granting] plaintiff the benefit of all inferences that can be derived from the facts alleged." *Clinton*, 880 F. Supp. 2d at 169 (internal quotations omitted) (quoting *Sparrow v. United Air Lines*, 216 F.3d 1111, 1113 (D.C. Cir. 2000)). Courts are not required to accept "legal conclusion[s] couched as factual allegations[s]" as true. *Id.* (quoting *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 193 (D.C. Cir. 2006)). Dismissal under Rule 12(b)(1) for lack of subject-matter jurisdiction is justified where a claim is "'immaterial and made solely for the purpose of obtaining jurisdiction' or [it] is 'wholly insubstantial and frivolous.'" *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 n. 10 (2006) (quoting *Bell v. Hood*, 327 U.S. 678, 682-3 (1946)).

The Federal Rules of Civil Procedure also require that a complaint contain "a short and plain

statement of the claim" in order to give the defendant fair notice of the claim and the grounds upon which it rests. Fed. R. Civ. P. 8(a)(2); *accord Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam). A motion to dismiss under Rule 12(b)(6) does not test a plaintiff's ultimate likelihood of success on the merits; rather, it tests whether a plaintiff has properly stated a claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A court considering such a motion presumes that the complaint's factual allegations are true and construes them liberally in the plaintiff's favor. *See, e.g., United States v. Philip Morris, Inc.*, 116 F. Supp. 2d 131, 135 (D.D.C. 2000). It is not necessary for the plaintiff to plead all elements of her prima facie case in the complaint. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511-14 (2002); *Bryant v. Pepco*, 730 F. Supp. 2d 25, 28-29 (D.D.C. 2010).

[p. 7 of 24] Nevertheless, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This means that a plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555-56 (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are therefore insufficient to withstand a motion to dismiss. *Iqbal*, 556 U.S. at 678. A court need not accept a plaintiff's legal

conclusions as true, *see id.*, nor must a court presume the veracity of legal conclusions that are couched as factual allegations, *see Twombly*, 550 U.S. at 555.

Finally, a court may grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "material" fact is one capable of affecting the substantive outcome of the litigation. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is "genuine" if there is enough evidence for a reasonable jury to return a verdict for the non-movant. *See Scott v. Harris*, 550 U.S. 372, 380 (2007).

The principal purpose of summary judgment is to streamline litigation by disposing of factually unsupported claims or defenses and determining whether there is a genuine need for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). The movant bears the initial burden of identifying portions of the record that demonstrate the absence of any genuine issue of material fact. *See* Fed. R. Civ. P. 56(c)(1); *Celotex*, 477 U.S. at 323. In response, the non-movant must point to specific facts in the record that reveal a genuine issue that is suitable for trial. *See Celotex*, 477 U.S. at 324. In considering a motion for summary judgment, a court must [p. 8 of 24] "eschew making credibility determinations or weighing the evidence[,]" *Czekalski v. Peters*, 475 F.3d 360, 363 (D.C. Cir. 2007), and all underlying facts and inferences must be analyzed in the light most favorable to the non-movant, *see Anderson*, 477 U.S. at 255. Nevertheless, conclusory assertions offered

without any evidentiary support do not establish a genuine issue for trial. *See Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999).

IV. ANALYSIS

A. Plaintiffs' First Cause of Action

First, Plaintiffs claim that the Government violated 22 U.S.C. § 2721 by denying Pakosz and Lewis's passport renewal applications and revoking Carmichael's passport after they failed to provide their social security numbers on their passport renewal applications. Am. Compl. ¶¶ 114-16. 22 U.S.C. § 2721 provides that "[a] passport may not be denied issuance, revoked, restricted, or otherwise limited because of any speech, activity, belief, affiliation, or membership within or outside the United States, which, if held or conducted within the United States, would be protected by the first amendment . . . ." 22 U.S.C. § 2721.

The Government's correspondence with Plaintiffs indicate that Lewis and Pakosz's passport renewal applications were denied because they did not include their social security numbers on the renewal application. Am. Compl. ¶¶ 49, 68. Furthermore, the Government's correspondence with Carmichael indicates that Carmichael's passport was revoked because he also did not provide his social security number on his renewal application and, thus, his passport had been erroneously issued. *Id.* ¶ 33.

The Government acted within its authority to deny passports to applicants who fail to provide their social security numbers, *see* 22 C.F.R. § 51.60(f); *see also* 22 U.S.C. § 2714a(f)(1), and to

revoke passports that have been issued erroneously, *see* 22 C.F.R. § 51.62; *see also* 22 [p. 9 of 24] U.S.C. § 2714a(f)(2). Plaintiffs do not cite any facts suggesting that the Government instead denied and revoked their passports because of their religious belief. To the extent that Plaintiffs claim that requiring them to provide their social security numbers on their passport renewal applications burdens their religious beliefs, that claim is addressed below in the Court's discussion of the Religious Freedom Restoration Act. Because Plaintiffs have not alleged sufficient facts to plausibly establish that the Government denied their passport application because of any religious beliefs, the Court grants the Government's motion to dismiss on Plaintiffs' first cause of action. The Court denies Plaintiffs' cross motion for partial summary judgment and injunction on their first cause of action.

B. Plaintiffs' Second Cause of Action

Plaintiffs also allege that the Government violated the Religious Freedom Restoration Act ("RFRA") by "demanding that [they] identify [themselves] with a Social Security Number," which their religious beliefs prohibit. Am. Compl. ¶ 118.

RFRA states that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the government can demonstrate that it "is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-

(b)(1). Under RFRA a plaintiff must first establish that a government action substantially burdens his exercise of religion. *Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.,* 281 F. Supp. 3d 88, 114 (D.D.C. 2017) (citing *Henderson v. Stanton*, 76 F. Supp. 2d 10, 14 (D.D.C. 1999). After this initial hurdle is met, the burden then shifts to the government to show that the challenged action uses the least restrictive means to further a compelling government interest. *Id.* Importantly, rather than a categorical strict scrutiny analysis, "RFRA requires the [p. 10 of 24] Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006) (quoting 42 U.S.C. § 2000bb-1(b)). Courts must look "beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemption to particular religious claimants." *Id.* at 431.

"A substantial burden exists when government action puts 'substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008) (quoting *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981)). Similarly, a substantial burden exists where government action "require[s] [a] plaintiff 'to choose between following the tenets of [his] religion and receiving a governmental benefit.'" *Singh v. McHugh*, 185 F. Supp. 3d 201, 217 (D.D.C. 2016) (quoting *Navajo*

Nation v. U.S. Forest Service, 535 F.3d 1058, 1070 (9th Cir. 2008)). "Religious exercise necessarily involves an action or practice" and, therefore, a plaintiff must allege "that he is put to a choice" between complying with a government requirement and violating his religious beliefs. *Kaemmerling*, 553 F.3d at 679; *see also Holt v. Hobbs*, 574 U.S. 352, 361 (2015) (finding that correctional department grooming policy required choice between violating religious beliefs or facing disciplinary action).

If a substantial burden is established, RFRA requires the Government to show that its action "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b). The government must demonstrate the least restrictive means of furthering a compelling governmental interest with respect to the particular plaintiff objecting. *See Burwell v. Hobby* [p. 11 of 24] *Lobby Stores, Inc.*, 573 U.S. 682, 728, (2014) ("HHS has not shown that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by *the objecting parties in these cases*") (emphasis added). The standard is "exceptionally demanding." *Id.*

Plaintiffs assert that requiring them to identify with a social security number on their passport renewal applications substantially burdens an exercise of their religious beliefs. Am. Compl. ¶ 14. Specifically, Plaintiffs allege that identifying with a social security number "is prohibited in the Revealed law" to which they adhere. *Id.* ¶ 118. The Government argues that Plaintiffs have failed to establish a substantial burden on their religious

exercise under RFRA because the social security number requirement "does not pressure Plaintiffs to change their behavior and violate their religion," and, instead, Plaintiffs' "claim seeks only to require the government itself to conduct its affairs in conformance with [their] religion." Gov't Mot. at 11.

The Government argument primarily relies on two cases. *See id.* at 9-10. First, the Government points to *Bowen v. Roy*, a Supreme Court case that predates the passage of RFRA. In *Bowen*, the plaintiff asserted that the government's *use* of a social security number for his two-year-old daughter violated his religious beliefs and would harm her spirit. 476 U.S. 693, 699 (1986). The Court determined that "[t]he Free Exercise Clause affords an individual protection from certain forms of governmental compulsion; it does not afford an individual a right to dictate the conduct of the Government's internal procedures." *Id.* at 700. In other words, the government's use of the social security number did not affect the plaintiff's behavior or ability to exercise his religious beliefs. *Id.* at 699-700 ("Just as the Government may not insist that appellees engage in any set of religious observance, so appellees may not demand that [p. 12 of 24] the Government join in their chosen religious practices by refraining from using a number to identify their daughter.").

The plaintiff in *Bowen* also challenged the requirement that he *provide* a social security number for his daughter to receive welfare benefits. *Id.* at 701. On this question three justices—Chief Justice Burger and Justices Powell and Rehnquist—applied a lower standard than strict scrutiny and concluded that requiring the plaintiff

to provide a social security number "promote[d] a legitimate and important public interest" in preventing fraud. *Id.* at 709. This approach was "expressly rejected by five Justices." *Leahy v. District of Columbia*, 833 F.2d 1046, 1049 (D.C. Cir. 1987). In *Leahy*, where the plaintiff challenged the requirement that he *provide* a social security number to obtain a driver's license, this Circuit clarified that "the compelling state interest test . . . continues to define the Supreme Court's free exercise clause jurisprudence." 833 F.2d at 1049. RFRA later statutorily adopted the strict scrutiny standard. *See* 42 U.S.C. § 2000bb-1 (requiring government actions that "substantially burden a person's exercise of religion" to be "in furtherance of a *compelling governmental interest*" and use "the *least restrictive means*") (emphasis added).

The Government then points to *Kaemmerling v. Lappin*, a D.C. Circuit case where the court rejected the plaintiff's RFRA claim that the extraction and storage of his DNA information by the Federal Bureau of Prisons substantially burdened his religious exercise. 553 F.3d at 679. The D.C. Circuit noted that "[t]he extraction and storage of DNA information are entirely activities of the FBI, in which Kaemmerling plays no role and which occur after the BOP has taken his fluid or tissue sample (to which he does not object)." *Id.* Thus, the government's actions could not "be said to hamper his religious exercise because they [did] not 'pressure [him] to modify his behavior and to violate his beliefs.'" *Id.* (quoting *Thomas*, 450 U.S. at 718). Like [p. 13 of 24] the government's use of social security numbers in *Bowen*, 476 U.S. at 700, the extraction of DNA information, while objectionable

to the plaintiff, involved solely internal government actions that did not affect the plaintiff's ability to exercise his religious beliefs or require action contrary to those beliefs, 553 F.3d 679.

These cases support Plaintiffs' position more than the Government's. In *Bowen*, the Court did not rule on the plaintiff's claim that providing his daughter's social security number violated his religious beliefs. Plaintiffs here do not challenge the Government's internal use of social security numbers; they challenge the requirement that they provide a social security number on their passport applications. *See* Am. Compl. ¶ 118. As such, *Bowen's* majority opinion does not control. The other case the Government points to, *Kaemmerling*, similarly does not support the Government's position. There the plaintiff did not object to the collection of "his fluid or tissue samples." 553 F.3d at 679. Instead, he objected to the government's use of those samples subsequent to the collection. *Id.* Because everything after collection involved only government action, the plaintiff's behavior required no modification and thus was not substantially burdened. *Id.* Here, in contrast, Plaintiffs do object to identifying themselves with and providing social security numbers. They must choose between adhering to their religious beliefs—the sincerity of which is not challenged by the Government nor questioned by the Court—and receiving a government benefit. Accepting as true the factual allegation made in the amended complaint and construing them in Plaintiffs' favor, the Court finds that Plaintiffs have alleged sufficient facts to state a claim under RFRA. *See Singh*, 185 F. Supp. 3d at

217. Accordingly, the Court will deny the Government's motion to dismiss on this claim.

The Government argues in the alternative that it is entitled to summary judgment on Plaintiffs' RFRA claim based on the submitted declarations of government officials. Gov't Mot. [p. 14 of 24] at 11-15. The Court finds that these declarations do not meet the "exceptionally demanding" standard required by RFRA. While the Court understands that the declarations assert a compelling government interest in requiring social security numbers on passport applications, *see id.* (describing the anti-fraud purposes of the social security number requirement), the submitted evidence does not engage in the "more focused" inquiry required by RFRA. *Burwell*, 573 U.S. at 726. RFRA requires a strict scrutiny analysis as applied to the person whose exercise of religion is being burdened. *Id.* The submitted declarations fail to explain why the interest is so compelling given that social security numbers were not required until relatively recently. Nor do they show that the government lacks other means of achieving its desired goals without imposing a substantial burden on the exercise of religion by these Plaintiffs. *Id.* at 728. In fact, the declaration describing the government interests in requiring social security numbers does not mention Plaintiffs at all. *See* Fultz Decl., ECF No. 24-3. Perhaps this is because the record suggests that Plaintiffs' requests for religious accommodations were not seriously considered on their merits when submitted. Accordingly, the Government is not entitled to summary judgment on Plaintiffs' RFRA claim.

C. Plaintiffs' Third Cause of Action

Third, Plaintiffs assert that the Government violated Executive Order 13,798, which, in part, directs executive agencies, "to the greatest extent practicable and to the extent permitted by law, [to] respect and protect the freedom of persons and organizations to engage in religious and political speech." Exec. Order No. 13,798, 82 Fed. Reg. 21,675 (May 4, 2017). Executive Order 13,798 does not create a private right of action. *Id.* ("This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, [p. 15 of 24] or any other person."). Accordingly, the Court grants the Government's motion to dismiss with respect to Plaintiffs' third cause of action.

D. Plaintiffs' Fourth Cause of Action

Plaintiffs also allege that they were denied due process guaranteed by the Fifth Amendment when the Government "deni[ed] access to the appeal process pursuant to 22 [C.F.R.] § 51.70(b)(2)" after Carmichael's renewed passport was revoked and Lewis and Pakosz's passport renewal applications were denied. Am. Compl. ¶ 124.

"For a procedural due process claim to survive a 12(b)(6) motion, a plaintiff must, at minimum, 'identify the process that is due.'" *Gonzalez Boisson v. Pompeo*, Civil No. 19- 2105, 2020 WL 2043889, at *7 (D.D.C. April 28, 2020) (quoting *Doe v. District of Columbia*, 93 F.3d 861, 870 (D.C. Cir. 1996)). "[D]ue

process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). However, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether due process was granted, courts must consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that [an] additional or substitute procedural requirement would entail." *Id.* at 335.

In *Haig v. Agee*, the Supreme Court concluded that a passport holder received adequate due process when he received notice as to why his passport was being revoked and was given the opportunity to request a post-revocation hearing. *See* 453 U.S. 280, 310 (1981) ("[t]he [p. 16 of 24] Constitution's due process guarantees call for no more than . . . a statement of reasons and an opportunity for a prompt post[-]revocation hearing."); *see also Gonzalez*, 2020 WL 2043889 at *7-8 (finding that Gonzalez received adequate due process when she was informed that her passport had been issued erroneously, that it had been revoked under 22 C.F.R. § 51.62(a)(2), and that she could request a hearing). *Haig* also distinguished the freedom of interstate travel from "the 'right' of

international travel [which] has been considered to be no more than an aspect of the 'liberty' . . . . [that] can be regulated within the bounds of due process." *Haig*, 453 U.S. at 306-07 (quoting *Califano v. Aznavorian*, 439 U.S. 170, 176 (1978)); *see also Gonzalez*, 2020 WL 2043889 at *8 (explaining that, under the *Mathews* factors, while Gonzalez had a significant interest in international travel, the government had a strong interest in preventing fraud in passport applications).

Plaintiffs assert that they were improperly denied an appeal process under 22 C.F.R. § 51.70(b)(2). Am. Compl. ¶ 124. Plaintiffs argue that denying them an appeal process violates their right to due process under the Fifth Amendment. *Id.* The Government asserts that the process outlined by its regulations meet the requirements of due process because they are

[Fn 1 - The Government's regulations do not grant appeal hearings to individuals whose passports are revoked or denied for "failure to provide a social security number." 22 C.F.R. § 51.70(b)(2). While Plaintiffs dispute the characterization that they failed to provide their social security numbers and assert that they, instead, provided "the social security number information that applies to" them, Am. Compl. ¶ 124, neither Carmichael, Lewis, nor Pakosz provided his social security number in his passport renewal application. See id. ¶¶ 19–21 (stating that all three plaintiffs requested a religious accommodation rather than provided their social security numbers). Accordingly, the Government properly applied 22 C.F.R. § 51.70(b)(2) to Lewis and Pakosz. The Government, however, did not apply 22 C.F.R. § 51.70(b)(2) to Carmichael. See id. ¶ 33; see also Pls.' Mem. ¶ 57(oo). Carmichael's passport was revoked pursuant to 22 C.F.R. § 51.62(a)(2) because it was issued erroneously, and he was thus given the

opportunity to request a hearing under 22 C.F.R. § 51.70(a). Am. Comp. ¶ 33; see also Pls.' Mem. ¶ 57(oo).]

[p. 17 of 24] consistent with *Haig*, that all three Plaintiffs received notice of the revocation and denials, and that Carmichael received the opportunity for a post-revocation hearing. Gov't Mot. at 18-20. The Government also notes that while Lewis and Pakosz may have been denied the opportunity for a hearing, "the Government unquestionably provided [them] the opportunity to submit [their social security number] or submit a declaration that they had never been issued one." *Id.* at 19-20.

Carmichael received a letter from the Government notifying him that his passport had been issued erroneously, that it had been revoked pursuant to 22 C.F.R. § 51.62(a)(2), and that he had the ability to request a post-revocation hearing. Am. Compl. ¶ 33; *see also* Gov't Mot. at 20. This notice is identical to the procedures found to have met the demands of due process in *Haig*. Accordingly, Carmichael has failed to state a claim that he was denied due process, and the Court grants the Government's motion to dismiss on Carmichael's due process claim.

While the post-revocation procedures afforded to Carmichael are identical to those found to be sufficient in *Haig*, the same cannot be said for Lewis and Pakosz. Unlike in *Haig*, Lewis and Pakosz assert that they were not given the opportunity for a hearing. Am. Compl. ¶¶ 124-25. The Government suggests this presents no due process problem because Lewis and Pakosz were "unquestionably provided . . . the opportunity to submit the

requested information or submit a declaration that they had never been issued [a social security number]." Gov't Mot. at 19-20. But the Court understands Lewis and Pakosz to claim that due process requires a hearing regarding their request for a religious accommodation. The Government does not engage with this allegation. While Government regulations provide the authority to deny passport applications that do not have a social security number, 22 U.S.C. § 2714a(f); *see also* 22 C.F.R. § 51.60(f), Lewis and Pakosz have pointed to a separate and specific procedural defect that they [p. 18 of 24] say violates their right to due process. The Government relies on its regulations to argue that a hearing is not required in these circumstances, but the lack of a social security number on their applications is inextricably intertwined with their request for a religious accommodation. Unlike Carmichael, Lewis and Pakosz had no opportunity for a hearing to explain their request. *See Bauer v. Acheson*, 106 F. Supp. 445, 452 (D.D.C. 1952) (finding that "refusal to renew [a] passport without an opportunity to be heard, was without authority of law"). Because the amended complaint has identified the process due and alleged the denial of an opportunity to be heard, the Court finds that Plaintiffs have properly stated a due process claim with respect to Lewis and Pakosz. *Mathews*, 424 U.S. at 333 ("The fundamental requirement of due process is the opportunity to be heard."); *Gonzalez*, 2020 WL 2043889, at *7.

The Court will grant Plaintiffs leave to amend their complaint with respect to their fourth cause of action related to Carmichael's passport revocation,

noting that, to survive a subsequent motion to dismiss, they must allege sufficient facts that demonstrate that the procedure Carmichael received was constitutionally defective.

E. Plaintiffs' Fifth Cause of Action

Next, Plaintiffs challenge 22 C.F.R. §§ 51.60, 51.70 as overbroad in violation of the First and Fifth Amendments to the U.S. Constitution. Am. Compl. ¶¶ 126-28. A challenge that a law is overbroad is a "type of facial challenge in the First Amendment context under which a law may be overturned as impermissibly overbroad because a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008) (citing *New York v. Ferber*, 458 U.S. 747, 769-71 (1982)) (internal quotations omitted). A similar, though distinct, doctrine exists in the due process context where a law may be void for vagueness if it does not [p. 19 of 24] define "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Beckles v. United States*, 137 S. Ct. 886, 892 (2017) (citations omitted); *see also FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("[The Due Process Clause of the Fifth Amendment] requires the invalidation of laws that are impermissibly vague."). It is not clear whether Plaintiffs sought to invoke either of these doctrines that allow for facial challenges. *See* Am. Compl. ¶¶ 126-28 (asserting that regulations are overbroad but

resulted "in the unlawful denial of *my* passport renewal application[]") (emphasis added). The first challenged regulation gives the Government the authority to deny passports to those who fail to provide their social security number in their passport applications. 22 C.F.R. § 51.60(f). The second states that where passport applications were denied or were revoked for a non-exhaustive list of reasons, including failing to provide a social security number, the applicant does not receive an opportunity for a hearing. 22 C.F.R. § 51.70(b)(2).

Plaintiffs allege that, by applying 22 C.F.R. §§ 51.60, 51.70, the Government is "violating the law of due process protected by the Fifth Amendment," Am. Compl. ¶ 127, and that the Government's actions under 22 C.F.R. §§ 51.60, 51.70 fall outside "the boundaries of the United States Constitution," *id.* ¶ 128. Thus, Plaintiffs claim that the Government's actions under 22 C.F.R. §§ 51.60, 51.70 resulted in the unlawful denial and revocation of their passports and injured their "property and liberty rights in travel." *Id.* These allegations do not support a facial challenge to the regulations as overly broad or impermissibly vague. Plaintiffs do not explain how the challenged regulations are unconstitutional in a "substantial number of [their] applications" in violation of the First Amendment. *Wash. State Grange*, 552 U.S. at 449 n.6. Nor do they explain how the regulations sweep too broadly or too vaguely in the context of due [p. 20 of 24] process. Because Plaintiffs do not expand beyond their conclusory legal allegations, the Court grants the Government's motion to dismiss with respect to Plaintiffs' fifth cause of action. To the extent that Plaintiffs allege that 22

C.F.R. §§ 51.60 and 51.70 resulted in a violation of their rights to due process as applied, that claim is addressed in the Court's analysis of Plaintiffs' fourth cause of action.

F. Plaintiffs' Seventh Cause of Action

Plaintiffs also allege that the Government violated the Privacy Act by failing to state the circumstances under which providing a social security number on a passport application is mandatory and the circumstances under which providing that information is voluntary. *Id.* ¶ 133. Plaintiffs' Privacy Act claim pertains to the requirements under 5 U.S.C. § 552a(e)(3), which states in relevant part that agencies must "inform each individual whom it asks to supply information . . . whether disclosure of such information is mandatory or voluntary." 5 U.S.C. § 552a(e)(3)(A). Plaintiffs allege that the Privacy Act Statement that they received failed "to correctly state in what conditions make [disclosure of a social security number] voluntary and what make[s] [disclosure] mandatory." *See* Am. Compl. ¶ 133. The Court understands Plaintiffs' claim to be that while the Privacy Act Statement indicates that providing a social security number is voluntary, it is in fact mandatory and, therefore, the Government has not complied with the statutory requirements.

The Government does not squarely address Plaintiffs' argument that because disclosure of a social security number is apparently required, the Privacy Act Statement is deficient. Instead, the Government argues that because the Privacy Act Statement contains all the elements required by

statute, Plaintiffs have not properly stated a claim. Gov't Mot. at 21. But the Privacy Act allows an individual to "bring a civil action against the agency" when it "fails to [p. 21 of 24] comply with any [] provision of", the Act. 5 U.S.C. § 552a(g)(1). Plaintiffs have alleged that the Privacy Act Statement does not comply with the law because disclosure of a social security number is mandatory to obtain a passport and yet the Privacy Act Statement says disclosure is voluntary. Am. Compl. ¶ 133. The Government's briefing also suggests that providing a social security number is required to obtain a passport. *See* Gov't Mot. at 21. Given the facts alleged and the Government's failure to address Plaintiffs' contention, the Court finds that Plaintiffs have sufficiently stated a claim under the Privacy Act and denies the Government's motion to dismiss Plaintiffs' seventh cause of action.

[Fn 2 To the extent Plaintiffs claim that the Government failed to "apply the provision for[] 'good cause'" in the Privacy Act, Am. Compl. ¶ 133, such a claim is dismissed. The "good cause" provision of the Privacy Act "permit[s] [an] individual who disagrees with the refusal of [an] agency to amend his record to request a review of such refusal" and have that review completed and a final determination made within 30 days "unless, *for good cause shown*, the head of the agency extends" that time period. 5 U.S.C. § 552a(d)(3) (emphasis added). Here, Plaintiffs are neither attempting to access nor amend their records, so this provision is inapplicable.]

G. Plaintiffs' Eighth Cause of Action

Plaintiffs also claim that the Government violated the First, Fifth, and Ninth Amendments by failing to fulfill their requests that the Government name the individual federal employees involved in

reviewing passport applications. Am. Compl. ¶¶ 135-37. However, Plaintiffs do not cite any law that requires the Government to name individual federal employees and do not explain why the Government's alleged failure to do so constitutes a violation of Plaintiffs' constitutional rights. *See id.* Accordingly, the Court grants the Government's motion to dismiss with respect to Plaintiffs' eighth cause of action.

H. Plaintiffs' Sixth & Ninth Causes of Action

[p. 22 of 24] Finally, Plaintiffs claim that the Government violated two federal criminal statutes. First, in their sixth cause of action, they allege that the Government violated 42 U.S.C. § 408(a)(8). *Id.* ¶ 130. Section 408(a)(8) makes it a felony to "compel[] the disclosure of the social security number of any person in violation of the laws of the United States." 42 U.S.C. § 408(a)(8). Second, in their ninth cause of action, Plaintiffs allege that Secretary Pompeo "and his agents" violated 18 U.S.C. § 241 by "conspir[ing] to injure, oppress, threaten or intimidate [them] . . . in the free exercise" of religion. Am. Compl. ¶ 139. Section 241 provides that "two or more persons [who] conspire to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution . . . shall be fined . . . or imprisoned." 18 U.S.C. § 241.

Criminal statutes "rarely" provide a private right of action. *Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979). "A 'bare criminal statute' with no other statutory basis for inferring that a civil cause of action exists, is insufficient to imply Congress

intended to create a concomitant civil remedy." *Leonard v. George Washington Univ. Hosp.*, 273 F. Supp. 3d 247, 256 (D.D.C. 2017) (quoting *Lee v. U.S. Agency for Int'l Dev.*, 859 F.3d 74, 77-78 (D.C. Cir. 2017)). In *Alexander v. Wash. Gas Light Co.*, this Court held that 42 U.S.C. § 408(a)(8) "does not provide a basis for a private civil cause of action." 481 F. Supp. 2d 16, 33 (D.D.C. 2006), *aff'd*, No. 06-7040, 2006 WL 3798858 (D.C. Cir. Aug. 24, 2006) (per curiam). Similarly, in *Crosby v. Catret*, the D.C. Circuit affirmed this Court's holding that § 241 does not create a private right of action. *See* 308 F. App'x 453, *1 (D.C. Cir. 2009); *see also Leonard*, 273 F. Supp. 3d at 256 ("It is established that Sections 241 and 242 of Title 18 of the U.S. Code provide 'no private right of action[.]'"). Accordingly, the Court grants the Government's motion to dismiss on Plaintiffs' sixth and ninth causes of action.

[p. 23 of 24] **V. OTHER PENDING MOTIONS**

Several other motions remain pending before the Court; they are resolved as follows.

Plaintiffs opposed the Government's motion requesting an extension of time to file an answer. *See* Mot. Extension Time, ECF No. 9; Pls.' Opp'n Mot. Extension Time, ECF No. 13. Alongside their opposition, Plaintiffs submitted a motion for order. Mot. for Order, ECF No. 14. Because the Court granted the Government's motion for an extension of time, *see* Order, ECF No. 11, the Court denies Plaintiffs' motion for order as moot.

Plaintiffs moved to request that the docket reflect the Court's November 20, 2019 order

granting Plaintiff Carmichael's motion to amend his complaint to add the U.S. Department of State as a defendant. Mot. to Amend, ECF No. 21. Because the docket already reflects this information, this motion is denied.

Plaintiffs moved for an electronic filing user name and password. Mot. CM/ECF Password, ECF No. 23. The Court denies this motion without prejudice. Under Local Rule 5.4(b)(2), Plaintiffs must describe their access to the internet, confirm their capacity to file documents and receive filing electronically on a regular basis, and certify that they have completed the Clerk's Office on-line tutorial. LCvR 5.4(b)(2). Plaintiffs' motion only certifies that Carmichael has completed the on-line tutorial. *See* Mot. CM/ECF Password. Plaintiffs can refile this motion with the required information.

Plaintiffs moved to add Carmichael's original complaint to the record and to add Lewis and Pakosz's motions for joinder to the record. Mot. Misc. Relief, ECF No. 33; Mot. Misc. Relief, ECF No. 36. Because these documents already appear on the docket, the Court denies these motions.

[p. 24 of 24] Plaintiffs moved for a hearing on the pending motion. Mot. for Hearing, ECF No. 37. Whether to grant a motion for an oral hearing is within the discretion of the Court. *See* LCvR 7(f). Because the Court has decided the pending motions based on the parties' written submissions, the Court denies this motion.

Finally, Plaintiffs have moved to compel answers to their discovery requests propounded on the Government. Mot. Compel, ECF No. 40. This motion is denied as premature because the Court has not yet entered a scheduling order to govern discovery.

VI. CONCLUSION

For the foregoing reasons, the Government's motion to dismiss (ECF No. 24) is **GRANTED** with respect to Plaintiffs' first, third, fourth (with respect to Carmichael), fifth, sixth, eighth, and ninth causes of action; it is **DENIED** with respect to Plaintiffs' second, fourth (with respect to Lewis and Pakosz), and seventh causes of action. The Government's motion in the alternative for summary judgment is **DENIED**. Plaintiffs' motion for partial summary judgment and injunction (ECF No. 28) is **DENIED**. Plaintiffs' other pending motions (ECF Nos. 14, 21, 23, 33, 36, 37, 40) are **DENIED**. Plaintiffs will be given leave to file an amended complaint with respect to their fourth cause of action within thirty days. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: August 28, 2020 RUDOLPH CONTRERAS
United States District Judge

United States District Court,
District of Columbia
Case No: **19-CV-2316-RC**

David Alan Carmichael, *et al.*	)
Plaintiff,	) Case No: **19-cv**
	) **-2316-RC**
v.	)
	) **Complaint**
Michael Richard Pompeo, *et al.*	) **'Amended'**
	) **For** Matter of
	) Due Process
	) Re: ECF 45,

Complaint – Second Amendment

INTRODUCTION

1. This is a civil action about a federal question regarding government accommodation for religion. The Defendant has more than once provided a religious accommodation for Plaintiffs' requests for the Defendant to issue to a passport starting in 2007 and 2008, notwithstanding that the Plaintiffs did not identify with a Social Security Number (hereinafter "SSN"). It may have helped Carmichael to obtain a passport in 2008 and a passport renewal in 2018 due to evidence of the bona fides, sincerity, and the practice, of his Christian religion was from the judgments against the government that he obtained in a SSN religious accommodation case in 2002-2006 in David Alan Carmichael v. United States, 297 F3d. 1367, U.S.

Ct. App. (Fed. Cir. 2002) (dismissal vacated); 66 Fed. Cl. 115, U.S. Ct. Fed. Cl. (2005) (unlawful discharge and military pay); 70 Fed. Cl. 81, 86 (2006) (E.A.J.A.)

2. Carmichael had vouched for the sincerity of the faith of some people in the past in order for them to receive an accommodation for their religion to not identify with a SSN to get their passport. Plaintiff Pakosz told Carmichael that his passport renewals request was denied because he did not provide a SSN. Unlike Pakosz, Carmichael's accommodation was granted January, 2018. Yet, Plaintiff Lewis recently had his passport denied for the same reason as Pakosz.

3. When Carmichael contacted the passport agencies, Congressional Representatives, and the White House to try to get access to a policy/practice correction for William and others, an agent of the Defendant retaliated by sua sponte cancelling Carmichael's current passport that had been obtained by religious accommodation. Beside the First Amendment, the Religious Freedom Restoration Act, and the President's Executive Order 13798 Promoting Free Speech and Religious Liberty (82 FR 21675) and its accompanying memorandum by the Attorney General, the US Code relating to passports prohibits the refusal of a passport for things protected by the First Amendment (free exercise of religion, etc.). The agent in Sterling, Virginia, will allow an accommo-dation to the SSN if someone can prove that a SSN has never been associated with them or for other 'technical' reasons, but seems hell-bent on excluding a passport to those who cannot identify with a SSN for reasons of religion.

4. There is a U.S. Supreme Court SSN religious objection case, *Bowen v. Roy*, 476 U.S. 694, 708 (1986), whose approach to religion jurisprudence diverged from the compelling interest standard of *Sherbert v. Verner*, 374 U.S. 398 (1963), and was cited in the Employment Division v. Smith, 494 U.S. 872 (1990) to support its divergence from the *Sherbert* rule. Yet, even in *Bowen's* analysis, the Court said that hostility toward religion would be shown if the agency grants an exception for one reason yet denies the exception for religion.

5. This matter requires the court's declaration of law as it relates to the constitutionality of the conduct of United States officers and agents, the guiding statutes and regulations. The remedy required is writ of mandamus, declaratory judgment, and injunction for protection of religion, and other relief in law and equity, and compensation for costs and fees where allowable by statute. The case is brought 'pro se' until such time as any of the Plaintiffs can find a lawyer to assist them, notwithstanding their poverty. This is the Complaint submitted by Carmichael on July 31, 2019, amended to include Joined parties in accordance with the Directive of the Court Order of November 21, 2019.

PARTIES

6. I, David Alan Carmichael (herein "Carmichael"), am the Plaintiff, domicil of origin in California. I reside in Virginia. I have the civil rights of a natural born citizen of the United States of America, for the personam jurisdiction of the courts of the United States. Within a week of filing my complaint, I Joined as complainant William

Mitchell Pakosz (herein "Pakosz"), born in Illinois, and Lawrence Donald Lewis (herein "Lewis"), born in New Jersey; having all the natural, common and civil rights of nationals or citizens of a State and the United States. Facts in each Lewis's and Pakosz's situation are parallel to Carmichael's; the Defendant's, the Jurisdiction, Venue, counts, and the relief are the same.

7. The Defendant is, Michael Richard Pompeo, in his official capacity as the Secretary of State of the United States of America. The Defendant shall also be the United States Department of State, and may also be co-conspirators and agents that shall be identified or confirmed upon discovery. The offices of his are located at 2201 C. Street, N.W., Washington, D.C., 20520.

8. The Defendant is also the United States, accountable for the Constitutionality of its positive law and the regulations of its agents; and is accountable for costs, compensation not sounding in tort, or other things sounding in tort allowable under the Federal Tort Claims Act; or where redress, relief, compensation or other things are provided by Acts of the Congress of the United States.

JURISDICTION

9. The court has original jurisdiction in this case of law and equity, and the laws of the United States, pursuant to the Constitution, according to United States Statutes At Large encoded in the United States Code series at 5 USC §552a, §§701-706; 18 USC §241, §245; 42 USC §408, §2000bb-1; 28 USC §1331, §1346, §1361, §2201, §2202 for Writ of Mandamus, Declaratory Judgment, Injunction,

Restitution of costs and fees, Damages where allowable and Further Relief.

VENUE

10. Pursuant to Federal Civil Procedure, 28 USC §1391 and §88, venue is properly in the United States District Court, District of Columbia, where the Defendant and his agency's headquarters are in the City of Washington, D.C.

STATEMENT OF FACTS

11. Each of us has a need, a desire, a duty of religion and a right to exit and reenter the United States at will in the ordinary course of life, business, and Carmichael for the sake of Christian evangelism ministry. Carmichael has for the purposes of religion gone to another country where the use of the United States passport (hereinafter "passport") was a necessity to accomplish that Christian ministry duty. Carmichael has been invited to assist in Christian missions-ministry where the use of a passport is necessary to exit this country, enter another, and to return.

12. The law of the United States at 8 USC §1185 says "...it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport." The Plaintiffs have no other documents for travel that will suffice for the purposes of a passport. Denial of a United States passport for which each is denied, unlawfully, makes the Plaintiffs' outlaws to travel to and from the United States, notwithstanding that some of that travel is for Christian Ministry and evangelism.

It **places a substantial burden upon Plaintiffs' religion, liberty and property rights.**

13. The U.S. passport application/renewal forms, DS-11 and DS-82 state:

> "FAILURE TO PROVIDE INFORMATION REQUESTED ON THIS FORM, INCLUDING YOUR SOCIAL SECURITY NUMBER, **MAY** RESULT IN SIGNIFICANT PROCESSING DELAYS AND/OR THE DENIAL OF YOUR APPLICATION." (Emphasis added)

14. Each of the Plaintiffs are prohibited from identifying with a Social Security Number (hereinafter SSN) on the basis of the Christian religion. Each man's belief and practices are sincere and bona fide. Any demand for either of them to identify with a SSN **places a substantial burden upon their religion**.

15. The sincerity and bona fides of Carmichael's belief and practice of religion, as well as the substantial burden identifying with a SSN places upon his religion, were tested in the case *David Alan Carmichael v. United States,* 297 F3d. 1367, U.S. Ct. App. (Fed. Cir. 2002) (vacating dismissal); 66 Fed. Cl. 115, U.S. Ct. Fed. Cl. (2005) (unlawful dishcharge and military pay); 70 Fed. Cl. 81, 86 (2006)(E.A.J.A.), where he prevailed substantially, obtaining a judgment in a military pay case where his request for religious accommodation was not processed in accordance with law and regulation.

16. Carmichael applied for a U.S. Passport on or about December 17, 2007, requesting a religious accommodation to the requirement to identify with a SSN. He explained that his belief and practices of religion makes identifying with a SSN something which he cannot do. The accommodation request

was approved and he was issued a U.S. Passport on or about January 23, 2008, passport #436634760.

17. December 2007, Pakosz was issued a passport from the Department of State without having to identify with a social security number. His application included a request for religious accommodation with a letter to Secretary of State Condoleezza Rice explaining the bona fides of his religious beliefs and practices that prohibit him from identifying with a SSN. The section below, "Other Facts Particular to Plaintiff William Mitchell Pakosz" contains matters relating to the recent denial of his passport renewal application.

18. Lewis applied for a passport in the year 2008. He made a request for religious accommodation on the basis of Christian religion which demands that he cannot provide a Social Security Number (hereinafter "SSN"). He explained the duties of his religion in a letter enclosed with the passport application. The Defendant provided a religious accommodation for my request and issued a passport to him on May 02, 2008, Passport Number 445066501, notwithstanding that he did not identify with a SSN. The section below, "Other Facts Particular to Plaintiff Lawrence Donald Lewis" contains matters relating to the recent denial of his passport renewal application.

19. On or about January 20, 2018, Carmichael applied to renew his passport. He explained in writing a reiteration of the basis for his request for religious accommodation to not have to identify with a SSN. He addressed his letter to "The Honorable Rex W. Tillerson, Secretary of State." He addressed it to Secretary Tillerson, since he understood that he had the authority and particular responsibility to

apply the laws protecting religion for the accommodation of my religion. He invoked 42 USC § 2000bb and the First Amendment. His accommodation request was approved and he was issued a U.S. Passport in January 30, 2018, passport #573308010.

20. On or about August 16, 2017, Pakosz submitted his application to renew his passport that was originally issued December 11, 2007. In keeping with the renewal application instructions, he submitted his then-current passport with the renewal application. His application for passport renewal was sent with a request for religious accommodation and a note in the SSN block, "Religious Prohibition 42 USC 2000bb." He sent a copy of that correspondence to the Defendant as an exhibit 1 in his letter to him on February 20, 2019.

21. April 3, 2019, Lewis submitted his Passport Renewal Application, with his then current passport, a photograph suitable for the passport, and a payment of $110.00 for the required renewal fee. Included with his application was an express request for religious accommodation to get relief from the form's request to identify with a SSN. He addressed his letter to "The Honorable Mike Pompeo, Secretary of State, United States Department of State, Via: National Passport Processing Center, P.O. Box 90155, Philadelphia, Pennsylvania 19190-0155."

22. Pakosz contacted Carmichael and asked for assistance in getting a passport. Pakosz allowed Carmichael to act as Pakosz agent in contacting the Defendant's offices in Sterling, Virginia. Carmichael knows of other people in his Christian fellowship or association that are facing similar

problems obtaining passports. When Carmichael found that the Defendant's Branch Director of the Sterling, Virginia Office was particularly involved in the denial of Pakosz renewal request, Carmichael and others wrote letters to the U.S. President, Vice-President, and legislators in the attempt to obtain a political solution. He asked for access to the White House's Religious Freedom Task Force that was announced in the news media. Instead of sending Carmichael's correspondence to the Task Force, or giving Carmichael a contact there, the White House sent Carmichael's correspondence to the very office of the Defendant that was the problem.

23. Apparently in retaliation to his redress activities, a rogue agent of the Defendant sent a letter to Carmichael saying that his current passport renewed on January 30, 2018, has been cancelled and cannot ever be renewed unless he identifies himself with a SSN.

24. Carmichael oversees a Christian evangelism and discipleship missions-ministry since 1998. In about 1999, he founded a ministry of biblical pastoral counseling and comfort, to those who abide by the Christian religion of not identifying with the 'Number of the Beast' SSN. He serves3there under the auspices of the American Christian Liberty Society (hereinafter A.C.L.S.)

25. Carmichael contacted the Defendant's agency on behalf of Pakosz on or about March 12, 2019. He contacted the agency in Sterling, Virginia, by telephone and spoke to Christine L. McClean, Branch Director, who introduced herself as Chris McClean without disclosing her title.

26. When Carmichael stated to Chris McClean that Pakosz was told in a letter that he could not

have an appeal hearing because he had not given a SSN, and that Defendant had not disclosed an alternative to the appeal hearing to obtain a religious accommodation, Chris McClean, stated that there was no other process than the appeal hearing for accommodation of religion and that the law did not give the Defendant any discretion regarding religion. Carmichael rebutted her. The conversation was:

> Carmichael: "...,. He recently got a letter back and it merely stated that it was from Bureau of Consular Affairs, Passport Services, Office of Legal Affirs, Law Enforcement Liaison. It sort of said, 'No, we can't do it. You don't get an appeal hearing if you don't provide a SSN.' But one of the things about his letter, it was very clear. It was a request for religious accommodation. He certainly wasn't willfully, intentionally, negligently or recklessly not providing an SSN. And so he addressed the issue of, it says they "may" turn it down but it doesn't say "must" turn it down. He put a FOIA in there asking actually who it is that makes the determinations, so that if he's going to have to get it turned down or has to deal with the situation that they actually know the person who it is that's making the determination. So I'm calling, (--), to find information about who it is, if there is no hearing over it being denied over an SSN, what is the process for religious accommodation because that process has not been disclosed here?"
>
> Defendant.: "The process for religious accommodation? There is not a separate process for that. The law does not give the Department

of State any discretion. So (--)"

Carmichael: (interrupting) "Except the word is may. May is pretty discretionary."

27. On or about March 12, 2019, Chris McClean stated that Pakosz's February 20, 2019 letter to Defendant Mike Pompeo had been forwarded to the proper office according to Pakosz's directive.

28. On or about March 12, 2019, Carmichael sent a letter to Chris McLean. She did not reply to the letter in accordance with Carmichael's request for information. Carmichael stated:

> "In the references (*sic*) conversation, I pointed out that the denial of the passport for not providing a SSN on the application is not something that "requires" disapproval. Support for that position is adequately addressed in William Pakosz's letter requesting the appeal hearing and religious accommodation.
>
> It is improper to deny an appeal hearing. Your office, or some office which needs to be disclosed, needs to assign a hearing officer who will schedule the hearing and allow the hearing to take place. The "hearing" once requested is not something that a hearing board has the discretion to deny. It must occur, and then let the hearing board or officer make their ruling, and let the accountability fall where it may.
>
> In our conversation, you said that William Pakosz's letter to the Secretary of State was forwarded to the proper office. You did not say which office that was. Please provide the contact information to the office and person to whom William Pakosz's letter was sent. Please provide the name and title of the person in your Office of Legal Affairs that has the highest supervisory

position. Who is the person in the agency who is supposed to assign a hearing officer when someone requests an appeal hearing? Again, I have been granted power of attorney by William Pakosz to speak to your agency in this matter."

29. On or about March 13, 2019, Carmichael sent to the Department of State FOIA Officer, a Freedom Of Information Act (FOIA) to which requested documents showing:

"1. The Freedom Of Information Act Officer or Officers at the Bureau of Consular Affairs, Passport Services at Sterling, Virginia.

2. The Name, Title and contact phone number of the Officers of the State Department that serve at the Bureau of Consular Affairs, Passport Services at Sterling, Virginia; and of the Officers of the Bureau of Consular Affairs, Passport Services, Office of Legal Affairs; and of the Officers of the Bureau of Consular Affairs, Passport Services, Office of Legal Affairs, Law Enforcement Liaison.

3. The meaning of department codes shown on the enclosure "CA/PPT/S/L JN59". I can deduce that CA means Consular Affairs; Particularly, I need to see a document that would show what the "JN59" code means, or who JN59 is, what is the person's name, title and phone contact number.

4. The Title of and office of Chris McLean who works at that bureau cited herein and that can be found at phone number (202) 485-6400"

30. Defendant's FOIA Officer did not respond to Carmichael's FOIA of March 13, 2019.

31. May 9, 2019, on behalf of himself and the American Christian Liberty Society, Carmichael

sent letters to the Congresspersons Honorable Elaine Luria, Honorable Mark Warner, Honorable Tim Caine, to the Vice President, and to the President saying:

> "Many in our Christian Fellowship are being denied original passports or renewed passports unless we violate our Christian religious practices. The passport processing service in Sterling, Virginia has granted some of our applications for passports on the basis of our request for religious accommodation; and have denied some applications saying that they are not authorized to honor requests for religious accommodation. One officer, Chris McLean, told me on the phone today that our denied applications are not allowed an appeal hearing and that there is no appeal process for reasons of religion. She said there is an accommodation for some people for technical reasons, but no accommodation for religion. Her statement is squarely contrary to your Executive Order 13798 and the Attorney General's "MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES, Federal Law Protections for Religious Liberties." Substantiating documentation is available upon your request.
>
> Please provide access to the Religious Liberty Task Force so that we can find relief to the substantial burden being placed upon us."

32. On or about June 22, 2019, Carmichael received a letter from the White House stating that they sent his correspondence to the appropriate Federal agency, without saying what agency to which they referred his correspondence.

33. On or about June 24, 2019, Carmichael

received express delivery by United Parcel Service, from JN59, DOS-CA/PPT/HQ, 600 19TH STREET, N.W., WASHINGTON DC 20006, tracking number 1ZX3370W3694466644. In the envelope was a letter from the United States Department of State, Washington, D.C. 20520, dated JUN 2 0 2019 to me at Carmichael's home. The letter stated:

> "The Department of State has revoked U.S. Passport number 573308010, issued to you in error on January 30, 2018. This action is taken in accordance with 22 C.F.R. § 51.62 (a)(2), which provides that a U.S. passport may be revoked when it has been determined that the passport was obtained illegally, fraudulently or erroneously. The regulations cited in this letter may be found at http://www.ecfr.gov.
>
> Department records show that you submitted an application for a U.S. passport by mail in May 2018, without listing a social security number (SSN) on the application. You also submitted a statement about why you would not provide your SSN.
>
> Consistent with 22 U.S.C. 2714a and 22 C.F.R. 51.60(f) the Department requires that passport applicants provide their SSN on their application, if they have been issued one. For applicants who were never issued an SSN, then the Department requires a declaration under penalty of perjury to that effect. Failure to provide the SSN, or "willfully, intentionally, negligently, or recklessly" providing an incorrect or invalid SSN, or failing to provide an appropriate declaration, will result in the denial of the application. As you did not provide your SSN or an appropriate declaration, U.S. Passport

number 5773308010 should not have been issued and is revoked pursuant to 22 C.F.R. § 51.62 (a)(2).

Under 22 C.F.R. §§51.7 and 51.66, the U.S. passport remains the property of the U.S. Government and must be surrendered upon demand. Please immediately return U.S. Passport number 573308010 to the following address: U.S. Department of State, CA/PPT/S/L/LA, 44132 Mercure Circle, P.O. Box 1227, Stering, VA 20166-1227.

You may request a hearing under 22 C.F.R. §§ 51.70-51.74. The hearing would take place in Washington, DC and would only address the basis upon which the Department revoked your passport. If you choose to request a hearing you must submit your request in writing by mail to the address above within sixty (60) days from receipt of this letter. The revocation is final and is not stayed by a request for a hearing.

Because the passport was issued based on our error, you may reapply for a passport without paying additional fees by submitting a new complete Form DS-82, U.S. Passport Renewal Application that includes your SSN **within 90 days** to:

National Passport Center
Attn: Jason Galvin
44231 Mercure Circle
P.O. Box 1108
Sterling, VA 20166-1108

If you do not submit this application within 90 days, should you wish to obtain a passport, you will need to re-apply by properly submitting a new passport application along with all

required documents and paying all application fees, following the instructions found at http:travel.state.gov.

Sincerely,
Bureau of Consular Affairs
Passport Service
Office of Legal Affairs and
Law Enforcement Liaison"

34. On or about July 2, 2019, Carmichael received a letter dated June 25, 2019, post marked June 26, 2019, from the Defendant, CA/PPT/S/L ST12, stating:

Thank you for contacting The White House regarding your concerns surrounding the U.S. passport application process. This response assumes that your concerns surround the social security number requirement on U.S. passport applications. Your inquiry was forwarded to this office for response.

Pursuant to 22 U.S.C. 2714a, passport applicants must provide their social security number (SSN) on their application, if they have been issued one. Failure to provide the SSN, or "willfully, intentionally, negligently, or recklessly" providing an incorrect or invalid SSN will result in the denial of the application. See 22 C.F.R. 51.60 (f). Pursuant to 22 C.F.R. 51.70, a hearing is not provided for applications denied or passports revoked for failure to provide a social security number. However, if the applicant does not have a social security number and has never been issued one, they cannot provide one on their application. However, in such an instance they are required to provide a declaration signed under penalty of perjury

explaining the reasons. You may also see the FAQs found at https://travel.state.gov/content/travel/en/passports/apply-renew-passport/faqs.html#ssn for additional information.

35. The Defendant Agent's June 25, 2019, cited above was not signed but merely cited, "Office of Legal Affairs and Law Enforcement Liaison, Office of Passport Services, Bureau of Consular Affairs.

36. Among the letters Carmichael had been shown by the members of his family and others in the Plaintiff's Christian Fellowship of the A.C.L.S., they were shown the affidavit that the Defendant, in particular one in the Sterling, Virginia office, wants them to sign in order to get a passport without providing a SSN. Though in their June 25, 2019, statement they said that a declaration "explaining the reasons" was sufficient to obtain an application without a SSN; **their practice is to exclude religious reasons and only allow one 'technical' reason**. The Defendant, particularly Christine L. McClean, requires an affidavit that declares that the Social Security Administration (hereinafter SSA) has never "issued" such a number associated with the applicant. In each of the Plaintiff's case, the situation is ambiguous. Each has sent a letter to the Commissioner of SSA on October 1, 1996 or some other office relating to the matter, to void application that might have been done on their behalf or those of their households. In Carmichael's letter, he explained that the SSN agency associated his name with their records due to direct and extrinsic fraud, and that he was prohibited by religion from identifying with a SSN. The other Plaintiffs sent similar letters. The

Commissioner did not send a response letter nor did the Commissioner refute Carmichael or the other Plaintiff's claim of being disassociated from the SSN.

37. The Plaintiffs cannot sign an "affidavit" saying that 'they' have never been associated with a SSN. They have never been able to get the SSA to officially suppress their records for their name like the SSA does for other Christian sects like the Amish. The Plaintiffs cannot, in good conscience, sign an affidavit about a third person about whose records they cannot have first-hand knowledge. They understand the command of religion "thou shalt not bear false witness" applies to testimony about which one is not a witness.

38. The Defendant Agent's June 20, and June 25, 2019, letters reiterated the circular reasoning that Carmichael, and the Plaintiffs, must continue to apply for a passport, that there will be no appeal hearing, and that the matter of religion and the laws, Executive Order and other things protecting religious are wantonly disassociated from their clear requests for accommodation of religion. The Defendants showed that there is an accommodation for secular technical reasons, but the particular agent deciding upon the matter in this instance is hostile toward religion. So hostile, that (probably she) retroactively and *sua sponte* usurped the higher authority of the Secretaries of State Secretary Rice and Tillerson who applied the accommodation in 2007 and 2008 for the Plaintiffs and in 2018 for Carmichael in a manner that upholds the law protecting religion.

39. The Defendant's Agent excluded the matter of religion in each of her official letters. Those acts of

the Defendant are direct and extrinsic fraud.

40. The fraudulent supposed-cancellation of Carmichael's passport appears to be retaliation or retribution for his administrative actions to help Pakosz and others in their Christian Fellowship, to secure the renewal of his or their passports obtained by religious accommodation.

Other Facts Particular to
Plaintiff Lawrence Donald Lewis

41. I applied for a passport, to be issued by the Defendant, in the year 2008. I had to make a request for religious accommodation in order to have the passport issued. On the basis of Christian religion, I could not provide a Social Security Number (hereinafter "SSN"). I explained the duties of my religion in a letter enclosed with the passport application. The Defendant provided a religious accommodation for my request and issued to me a passport on May 02, 2008, Passport Number 445066501, notwithstanding that I did not identify with a SSN.

42. April 3, 2019, I, Plaintiff Lewis, submitted my Passport Renewal Application, my then current passport, a photograph of me suitable for the passport, and a payment of $110.00 for the required renewal fee. Included with my application was an express request for religious accommodation to get relief from the form's request for me to identify with a SSN. I addressed my letter to "The Honorable Mike Pompeo, Secretary of State, United States Department of State, Via: National Passport Processing Center, P.O. Box 90155, Philadelphia, Pennsylvania 19190-0155."

43. In my letter explaining my request for religion accommodation, I asked for the Defendant

to apply "the Religious Freedom Restoration Act, 42 USC §2000bb, et seq.; and the self-executing First Amendment, whether or not there is a statutory requirement to obtain or identify with a SSN for a passport of (sic) for any other reason." I also cited other ordinances:

> ""Thank you for implementing and applying Executive Order 13798 and its "MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES titled, "Federal Law Protections of Religious Liberties." Thank you also for honoring 22 USC Section 2721. (Which states, in pertinent part:
>
> **22 USC §2721, Impermissible basis for denial of passports.**
>
> A passport may not be denied issuance, revoked, restricted, or otherwise limited because of any speech, activity, belief, affiliation, or membership, within or outside the United States, which, if held or conducted within the United States, would be protected by the first amendment to the Constitution of the United States." (Aug 1, 1956, ch. 841, title I, §49, as added Pub. L. 102-138, title I, §113, Oct 28, 1991, 105 Stat. 655.)""

44. In my request for accommodation, I pointed out that I am 69 years old, I would be eligible for Social Security but do not collect it due to my obligations of religion.

45. I signed my request for religious accommodation under the Penalty of Perjury.

46. I received a reply from the Defendant, from his Sterling, Virginia, office. The letter was dated May 1, 2019 and referenced their tracking number 297428458. The letter stated:

"Dear Mr. Lewis:
Thank you for your recent passport application. However, your Social Security Number was not provided on your passport application. Please provide your Social Security Number by clearly writing it in the spaces provided below.
_____-_____-_____
If you have never been issued a Social Security Number, please submit a signed statement under penalty of perjury to that effect or used the following:
To whom it may concern,
I,_____
(*print full name*) declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.
Executed
on:_____
(DATE)
Signature:_____
(Sign using full name as indicated on the passport application)"

47. The Defendant's May 1, 2019 letter stated that I had ninety days to comply. At the ninety-day mark, July 29, 2019, I responded to the Defendant's letter. I sent again a copy of my original letter pointing out my request for religious accommodation. I pointed out that the Defendant either had not read or was ignoring my request for religious accommodation. I reproved the Defendant for ignoring and violating law protecting religion. I also stated:

""A federal lawsuit will be hugely costly of time

and money. Please avoid this by READING and correctly APPLYING my "Request for Religious Accommodation," originally allowing issuance of the original Passport approximately 11 years ago WITHOUT SSN for duty of religion. I am sure is (sic) in the file you currently have.""

48. I signed my July 29, 2019 letter "Under penalty of perjury, under the laws of the United States, the foregoing statement and enclosures I hereby declare to be true."

49. August 29, 2019, the Defendant responded to my July 29, 2019 letter. There the Defendant stated:

"Thank you for your passport request. Your passport application was submitted on **4/3/2019**. You submitted a passport application that did not provide your correct Social Security Number. Under the 22 U.S.C 2714a, a passport application may be denied if the applicant does not provide her/his Social Security Number or willfully, intentionally, negligently, or recklessly provides an incorrect or invalid Social Security Number.

On **5/1/2019**, we requested that you provide your Social Security Number. You either did not provide your Social Security Number or provided an incorrect or invalid Social Security Number. Therefore, a U.S. passport cannot be issued to you at this time, and your application is denied.

Sincerely,
Customer Service Department
Enclosure(s):
Passport # 445066501"

50. The Defendant committed acts of direct and

extrinsic fraud in his August 29, 2019 denial letter. The Defendant excluded the facts relating to the express request for religious accommodation. The Defendant included a citing of "22 U.S.C 2714a," yet excluded his duty under, and the citing of, 22 U.S.C. § 2721. He falsely, without having any evidence to support it, stated or inferred that I "willfully, intentionally, negligently, or recklessly provided an incorrect or invalid Social Security Number."

51. Like the Carmichael complaint for which I join, the Defendant, or his agent, communicated that the matter of religion and the laws, Executive Order and other things protecting religious freedom were wantonly disassociated from my clear request for accommodation of my religion. It showed that there is an accommodation for secular technical reasons, but the particular agent deciding upon the matter in this instance is hostile toward religion. So hostile, that (probably she) usurped the higher authority of the law that Secretary of State Rice applied the accommodation in 2008.

Other Facts Particular to Plaintiff William Mitchell Pakosz

52. I, William Mitchell Pakosz, had presented facts that established requisite elements of the bona fides of my religion and the Defendant in no way challenged those, tacitly admitting to their fidelity. Without any facts contradicting me, and without any law to support his and his agency's acts (5 USC §701 – definition of agency), the Defendant and his agency do not have the discretion in law to deny my applications for passport renewal under the facts, circumstances and law put before him, whereby they place a substantial burden upon my religion.

53. December 2007, I was issued a passport from

the Department of State without my having to identify with a social security number, notwithstanding that the passport application form requested that I identify with such a number. My application included a request for religious accommodation with a letter to Secretary of State Condoleezza Rice explaining my bona fides of my religious beliefs and practices that prohibit me from identifying with a SSN.

54. At the time that my religion was accommodated and my passport issued without my identifying with a SSN in 2007, the laws of the United States that give permission for the Defendant to ask for such a number are either exactly the same or are substantially the same as they are today. Recently, the Defendant has been unlawfully denying my requests for renewal of my passport contrary to the prior practice.

55. On or about August 16, 2017, I submitted my application to renew my passport that was originally issued December 11, 2007. In keeping with the renewal application instructions, I submitted my passport with the renewal application. My application for passport renewal was sent with a request for religious accommodation and a note in the SSN block, "Religious Prohibition 42 USC 2000bb." I sent a copy of that correspondence to the Defendant as an exhibit 1 in my letter to him on February 20, 2019.

56. On or about, September 1, 2017, the Defendant acting through his Passport Processing Center in Sterling Virginia sent a letter requesting me to provide a Social Security Number or sign an affidavit regarding the records of the Social Security Administration. I understand that I cannot

rightfully execute an affidavit about somebody else's records of which I have no first hand knowledge. I understand that I have not cognitively applied for a SSN; that any association of my name with any sort of SSA record is or would be a matter of identity theft from direct or extrinsic fraud. The form sent by the Defendant had no OMB Number. The United States Code of Federal Regulations explains at 5 CFR §1320 explains that I have no duty to answer such a query from the Defendant when there is no valid OMB number on the query form. I sent a copy of that correspondence to the Defendant as an exhibit 2 in my letter to him on February 20, 2019.

57. On or about, September 8, 2017, I sent a letter to the Defendant explaining that I was requesting a religious accommodation, that it is necessary, and that it had been accommodated by the State Department previously. I sent a copy of that correspondence to the Defendant as an exhibit 3 in my letter to him on February 20, 2019.

58. On or about September 22, 2017, the Defendant through the Passport Processing Center in Sterling Virginia sent a letter explaining that my passport application "may" be denied, but not that it "must" be denied if I "willfully, intentionally, negligently, or recklessly" provides an incorrect or invalid social security number. None of those things applied to my application. I sent a copy of that correspondence to the Defendant as an exhibit 4 in my letter to him on February 20, 2019.

59. On or about October 3, 2017, I reiterated my request for a passport renewal to Secretary of State Rex Tillerson. I enclosed with that request to renew my passport my recent passport, the September 22, 2017 denial letter, and the letter I had sent to

Secretary of State Condoleezza Rice the first time my passport was approved with a religious accommodation. I sent a copy of that correspondence to the Defendant as an exhibit 5 in my letter to him on February 20, 2019.

60. On or about November 10, 2017, I reiterated my request for my passport renewal in a letter to Secretary of State Rex Tillerson. I sent a copy of that correspondence to the Defendant as an exhibit 6 in my letter to him on February 20, 2019.

61. On or about January 12, 2018, I called the National Passport Center phone number, 877-487-2778 and spoke to David. I explained my difficulty in obtaining a passport under 42 USC 2000 bb and he recommended to wait for a phone call from the passport center. Geno called me and gave me instructions to (1) reapply for a passport at the National Passport Center and (2) attempt to get the expired passport back from Secretary of State Rex Tillerson's office that I sent on the October 3, 2017.

62. On or about January 13, 2018, I supplied another passport application to the Defendant as directed by Geno from the National Passport Processing Center to renew my passport that was originally issued #434370467. I paid the fee again. Nobody ever told me about a process for appeal, only to reapply and pay again. I sent a copy of that correspondence to the Defendant as an exhibit 7 in my letter to him on February 20, 2019.

63. On or about January 13, 2018, I wrote a letter to Secretary of State Rex Tillerson's office asking them to return the original passport that I had mailed to him with my request for religious accommodation. I sent a copy of that correspondence to the Defendant as an exhibit 8 in

my letter to him on February 20, 2019.

64. On or about February 2, 2018, I contacted the passport office again at 202-485-6373 and spoke to Cheryl Muzzo. I sent with my letter, DS11 passport renewal form and DS64 lost or stolen passport form because I was told to do so. I also reiterated my request for religious accommodation. I sent a copy of that correspondence to the Defendant as an exhibit 9 in my letter to him on February 20, 2019.

65. On or about February 12, 2018, I was contacted by the Defendant through a Susan from the U.S. Department of State National Passport Center who told me that I needed to send in a Social Security Statement Form.

66. On or about February 14, 2018, in reply to Susan's request of February 12, 2018, I sent a letter to the Defendant via the National Passport Center reiterating my request for religious accommodation and referencing the two docket numbers that were assigned to my case, 286329363 and 284901802. I included the affidavit form that they requested, expressing specifically my convictions of religion. I sent a copy of that correspondence to the Defendant as an exhibit 10 in my letter to him on February 20, 2019.

67. On or about March 22, 2018, I sent a follow-up letter and a reiteration of my request for religious accommodation. I sent a copy of that correspondence to the Defendant as an exhibit 11 in my letter to him on or about February 20, 2019.

68. On or about April 2, 2018, the Defendant through the National Passport Center, Sterling, Virginia, sent an unsigned letter to me from the "Customer Service Department" stating that I had submitted a passport application on January 15,

2018. "You submitted a passport application that did not provide your correct social security number." The letter then stated that they request "that you provide your Social Security Number." Notwithstanding my request for religious accommodation, the letter from the Customer Service Department stated, "Therefore, a U.S. passport cannot be issued to you and your passport is denied." I had no way of knowing who it was at the passport center in Sterling, Virginia that is violating the law. The statute cited as an authority only says that a passport "may" be denied under circumstances that do not apply to me or my situation. I was not told of any appeal process. I sent a copy of that correspondence to the Defendant as an exhibit 12 in my letter to him on or about February 20, 2019.

69. On or about April 12, 2018, I replied to the Defendant's denial letter pointing out that I had also sent other information to verify my identity. I sent information that explains the SSN offence against religion in a document called "The Mark of The Beast... It Is Here, Now". I sent a copy of that correspondence to the Defendant as an exhibit 13 in my letter to him on or about February 20, 2019.

70. On or about April 12, 2018, I submitted an information letter to Senator Duckworth asking her to do anything that he could to help me.

71. On or about May 8, 2018, I wrote directly to the Secretary of State, Mike Pompeo (Defendant), with a copy of my application for passport that I sent on January 15, 2018 with a copy of my letter to Senator Duckworth and a copy of a U.S. District court document where my religious accommodation was upheld for the sake of voting. I sent a copy of

that correspondence to the Defendant as an exhibit 14 in my letter to him on or about February 20, 2019.

72. On or about June 26, 2018, I wrote a letter to Senator Dick Durbin asking him to intervene. I sent a copy of that correspondence to the Defendant as an exhibit 15 in my letter to him on or about February 20, 2019.

73. On or about August 30, 2018, I wrote to the Defendant via the National Passport Center in Sterling, Virginia, pointing out that I had responded to their denial letter in a timely fashion. I requested the name of the Authorizing Officer (As defined in 22CFR§51.1) who is approving or disapproving my passport. I requested information that ought to be provided according to the Freedom Of Information Act. Customer Service Department is not the Authorizing Officer. I also requested the means of appeal. I sent a copy of that correspondence to the Defendant as an exhibit 16 in my letter to him on or about February 20, 2019.

74. On or about October 2, 2018, the Defendant via the National Passport Center in Portsmouth, New Hampshire sent a letter saying they are returning documents to me without saying which they were returning, for what reason. I sent a copy of that correspondence to the Defendant as an exhibit 17 in my letter to him on or about February 20, 2019.

75. On or about November 16, 2018, I wrote to the Defendant via that same National Passport Center in Portsmouth, New Hampshire and I requested an Administrative Hearing under Section 51.70, a Written Determination signed by the Administrative Officer or his Delegate covering 42

USC 2000bb and Executive Order 13798, and answer to my Freedom Of Information Request. I sent a copy of that correspondence to the Defendant as an exhibit 18 in my letter to him on or about February 20, 2019.

76. On or about November 20, 2018, I sent a letter again to the Secretary of State Mike Pompeo asking for a religious accommodation request regarding my passport application. I sent a copy of that correspondence to the Defendant as an exhibit 19 in my letter to him on or about February 20, 2019.

77. On or about December 4, 2018, the Defendant via the National Passport Center in Sterling, Virginia responded and said that they sent my request to the Bureau of Consular Affairs, Passport Services, Office of Legal Affairs. I sent a copy of that correspondence to the Defendant as an exhibit 20 in my letter to him on or about February 20, 2019.

78. On or about December 12, 2018, I sent a letter to the Defendant via the office of legal affairs reminding them that I was seeking a religious accommodation. I sent a copy of that correspondence to the Defendant as an exhibit 21 in my letter to him on or about February 20, 2019.

79. On or about February 20, 2019, I sent a letter with twenty two exhibits that was intended to be my last attempt at administrative redress to the Defendant. I sent a letter addressed directly to him, Mike Pompeo via his office in Sterling, Virginia via the Legal Affairs office where provided and copy to that Legal Affairs office and directed them to send my letter to Mike Pompeo where I said:

""My application for passport renewal was

sent to you with a request for religious accommodation (See Enclosures 1 -21 associated with the enclosed timeline). The passport application form directed me to identify myself with a Social Security account number (SSN), which I cannot do for reasons of religion. I have sent many timely correspondences to your officers regarding my applications to renew my passport, yet the passport offices have not fulfilled their legal duties. Your denial was based on a form that I am not required to answer since it has been sent to at least ten people and it has no OMB number (5 CFR 1320). There is no actual denial of my request since the purported "denial" was done without authority in law and without fulfilling the specifications cited by the CFR, and my protests have been timely, my passport renewal request is not expired.""

80. As well, my February 20, 2019 letter to the Defendant exclaimed that:

a. My passport renewal application gave me a right to an administrative hearing, that my application ought to be approved, or otherwise for him to cite the authority that permitted him from denying it on the basis of religious accommodation."

b. I cited his legal ministerial duty to approve my application showing that I the laws which would legitimately deny a passport did not apply to me.

c. I pointed out that the purpose of Congress giving authority to the Secretary of State to deny a passport application for the applicant refusing to provide a SSN is clearly **not** stated for the purpose of forcing someone to make the SSN an

element of their identity.

d. I stated:

""In my case, I am not a person who qualifies for denial under 22 UCS 1714a(f)(1)(A)(i) or (ii). I placed the words, "None, Religious Prohibition" in the SSN blocks to indicate my need for religious accommodation. **I am duty bound by religion to not participate in identifying with a SSN**. Secondly, the Social Security Administration has power over its records, not over me. They issue numbers to account records. An SSN might only be contemplated as mine if I had cognitively applied for such a number. That is not the case. There cannot be a "correct" SSN related to me. The Social Security Administration Commissioner said the "correct" SSN for someone in my position is "Religious Objector."" (Enclosure 22 of my February 20, 2019 letter)

e. I cited the reasons and provisions for a "good cause" and cited *Bowen v. Roy*, 476 US 693, 708 (1986):

""**If a state creates such a mechanism, its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent**. Thus, as was urged in Thomas, to consider a religiously motivated resignation to be "**without good cause**" tends to exhibit hostility, not neutrality, towards religion. See Brief for Petitioner 15, and Brief for American Jewish Congress as Amicus Curiae 11, in Thomas v. Review Board of Indiana Employment Security Div., O. T. 1979, No. 79-952. See also Sherbert, supra, at 401-402, n.

4; United States v. Lee, 455 U. S., at 264, n. 3 (STEVENS, J., concurring in judgment)"" [Emphasis added]

f. I cited Executive Orders 9397 and 13478 that say the Defendant "may" not "must" use a SSN as a matter of convenience not a compelling mandate.

g. I cited and explained the application of the Religious Freedom Restoration Act, explaining that I had sincere and bona fide religious beliefs and practices against which his SSN demand placed a substantial burden.

h. I cited Executive Order 13798 and the implementing "MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES, Federal Law Protections for Religious Liberties" explaining that the Defendant has a duty to provide a mechanism for accommodation of religion.

i. I quoted the Memorandum – Protections for Religious Liberties where it said:

"**It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom**. ...Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. **The executive branch will honor and enforce those protections**." (Emphasis added)

" **Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place**. It also encompasses religious observance and practice.

Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming."

"Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society."

"RFRA applies to all actions by federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration."

"In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion." (emphasis added)

"That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program." (emphasis added)

"In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations

of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so...."

""The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. **To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming**. See Zorach v. Clauson, 343 U.S. 306, 314 (1952) ("[Government] follows the best of our traditions ... [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.")."" (emphasis added)

j. I said in summary and reiterated my request:

"Wherefore, I can find no authority in law for the Secretary of State to refuse my passport renewal application. Therefore, I respectfully request that my passport renewal application be immediately approved and that the renewed passport be sent to me."

81. On or about March 12, 2019, by way of my agent, I contacted the Defendant via his offices in

Sterling, Virginia. My agent spoke to the Defendant's agent Chris McLean, in the office of Legal Affairs, Law Enforcement Liaison that was referenced on the DS-11 and DS-82 forms and by correspondence I received from the Defendant directing me to that office to obtain access to an appeal hearing.

82. When my agent stated that I was told in a letter that I could not have an appeal hearing because I had not given a SSN, and that Defendant had not disclosed an alternative to the appeal hearing to obtain a religious accommodation, Chris McLean, stated that there was no other process than the appeal hearing for accommodation of religion and that the law did not give the Defendant any discretion regarding religion. My agent rebutted her. The conversation is cited at Paragraph 26. above.

83. On or about March 12, 2019, Chris McLean stated to my agent that my February 20, 2019 letter to Defendant Mike Pompeo had been forwarded to the proper office according to my directive.

84. On or about March 20, 2019, the Defendant sent me a list of things they would need in order to fulfill my Freedom Of Information Act request. They said I needed to send a copy of my valid passport, or other identification which I do not possess in order for them to fulfill the FOIA request.

85. On or about April 8, 2019, I wrote a letter to Christine L. McLean, Branch Director, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs, 44132 Mercure Circle, P.O. Box 1227, Sterling, Virginia 20166-1227. I reiterated my request for passport record information. I sent a $50 postal money order. I pointed out that the

request for information form did not fulfill the regulatory requirements of a valid "OMB" number resulting in a form which has not 'mandate' authority for the request of private information. None-the-less, I sent an affidavit with a current photo the fulfills passport specifications. I have not received a response.

86. On or about May 7, 2019, I wrote a letter to the Vice-President of the United States, telling him of my previous religious accommodation and of the current difficulties I am having with the Defendant imposing upon my religion. I asked him to provide information giving me access to the Religious Liberty Task Force. I did not receive a reply.

87. On or about June 14, 2019, I wrote a letter to the Christine L. McLean, Branch Director, U.S. Department of State, CA/PPT/S/L, 44132 Mercure Circle, P.O. Box 1227, Sterling, Virginia 20166-1227. I explained to her the grave injury she has where she has damaged my soul where I am denied visits with my family in foreign lands to commemorate the evils our family has suffered through persecution by the Nazis.

88. The Defendant has not told me, nor does the Defendant believe, that any of the information I have given is false and I am not under any threat of being prosecuted under 18 USC §§1001, 1542, 1621. The U.S. passport/renewal applications state:

> "WARNING: False statements made knowingly and willfully in passport applications, including affidavits or other documents submitted to support this application, are punishable by fine and/or imprisonment under U.S. law including the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542, and/or 18 U.S.C. 1621."

89. I provided "reasonable cause" information to the Defendant, and I did not commit "willful" neglect but rather conveyed the "reasonable cause."

90. I am not one of those persons for which the Defendant needs to scrutinize for tax or debt collection purposes, or for malevolent conduct, or for any other disqualifier for a passport. I gave a declaration to the Defendant regarding that.

Other Facts Related to All Plaintiffs

91. Each Plaintiff has a need and want to be able leave and return to the United States, and travel to other countries while carrying a valid passport. They have no other documents for travel or that will suffice for the purposes of passport use.

92. The Social Security Administration, in an April 11, 2003 letter from Charles A. Mullen, Social Security Administration, Associate Commissioner, Office of Public Inquiries, made the official statement that:

> "The Social Security Act does not require a person to have a Social Security number to live and work in the United States, nor does it require a Social Security number simply for the purpose of having one."

93. **The statutes controlling passports, at 22 USC §2721 says:**

> "A passport may not be denied issuance, revoked, restricted, or otherwise limited because of any speech, activity, belief, affiliation, or membership, within or outside the United States, which, if held or conducted within the United States, **would be protected by the first amendment** to the Constitution of the United States." (Emphasis added)

94. The government has no compelling interest in

associating the Plaintiffs with a SSN, especially for the purposes for which the SSN is requested relating to the passport.

95. The U.S. Supreme Court indicated in *Bowen v. Roy*, a SSN religious objection case that under the circumstances of the Plaintiffs' case, the accommodation that they requested was improperly denied and Carmichael's was unlawfully supposedly spontaneously cancelled:

> ""**If a state creates such a mechanism, its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent**. Thus, as was urged in Thomas, to consider a religiously motivated resignation to be "**without good cause**" tends to exhibit hostility, not neutrality, towards religion. See Brief for Petitioner 15, and Brief for American Jewish Congress as Amicus Curiae 11, in Thomas v. Review Board of Indiana Employment Security Div., O. T. 1979, No. 79-952. See also Sherbert, supra, at 401-402, n. 4; United States v. Lee, 455 U. S., at 264, n. 3 (STEVENS, J., concurring in judgment)"" [Emphasis added] *Bowen v. Roy*, 476 U.S. 694, 708 (1986)

96. The U.S. passport/renewal forms state:

"You do not have to supply this information unless this collection displays a currently valid control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison, 44132 Mercure Cir, P.O. Box 1227, Sterling, Virginia 20166-1227"

97. The Form sent by the Defendant, demanding information, did not display a currently valid control number.

98. The U.S. passport/renewal applications state:

> "WARNING: False statements made knowingly and willfully in passport applications, including affidavits or other documents submitted to support this application, are punishable by fine and/or imprisonment under U.S. law including the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542, and/or 18 U.S.C. 1621."

99. Nowhere in the "Proof of Identity" section of the U.S. passport/renewal application forms is the SSN stated to be required though it says later that the SSN is used to verify identity.

100. It is the Tax Law section of the U.S. passport U.S. passport/renewal application forms that state the reason and authority that allows the State Department to ask for a Social Security Number is:

> "Section 6039E of the Internal Revenue Code (26 U.S.C. 6039E) and 22 U.S.C 2714a(f) require you to provide your Social Security number (SSN), if you have one, when you apply for or renew a U.S. passport. If you have never been issued a SSN, you must enter zeros in box #5 of this form. If you are residing abroad, you must also provide the name of the foreign country in which you are residing. The U.S. Department of State must provide your SSN and foreign residence information to the U.S. Department of the Treasury. If you fail to provide the information, your application may be denied and you are subject to a $500 penalty enforced by the IRS. All questions on this matter should be referred to

the nearest IRS office."

101. Thus says, Section 6039E of the Internal Revenue Code (26 USC 6039E):

"(a) General rule Notwithstanding any other provision of law, any individual who—

(1) applies for a United States passport (or a renewal thereof), or shall include with any such application a statement which includes the information described in subsection (b).

(b)Information to be provided Information required under subsection (a) shall include—

(1) the taxpayer's TIN (if any), (4) such other information as the Secretary may prescribe.

(c)Penalty

Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty equal to $500 for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect."

102. The enforcement of 26 USC 6039E is not the denial of a passport, but a $500 fine, "unless it is shown that such failure is due to reasonable cause and not to willful neglect." The Plaintiff's provided "reasonable cause" information to the Defendant, and did not commit "willful" neglect but rather conveyed the "reasonable cause."

103. **The Use of Social Security Number** section on the U.S. passport/renewal application forms state:

"Your Social Security number will be provided to U.S. Department of Treasury, used in connection with debt collection and checked against lists of persons ineligible or potentially ineligible to receive a U.S. passport, among other authorized uses.

104. **The Privacy Act Statement** section on the U.S. passport/renewal application forms state:

"**AUTHORITIES**: Collection of this information is authorized by 22 U.S.C. 211a et seq.; 8 U.S.C. 1104; 26 U.S.C. 6039E, 22 U.S.C. 2714a(f), Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; Executive Order 11295 (August 5, 1966); and 22 C.F.R. parts 50 and 51.

PURPOSE: We are requesting this information in order to determine your eligibility to be issued a U.S. passport. Your Social Security number is used to verify your identity.

ROUTINE USES: This information may be disclosed to another domestic government agency, a private contractor, a foreign government agency, or to a private person or private employer in accordance with certain approved routine uses. These routine uses include, but are not limited to, law enforcement activities, employment verification, fraud prevention, border security, counterterrorism, litigation activities, and activities that meet the Secretary of State's responsibility to protect U.S. citizens and non-citizen nationals abroad. More information on the Routine Uses for the system can be found in System of Records Notices State-05, Overseas Citizen Services Records and State-26, Passport Records.

DISCLOSURE: Providing information on this form is voluntary. Be advised, however, that

failure to provide the information requested on this form may cause delays in processing your U.S. passport application and/or could result in the refusal or denial of your application. Failure to provide your Social Security number may result in the denial of your application (consistent with 22 U.S.C. 2714a(f)) and may subject you to a penalty enforced by the Internal Revenue Service, as described in the Federal Tax Law section of the instructions to this form. Your Social Security number will be provided to the Department of the Treasury and may be used in connection with debt collection, among other purposes authorized and generally described in this section." (Emphasis of 'underline' added)

105. The passport renewal application form DS-82 has the same, or substantially the same statements quoted at the paragraphs above relating to the passport application form DS-11.

106. The Plaintiff's are not those who are subject to the denial of their passport renewal on the basis of those things listed or referenced on the application form.

107. The Defendant is hiding or allowing his agents to unlawfully hide the identity of those who have acted, and are acting, to violate the laws of the United States to the Plaintiffs' injury and the injury of their religion.

108. The Defendant failed to follow the directives of Executive Order 13798 and its implementing memorandum for all departments entitled Federal Law Protections For Religious Liberties. He has also failed to disseminate it to his subordinate actors and train them to apply E.O.

13798 and its implementing directives.

109. The Defendant and his agents knew and should have known that to cancel Carmichael's passport and to deny Plaintiffs' passport renewals, knowing the lack of SSN was on the basis of sincere and bona fide religion that is substantially burdened, was clear violation of the Bill of Rights; 42 USC §2000bb, et seq.; E.O. 13798 and its implementing directives from the Attorney General; and 22 USC §2721.

110. The Defendant and his agents acted in bad faith to deny Plaintiffs Lewis and Pakosz passport renewal applications and to spontaneously after-the-fact cancel Carmichael's approved religious accommodation request and passport, knowing their previous passport and Carmichael's current passport was approved as a matter of religious accommodation while deliberately and artfully dodging that fact in the Defendant's correspondence about the matter. 111. It took two or more persons, the named Defendant and other actors of his to conspire together for some of the unlawful acts and deprivation of the Plaintiffs' rights cited in this complaint.

112. The U.S. Passports of the Plaintiffs were arbitrarily, capriciously, in bad faith, in abuse of discretion, colorably cancelled or their renewals were denied contrary to the facts, law and national policy in effect when the actions by the Defendant were taken.

113. On September 28, 2019, Carmichael was scheduled to attend a reunion of the first ship upon which he served, the USS PAUL F FOSTER, EDD-964, the only Spruance Class destroyer remaining in service. His lack of a passport excluded him from

having identification suitable for entering the military property of the United States to visit that ship with his shipmates. He had no suitable identification to travel to California by air on November 15th to collect his aged and infirmed mother to transfer her to his home in Virginia to lived with him there permanently. The Defendant's unlawful interference with this limited opportunity is gravely egregious to the Plaintiffs' life, liberty and property rights, and is a great offence to their very soul.

Amendment Two ¶1. Plaintiff Carmichael was told by several people, as well as Plaintiffs Lewis and Pakosz, that their U.S. passports were denied for not providing a SSN, even though the applicant had explained their religious prohibition against identifying with a SSN. Those people said that the passport agency sent them the same affidavit form sent to Plaintiffs Pakosz and Lewis. The passport agency explained that they would have to apply again, but would continue to be denied a passport unless they identified with a SSN or filled out the affidavit form swearing, "I (name) declare under the penalty of perjury under the laws of the United States that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration." Plaintiff Carmichael understood that his reapplying would manifest the same denial-result and Plaintiffs Lewis, Pakosz, and others who were told to continue reapplying, only next time provide a SSN or fill in the form which Plaintiff Carmichael could not file in good conscience. Carmichael understood that he cannot rightly swear to hearsay information, nor could he in good conscience participate in the

violation of 44 U.S.C. §3512, nor could he swear to something that was a distortion of the matter at hand.

Amendment Two ¶2. Notwithstanding that he made a forthright request for religious accommodation, Plaintiff Pakosz was told that he must continue to reapply for a passport, with the anticipation that his next application would be denied so long as he did not identify with a SSN, or file an affidavit saying , "I (name) declare under the penalty of perjury under the laws of the United States that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration." Plaintiff Pakosz objections were the same as those of Carmichael cited in Amendment Two ¶1.

Amendment Two ¶3. Plaintiff Lewis received a letter from the passport agency, saying his passport was denied because he did not identify with a SSN or file an affidavit saying, "I (name) declare under the penalty of perjury under the laws of the United States that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration." Plaintiff Lewis's objections were the same as those of Carmichael cited in Amendment Two ¶1.

Amendment Two ¶4. Because we believe that the Social Security Administration only has power to issue Social Security Account Numbers to their Social Security Account records; each of us Plaintiffs believe that we can honestly say the phrase, "**I** have never been issued a Social Security Number by the Social Security Administration." Each of us also believe that we cannot in good faith file an affidavit about somebody else's activities or

records but that affidavits are only relevant and valid if they are done as a testimony of what is a matter of our first-hand cognizance and experience rather than what might be based upon hearsay.

Amendment Two ¶5. Each of us Plaintiffs believe that no man has any authority to issue any thing to us individually against our individual will, especially when the thing issued is prohibited by the absolute law of the Creator as revealed in the Bible.

Amendment Two ¶6. Plaintiff Pakosz, in 2018, gave to Plaintiff Carmichael a copy of every correspondence, and notes from every conversation, that he had with the State Department regarding his passport applications and denials. Plaintiff Carmichael was aware of the conditions put upon Pakosz and other people to swear "I have never been issued a Social Security Number by the Social Security Administration" and of the futility of reapplying to reach the same result.

Amendment Two ¶7. Notwithstanding the semantics of making a statement saying "I" have never been issued a SSN where records can only be issued a Social Security Account record number, all Plaintiffs presume that swearing such a statement might be perceived as a fraud by some who have a different understanding of the semantics.

Amendment Two ¶8. Each of the Plaintiffs knows of no way that they are a threat to national security and have not been told by any person that they are a threat to national security.

Amendment Two ¶9. The Defendants falsely claim, in their memoranda to the District Court, that they provided Carmichael due process through a post-revocation hearing. Their June 21, 2019 revocation letter cited where appeals processes are

found but misstated that an appeal was available (Memorandum [Memo.] Attachment 1). The opposite is true under the circumstances according to the regulations that apply, namely 22 U.S.C. §51.60(f) and §51.70(b)(2). The Defendants truthfully claimed that such appeal due process is not available where they stated in correspondence to Carmichael and in correspondence to Pakosz and to Lewis, of which Carmichael was privy, saying:

> "In your letter, you also requested an administrative hearing. Please be advised that **you are not entitled to a hearing under Sections 51.70 through 51.74** of the passport regulations in Title 22 of the Code of Federal Regulations. **A hearing is not provided in a case of an adverse passport action taken for failure to provide a SSN**." Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison ltr. to William Pakosz, FEB 26 2019, of which David Alan Carmichael was made privy contemporaneously. (Memo. Attachment 2) (Emphasis added)
>
> "However, **our regulations don't provide hearings for no security number** for denial. And there are certainly other legal avenues available outside the administrative hearing process." Christine McClean, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison statement to David Alan Carmichael, March 12, 2019 in phone conversation. (Memo. Attachment 3) (Emphasis added)
>
> "Pursuant to 22 C.F.R. 51.70, **a hearing is not provided** for applications denied **or passports**

revoked for failure to provide a social security number." Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison ltr. to David Alan Carmichael, June 25, 2019, regarding correspondence forwarded to them by the White House. (Memo. Attachment 4) (Emphasis added)

Amendment Two ¶10. Plaintiff Carmichael's passport was renewed, January 30, 2018, after Carmichael submitted a passport renewal application on January 20, 2018, along with a request for religious accommodation because he could not identify with a SSN. (Memo. Attachment 5). The letter requesting religious accommodation text is herebelow:

"David Alan Carmichael
1748 Old Buckroe Road
Hampton, Virginia 23664
January 20, 2018
The Honorable Rex W. Tillerson
Secretary of State
United States Department of State
Via: National Passport Processing Center
P.O. Box 90155
Philadelphia, PA 19190-0155
RE: Passport Application Without SSN For Sincere and Bona Fide Religion
Mr. Secretary,

I have enclosed my current passport (Encl. 1) and my passport renewal application and photograph (Encl. 2) along with my payment of $110.00 (Encl. 3), and evidence of the United States recognizing and accommodating my practice of religion (Encl.4).

I came to understand that participation in Social Security and identification with its number is prohibited in the scriptures of the Holy Bible. I discovered that any association of my name with a SSN had been done as a matter of fraud. I wrote to the Social Security Administration over twenty years ago, October 1, 1996, rescinding the application that had been submitted associating my name with a SSN, explaining the fraud and a particularly the prohibitions of religion . Over ten years ago, I won a money judgment against the United States when my government employer opposed my disassociation with SSN identification. David Alan Carmichael v. United States, 298 F3d. 1367, U.S. Ct. App. (Fed. Cir., Aug. 2002); 66 Fed. Cl. 115, U.S. Ct. Fed. Cl. (2005). Through that judgment as well as its judgment payment (Encl. 4, showing the term "n/a" in the TIN block), the United States government has demonstrated that it recognizes the religion-based self-executing exception from the requirement of identifying with a SSN. Your recognizing the self-executing exception to the requirement on the issuing of my current passport reinforced that important principle of law.

I understand that you use an electronic chip embedded in the passport book that enables the passport. Ensure that there is no SSN associated with your records since any association of my name with a SSN would have to be on the basis of fraud and fraudulent identity theft and I would therefore not be able to use such a passport without participating with

the fraud as well as violating the prohibitions of the Holy Bible, Revelation, Chapter Thirteen, inter alia.

Please continue to provide accommodation on the basis of religion according to the Religious Freedom Restoration Act, 42 USC 2000bb, et seq., and the self-executing First Amendment, whether or not there is any statutory requirement to obtain or identify with a SSN for a passport or any other reason.

Thank you for your service. May our Heavenly Father continue and increase His favor upon you as you serve as one of His ministers according to His grace and power.

Respectfully yours,

Under the penalty of perjury, under the laws of the United States, the foregoing statement and enclosures I hereby declare true:

[*Signature – David Alan Carmichael*]

DAC/slf

1) Current Passport

2) Passport Renewal Application, Form DS 82, with current photo (Memo. Attachment 6)

3) Payment $110.00, Draft# 051406543 1333572301 1232

4) Judgment Fund Voucher For Payment, 1JAN2006 Fax from U.S. Justice Dept. to U.S. Treasury Dept." (Memo. Attachment 7)

Amendment Two ¶11. In Block "5. Social Security Number" of the passport renewal form DS-82, I, Plaintiff David Alan Carmichael wrote, "N/A 42 USC 2000bb see letter." I referred to my letter addressed to Secretary of State Rex W. Tillerson, requesting religious accommodation, mailed with

my passport renewal application DS-82. (Memo. Attachment 6)

Amendment Two ¶12. Enclosed with my passport renewal application form DS-82 on January 20, 2018, Plaintiff David Alan Carmichael provided a copy of Judgment Fund Voucher For Payment, 1JAN2006 Fax from U.S. Justice Dept. to U.S. Treasury Dept (Memo. Attachment 7). That form was a communication from the United States Department of Justice to the United States Department of Treasury, regarding the payment and tax reporting of a money judgment payment of $165,020.50 to me where I paid approximately $38,000 in taxes. The Department of Justice in block "6. **Taxpayer Identification Number(s):" used the term "n/a" which means not applicable**. According to Treasury Regulations, the Taxpayer Identification Number for individuals is the Social Security Number.

Amendment Two ¶13. The full conversation between David Alan Carmichael and Christine McClean of Consular Affairs, Passport Services, Legal Affairs, Law Enforcement Liaison was recorded by David Alan Carmichael on March 12, 2019, and turned into a transcript verified under oath by affidavit on March 21, 2019. The verified conversation transcript is (Memo. Attachment 3) :

> "Chris McLean: Hello, Chris McLean.
>
> David: Hello, I'm David Alan Carmichael. I'm calling on behalf of the American Christian Liberty Society and for one of our members who made a request for religious accommodation, and he's given me power of attorney. I drafted a letter for him a couple of weeks ago, and he signed it, and it was a request for religious

accommodation. He recently got a letter back and it merely stated that it was from Bureau of Consular Affairs, Passport Services, Office of Legal Affairs, Law Enforcement Liaison. It sort of said, 'No, we can't do it. You don't get an appeal hearing if you don't provide a SSN.' But one of the things about his letter, it was very clear. It was a request for religious accommodation. He certainly wasn't willfully, intentionally, negligently or recklessly not providing an SSN. And so he addressed the issue of, it says they "may" turn it down but it doesn't say "must" turn it down. He put a FOIA in there asking actually who it is that makes the determinations, so that if he's going to have to get it turned down or has to deal with the situation that they actually know the person who it is that's making the determination. So I'm calling, on behalf of, to find information about who it is, if there is no hearing over it being denied over an SSN, what is the process for religious accommodation because that process has not been disclosed here.

Chris McLean: The process for religious accommodation. There is not a separate process for that. The law does not give the Department of State any discretion. So....

David: (interrupting) Except the word is may. May is pretty discretionary.

Chris McLean: Have you, yeah, I'm just trying to pull it up. Give me a moment here.

David: And we do have other members who have had their passports approved, in the same circumstance. In fact out of Sterling, Virginia.

Chris McLean: **They have Social Security**

Numbers, and have they gotten passports recently.

David: Then I can explain that, pretty well. There are people who were identified with a SSA record years ago when they were children, and then as adults came to the conclusion that they couldn't participate. They couldn't identify with the number. And then, at that point, you know, the response from the Social Security Administration is 'Well just don't identify with the number.' So, okay, press on smartly. And then, when you get in situations like this, like you request a passport, to get it renewed, then it depends on who is across the isles. Some people, they'll send back this thing, 'please sign this affidavit that says you've never had an SSN. Well, as I understand, you're probably a lawyer, but that's a little problematic because how do you an affidavit of first-hand-knowledge of second-hand information. That's a little squirley. Because there are some people, depending on when they wrote the Social Security Administration, either their records were suppressed, or I think the proper term is suppressed. And they've gotten letters from the Social Security Administration saying, 'You've never had a number' because the record was suppressed. Then there was a point when they stopped that procedure. So people are caught in this quagmire. As we see it, especially if it says "may", they may disapprove it if its, you know, somebody's committing fraud or they owe fifty-thousand dollars or more to the IRS and their trying to dodge it, that would be a reasonable reason to deny a passport. And we're all for it.

But when you put a person in a position where, hey! I can't help what somebody else's record is but I personally cannot identify with that thing and a passport is an identification thing, and if you look at the Religious Freedom Restoration Act and also the current memorandum to all departments on religious freedom, it goes into great detail about the back-flips that government needs to do when it has a conflict with somebody like William and myself. Because I'm in the situation and of course but my passport got approved. And there's other people across the country who got their passport approved, but then William's is not. So we're trying to find out who is it? You can look at the, like the hearing officer, is there something that prohibits a hearing officer from looking at the specifics here and say, "What's the intention of the statute?" The intention is against those who owe fifty-thousand dollars or more, have had due process with the IRS. The intention is to identify them and to keep them at home. Of course, there is great history in law for that. But there's also great history in law for saying, 'okay, you don't really fulfill the compelling interest that we're looking for here.' 'You're an honest guy with sincere abiding convictions even to the point where it hurts you.' 'So we believe you're sincere, and of course, all we want to make sure it that you are a nice guy whose not trying to dodge something and leave the country.' Seems to me that there, the appeal process ought to be able to address all the laws, not just 22 USC 2714a. (*sic*)

Chris McLean: Okay. That'd be nice. I understand the point you are making. However,

our regulations don't provide hearings for no security number.

David: Okay.

Chris McLean: ... **for denial**. And there are certainly other legal avenues available **outside the administrative hearing process**. But this Department's position on this is very clear and fairly articulated which is that in order to obtain a United States passport, which is not an entitlement, ?? then you need to comply with the requirements set by the Department, and those requirements include either providing a social security number or certifying that you do not have a social security number, meaning that a social security number has never been issued to you.

David: So there's one question that I have, to kind of close out, and a statement. But I'll start with my statement. There was a very interesting Social Security Number that went to the Supreme Court. It was Bowen versus Roy, it was Bowen B O W E N versus Roy. One of the things that Bowen versus Roy said there, and actually it precipitated the Smith versus Employment Division case that Congress actually wrote the RFRA to counter. But one thing about Bowen versus Roy, it said, if a agency provides a alternative for some non-religious reason, that it shows hostility toward religion when it provides a, let's say, technical accommodation, but not one for religion. I don't know where you are on the policy. Most likely you're probably somebody who has great input on how your department or your branch looks at these things. So I encourage you to do that. So, and so we kinda

gotta close this conversation here – What I'd like to do now is to know whether the accommodation request was sent to the Secretary of State because it seems to me, and us when we put the thing together, that if nobody else has the prerogative, it's not in the hearing processing, the due process through the, you know, appeal hearing or whatever, that no doubt that the Secretary of State who makes regulations would have the reservation and prerogative, and actually I think ministerial duty if he looks at the facts, to actually provide the accommodation. How do we know whether, cause we don't see it in this letter, whether that request was actually forwarded to the proper office.

Chris McLean: It was forwarded to the proper office.

David: That's fabulous.

Chris McLean: And again, Department policy is very clear and it is set out in multiple locations that a Social Security Number is required (--).

David: Again, my encouragement to you is to consider the Executive Memorandum that was published, I think two years ago, almost two years ago, in October 2017, for all Departments that they would apply religious accommodations. And that's it. I really appreciate your information. And the very important thing was to know yes that it was forwarded, because there is a stress reliever right there. That was really helpful. Thank you very much. You're Chris McLean and I appreciate your time.

Chris McLean: Hm, hm.

David: Okay, b-bye."

Amendment Two ¶14. Christine McClean

of Consular Affairs, Passport Services, Legal Affairs, Law Enforcement Liaison discovered that Carmichael's passport had been approved without a SSN during the conversation where Carmichael said, "Because I'm in the situation and of course but my passport got approved." (Memo. Attachment 3)

Amendment Two ¶15. There is no statute or regulation that would mandate the Defendants send to the Plaintiffs, a form demanding a statement regarding those things that do, or might, disqualify someone from being issued a passport pursuant to 22 C.F.R. §51.60(a)-(h).

Amendment Two ¶16. There is no statute or regulation that prohibits the Defendants from issuing passports to Carmichael, Pakosz or Lewis, unless they first fill out a statement form other than the passport application, declaring their status or other information regarding thing that do or might disqualify someone from being issued a passport pursuant to 22 C.F.R. §51.60(a)-(h).

Amendment Two ¶17. The person who initiated Carmichael's passport revocation has not been disclosed by the Defendants. On the basis of the conversation Carmichael had with Christian McClean on March 12, 2019, and the other correspondence between Carmichael, Pakosz and the Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison, Plaintiff Carmichael believes that it is likely that Christine McClean initiated the passport revocation in what Carmichael believes is a retaliation because of his attempts to help Pakosz achieve accommodation for religion, and for Carmichael's whistle-blowing to the White House.

Amendment Two ¶18. Plaintiff Carmichael believes it is likely that the passport revocation initiator did not communicate to Jonathan Rolbin the fact that there was a request for religious accommodation with regard to Carmichael's passport, but it must be confirmed by discovery.

Amendment Two ¶19. Plaintiff Carmichael believes it is likely that the passport revocation initiator did not communicate to Jonathan Rolbin the fact Carmichael had been assisting Pakosz with communications regarding a religious accommodation for Pakosz's passport.

Amendment Two ¶20. Plaintiff Carmichael believes it is likely that the passport revocation initiator did not communicate to Jonathan Rolbin the fact that there was correspondence from the White House regarding Carmichael's query seeking intervention for the accommodation of religion regarding the processing of passports.

Amendment Two ¶21. Plaintiff Carmichael believes it is likely that Christine McClean falsely stated that William Pakosz's request for religious accommodation was forwarded to the proper office that could either communicate his request to the Secretary of State to whom he directed the request, or to the proper office or officer who could intervene to grant the accommodation.

Amendment Two ¶22. The Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison instituted a statement form relating to 22 C.F.R. §51.60(f), lacking the power of discretion by law or regulation.

Amendment Two ¶23. The Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison without due

process required by law, instituted a statement form relating to 22 C.F.R. §51.60(f), though they did not create the same or similar innovations regarding 22 C.F.R. §51.60(a)-(h).

Amendment Two ¶24. The Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison without due process required by law, instituted a statement form relating to 22 C.F.R. §51.60(f), but they did not create the same or similar innovations regarding an opportunity to make a statement seeking religious accommodation for humanitarian reasons in keeping with 22 U.S.C. § 2721, and 22 U.S.C. § 2714a(1)(B), and the Religious Freedom Restoration Act..

Amendment Two ¶25. The Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison obstructed William Pakosz's request for religious accommodation to the Secretary of State by not forwarding it to the Secretary of State as requested by Mr. Pakosz.

Amendment Two ¶26. The Defendant sent letters to Mr. Lewis and Pakosz, explaining that they could not file an appeal for the passport renewal denial, but could continue to reapply, notwithstanding that the result of the next application would be the same (Memo. Attachment 2).

Amendment Two ¶27. Neither of the Plaintiffs are those certified by the Secretary of the Treasury as having seriously delinquent tax debt.

Amendment Two ¶28. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(a), "The Department may not issue a passport, except a passport for direct return to the

United States, in any case in which the Department determines or is informed by competent authority that:

"(1) The Applicant is in default on a loan received from the United States under 22 U.S.C. 2671(b)(2)(B) for the repatriation of the applicant and, where applicable, the applicant's spouse, minor child(ren), and/or other immediate family members, from a foreign country (see 22 U.S.C. 2671(d)); or

(2) The applicant has been certified by the Secretary of Health and Human Services as notified by a state agency under 42 U.S.C. 652(k) to be in arrears of child support in an amount determined by statute.

(3) [Reserved]

(4) The applicant is a covered sex offender as defined in 22 U.S.C. 212bI(1), unless the passport, no matter the type, contains the conspicuous identifier placed by the Department as required by 22 U.S.C. 212b."

Amendment Two ¶29. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(b), "The Department may refuse to issue a passport in any case in which the Department determines or is informed by competent authority that:

"(1) The applicant is the subject of an outstanding Federal warrant of arrest for a felony, including a warrant issued under the Federal Fugitive Felon Act (18 U.S.C. 1073); or

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could

result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(3) The applicant is subject to a U.S. court order committing him or her to a mental institution; or

(4) The applicant has been legally declared incompetent by a court of competent jurisdiction in the United States; or

(5) The applicant is the subject of a request for extradition or provisional request for extradition which has been presented to the government of a foreign country; or

(6) The applicant is the subject of a subpoena received from the United States pursuant to 28 U.S.C. 1783, in a matter involving Federal prosecution for, or grand jury investigation of, a felony; or

(7) The applicant is a minor and the passport may be denied under 22 CFR 51.28; or

(8) The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces pursuant to chapter 47 of title 10 of the United States Code; or

(9) The applicant is the subject of an outstanding state or local warrant of arrest for a felony; or

(10) The applicant is the subject of a request for extradition or provisional arrest submitted to the United States by a foreign country."

Amendment Two ¶30. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60I, "The Department may refuse to issue a passport in any case in which:

(1) The applicant has not repaid a loan received

from the United States under 22 U.S.C. 2670(j) for emergency medical attention, dietary supplements, and other emergency assistance, including, if applicable, assistance provided to his or her child(ren), spouse, and/or other immediate family members in a foreign country; or

(2) The applicant has not repaid a loan received from the United States under 22 U.S.C. 2671(b)(2)(B) or 22 U.S.C. 2671(b)(2)(A) for the repatriation or evacuation of the applicant and, if applicable, the applicant's child(ren), spouse, and/or other immediate family members from a foreign country to the United States; or

(3) The applicant has previously been denied a passport under this section or 22 CFR 51.61, or the Department has revoked the applicant's passport or issued a limited passport for direct return to the United States under 22 CFR 51.62, and the applicant has not shown that there has been a change in circumstances since the denial, revocation or issuance of a limited passport that warrants issuance of a passport; or

(4) The Secretary determines that the applicant's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States."

Amendment Two ¶31. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(d), "The Department may refuse to issue a passport in a case in which the Department is informed by an appropriate foreign government authority or international organization that the applicant is the subject of a warrant of arrest for a

felony."

Amendment Two ¶32. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(e), "The Department may refuse to issue a passport, except a passport for direct return to the United States, in any case in which the Department determines or is informed by a competent authority that the applicant is a minor who has been abducted, wrongfully removed or retained in violation of a court order or decree and return to his or her home state or habitual residence is necessary to permit a court of competent jurisdiction to determine custody matters."

Amendment Two ¶33. Because the accusation is false and not the truth according to the particular facts and circumstances, none of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(f), "The Department may refuse to issue a passport to an applicant who fails to provide his or her Social Security account number on his or her passport application or who willfully, intentionally, negligently, or recklessly includes an incorrect or invalid (SSN).

Amendment Two ¶34. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(g), "The Department shall not issue a passport card to an applicant who is a covered sex offender as defined in 22 U.S.C. 212bI(1).

Amendment Two ¶35. Neither of the Plaintiffs are those to whom, pursuant to 22 C.F.R §51.60(h), "The Department may not issue a passport, except a limited validity passport for direct return to the United States or in instances where the Department finds that emergency

circumstances or humanitarian reasons exist, in any case in which:

(1) The Department is notified by the Attorney General that, during the covered period as defined by 22 U.S.C. 212a:

(i) The applicant was convicted of a violation of 18 U.S.C. 2423, and

(ii) The individual used a passport or passport card or otherwise crossed an international border in committing the underlying offense.

(2) The applicant is certified by the Secretary of the Treasury as having a seriously delinquent tax debt as described in 26 U.S.C. 7345.

(i) In appropriate circumstances, where an individual's passport application is denied or passport revoked consistent with this part, the Department may issue a limited validity passport good only for direct return to the United States.

[72 FR 64931, Nov. 19, 2007, as amended at 81 FR 60609, Sept. 1, 2016; 81 FR 66185, Sept. 27, 2016; 83 FR 21874, May 11, 2018; 84 FR 67185, Dec. 9, 2019]

Amendment Two ¶36. Neither of the Plaintiffs were demanded to file a statement regarding the disqualifying conditions of 51.60(a) and 51.60(b), or the potentially disqualifying conditions of 51.60(b)-(h) except for a request for social security number information which might relate to 51.60(f).

Amendment Two ¶37. The word "may" in 22 C.F.R. 51.60(f) indicates that the "Department" is not mandated to deny a passport to an applicant who fails to provide his or her Social Security

account number on his or her passport application or who willfully, intentionally, negligently, or recklessly includes an incorrect or invalid Social Security account number.

Amendment Two ¶38. Neither of the Plaintiffs "fail(ed)" to provide his or her Social Security account number but in fact exercised due diligence in requesting religious accommodation

Amendment Two ¶39. The words 22 C.F.R. 51.60(f) "willfully, intentionally, negligently, or recklessly" are descriptive of words that indicate an action of wrong rather than an action of right.

Amendment Two ¶40. The accusation that the Plaintiffs "failed to" or "willfully, intentionally, negligently, or recklessly" or incorrectly, did not identify with a SSN are false accusations, there has not been an adversarial trial, indictment, or other prosecution to prove the accusation according to the law of our land. We are not guilty of anything that justifies the Defendants' denial of our right to international travel. We did not fail to provide social security number information nor did we provide an incorrect number. We provided the social security number information that applies to us, individually. That information we provided on the form is just as valid, if not more valid, as is the Defendant's affidavit form sent to other people which the law and regulations said we need not file since it does not have a valid OMB number. The Defendant allows other people, in lieu of an 'actual' SSN, to use terms such as "000-00-0000", "n/a", "not applicable", "religious prohibition" as the fulfillment of the social security number information requirement. Therefore, like other people who have had their passports approved and renewed without

using the exact numbers of a SSN, we did not "fail" to provide a social security number and our information provided was purposefully correct. Therefore, we have indeed fulfilled the provisions of 22 CFR 61.60 (f) and therefore ought not to have our passport renewal be denied or revoked or be denied the due process of an appeal hearing.

FIRST CAUSE OF ACTION
(Violation of 22 USC §2721)

114. The allegations contained in Paragraphs 1 through 113of this Complaint are re-alleged and incorporated herein by presumed reference.

115. Defendant unlawfully denied, revoked, restricted and otherwise limited my passport renewal applications or cancelled my passport or its application because of my speech, activity, belief, affiliation, or membership, within or outside the United States which is protected by the first amendment to the Constitution of the United States, in violation of 22 USC §2721.

116. The failure of the Defendant to comply with 22 USC §2721 and apply an accommodation for religion that was previously granted to me by the Defendant's predecessor was arbitrary, capricious, in bad faith, without any rational basis and contrary to law, regulation and mandatory published procedure whereby I was seriously prejudiced, resulting in the unlawful denial of my passport renewal applications; wrongfully causing me expenses and injury to my property right in the application and its process, under the colorable cancellation, wrongfully causing me injury to my property and liberty rights in travel and the applied-for passport necessary to that travel; and monetary

injury in the amounts and ways set forth in the demand for relief below.

SECOND CAUSE OF ACTION
(Violation of 42 USC §2000bb, et. seq.)

117. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and incorporated herein by presumed reference.

118. The Defendant is unlawfully placing a substantial burden upon my bona fide belief and practice of Christian religion, demanding that I identify with a Social Security Number which is prohibited in the Revealed law that is of higher authority, penalty and reward of any worldly law. The Defendant is unlawfully placing that substantial burden without any compelling interest of government toward me or in general. The Defendant is unlawfully ignoring those less restrictive means that are already being used by his department to renew or issue passports without identifying with a Social Security Number for technical reasons and denying that same accommodation to me in opposition to my religion. Thereby, the Defendant violates the positive law of the United States that protects religion shown at 42 USC §2000bb, *et seq*.

119. The failure of the Defendant to comply with 42 USC §2000bb, et seq., is arbitrary, capricious, in bad faith, without any rational basis and contrary to law, regulation and mandatory published procedure whereby I was seriously prejudiced, resulting in the unlawful denial of my passport renewal applications, wrongfully causing me injury to my property and liberty rights in travel and the applied-for passport, and monetary injury in

the amounts and ways set forth in the demand for relief below.

THIRD CAUSE OF ACTION
(Violation of Executive Order 13798)

120. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and incorporated herein by presumed reference.

121. The Defendant is unlawfully violating the policy of the United States, of the Executive Order 13798 and its implementing "MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES titled, "Federal Law Protections for Religious Liberties." The Defendant, in opposition to that United States policy is wantonly using the color of a statute or regulation as an unreasonable excuse to unlawfully deny, revoke, restrict and otherwise limit my passport renewal application or cancelling my passport, placing a substantial burden upon my bona fide belief and practice of Christian religion, demanding that I identify with a Social Security Number which is prohibited in the Revealed law which is of higher authority, penalty and reward of any worldly law. Though the statute and regulations, upon which the Defendant supposedly relies, says his department "may" deny a passport application the Defendant has said that the department "must" deny the application. Though the United States policy clearly shows that there is a positive duty for the Defendant to find an accommodation unless truly impossible or unjustly injures another's life, liberty or happiness, the Defendant has falsely said that the law and policy does not allow for accommodation of religion. Thereby, the Defendant violates the Executive

Order 13798 and its implementing memorandum in violation of the public policy of the United States. He has also failed to disseminate the information to his subordinates.

122. The failure of the Defendant to comply with the policy of the United States, of the Executive Order 13798 and its implementing "MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES titled, "Federal Law Protections for Religious Liberties." is arbitrary, capricious, in bad faith, without any rational basis and contrary to law, regulation and mandatory published procedure whereby I was seriously prejudiced, resulting in the unlawful denial or cancellation of my passport renewal applications, wrongfully causing me expenses and injury to my property right in the application and its process, injury to my property and liberty rights in travel and the applied-for passport necessary to that travel, and monetary injury in the amounts and ways set forth in the demand for relief below.

FOURTH CAUSE OF ACTION
(Violation of 22 CFR 51.70 and the Fifth Amendment to the U.S. Constitution)

123. The allegations contained in Paragraphs 1 through 113, AND Amendment Two, paragraphs 1-40 of this Complaint are re-alleged and incorporated herein by presumed reference.

124. The Defendants Unlawfully Revoked Plaintiff Carmichael's passport without pre-revocation adversarial due process. They denied Plaintiffs Lewis's and Pakosz's passport renewals contrary to due process. They deny all the Plaintiffs post revocation and post denial adversarial due

process. They strip all the Plaintiffs of their right to international travel arbitrarily, without the Plaintiffs doing anything wrong, yet punish the Plaintiffs under the guise of arbitrary and capricious color-of-law machinations.

a. The Defendants on one hand communicated to Carmichael in conversations on the phone about the denial of Plaintiff Pakosz passport renewal, that no process for appeal or religious accommodation is available, saying, "The process for religious accommodation. There is not a separate process for that. The law does not give the Department of State any discretion..... . However, our regulations don't provide hearings for no security number." (Memo. Attachment 3) They then collaterally say they offered a prohibited appeal process

b. The Defendants said to Carmichael in an official letter, ""Pursuant to 22 C.F.R. 51.70, **a hearing is <u>not</u> provided** for applications denied **or passports revoked** for failure to provide a social security number." (Emphasis added) Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison ltr. to David Alan Carmichael, June 25, 2019, regarding correspondence forwarded to them by the White House. (Emphasis added) (Memo. Attachment 2)

c. The Defendants wantonly deny access to any adversarial appeal process through the Defendants' regulation, 22 Code of Federal Regulations (C.F.R.) §51.70(b)(2) in conjunction with 22 C.F.R. § 51.60(f), whereby the appeal process normally afforded to the majority of others is denied to the Plaintiffs when their

passport applications are denied or revoked. Those who are **accused** of failing to provide a Social Security Number, or who are **accused** of "willfully, Intelligently, knowingly, or negligently" not identifying with a Social Security Number are denied adversarial due process to determine whether their not identifying with a Social Security Number was a wrong or a right under the particular facts and circumstances.

d. The Defendants regulation §51.60(f) paired with §51.70(b)(2) is a violation of the constitution and due process in that it too broadly, unnecessarily, and improperly sweeps those of us who are doing acts of righteous religion, hurting nobody, in with those who are doing acts of wrong. They unlawfully punish us like miscreants or frauds who are not identifying with a social security number because of a willful, intelligent, negligent or reckless acts of wrong. The Defendants indiscriminate classification of innocent with malevolent activity must fall as an assertion of arbitrary power. The regulation is not narrowly drawn to prevent the supposed evil, which according to the FAST Act is prohibiting travel to those who have by full due process been certified by the Secretary of the Treasury as having seriously delinquent tax debt.

e. The Defendants regulation §51.60(f paired with §51.70(b)(2) is a violation of the constitution and due process in that it sets up a standard that would deny and revoke a passport, and exclude an appeal process for that denial and revocation, using words that are vague, are not defined in

statute, and are arbitrarily applied since it is not clearly spelled out whether those words apply to those whose motive is to do a wrong or to also those whose motive is to do a right. The Regulation says that failure to identify with a SSN on the passport application form "may" cause the application to be delayed or denied but those who implement the regulation are acting as if the passport application "must" be delayed and denied. There is no standard guiding the decision process to determine what facts and circumstances ought to be included, or which ought to be excluded, in determining whether a passport is or is not delayed or denied for not identifying with a SSN.

f. The Defendants violated the constitution and due process when they allowed someone who was not in the chain of decision making, when the Carmichael passport renewal was adjudicated, to *sua sponte* become a super-secretary adjudicator after the fact. Waiver provisions were properly applied in the reign of Secretary of State Rex Tillerson who had the prerogative under the 22 U.S.C. 2714a(f)(1)(B) to waive the SSN requirement of Carmichael's passport renewal for humanitarian reasons, of which religion is one of those reasons. Secretary Tillerson also had the prerogative to waive the SSN requirement for reasons of religion pursuant to 22 U.S.C. §2721 since free exercise of religion is protected by the first amendment and includes not merely belief, but activity, membership, association, etc. In the after-the-fact retroactive action by the Defendant against Carmichael, the Secretary of State's successor to

whom the religious accommodation was addressed was not consulted regarding the waiver prerogatives that remain reserved to the Secretary of State. The violations of due process by the Defendants cause the Plaintiffs to be detained without being convicted of a crime and there is no probable cause for issuing a warrant of arrest by the standards of the Fourth Amendment.

g. The Defendants violated the constitution and due process prohibiting any reasonable due process by which to obtain a passport or accommodation for religion by saying that we must continue to reapply for a passport under the same conditions that the Defendant says will warrant the denial or revocation of our applications for passport. The Defendant is unconstitutionally demanding that we can recapture our freedom to travel by simply in good faith abandoning our activity of religion. *See Aptheker v. Secretary of State*, 378 U.S. 500, 507 (1964)

h. The Defendants violated the constitution and due process where the Defendant will rightfully issue passports to people who do not identify with a SSN and have either successfully evaded any association with a SSN or have succeeded in having the Social Security Administration suppress any record that was associated with them. The Defendants' process for determining which of the 'haves' or 'have-nots' gets a passport is not substantive **due** process.

i. The Defendants violated the constitution and due process where their procedure to

separate the 'SSN-haves and have-nots' is to demand that those who have already filed a passport application under oath, fill out a particular secondary form, demanding a particular statement under oath, where such statement is not prescribed by statute or regulation. In fact, their demanding the particular attestation under oath on the particular form is a process **proscribed** by statute 44 U.S.C. § 3512. Contrary to the due process protected by 44 U.S.C. § 3512 we are penalized by the denial of our right to travel, without due process, where that law of Congress says that we cannot be penalized for not completing the form.

j. The Defendants violated due process in that the Statute 22 U.S.C. §2714a(f), subparagraph (1)(A) that "authorizes" them in permissive terms to deny or revoke a passport in some instances where an applicant does not identify with a SSN; but the Defendant excludes a provision for our gaining access to the Secretary of State to apply for a waiver, or to enable us to obtain the waiver provided for in 22 U.S.C. §2714a(f), subparagraph (1)(B).

k. The Defendants violated due process where the Statute 22 U.S.C. §2714a(f), subparagraph (1)(A) uses permissive language to the Secretary of State to deny a passport related to instances where someone does not identify with a SSN. The Defendants' regulations §51.60(f) paired with §51.70(b)(2) institute a mandate to those who apply the regulations that they should deny or revoke passports when someone does not identify with a SSN;

notwithstanding that the statute has left to the discretion of the Secretary of State the retained power do not deny a passport over someone not identifying with a SSN.

125. The actions of the Defendants to deny Plaintiffs Lewis's and Pakosz's passport renewal applications and to revoke Carmichael's passport without substantive due process of law is arbitrary, capricious, an abuse of discretion, an act of reprisal for whistle-blowing, a depravation of the right to travel abroad without due process of law, in violation of the Fifth Amendment to the Constitution of the United States; and affects the deprivation of rights secured by the First and Ninth Amendments. It is a severe restriction upon, and in effect a prohibition against, world-wide foreign travel, injuring our constitutional liberty closely related to free speech, association, religion, and right to redress grievances. It penalizes and punishes plaintiffs and restricts our liberty on without even legislative or administrative fact-findings that we are subversives; penalizing us as if we had committed a crime but without benefit a trial according to due process, which requires a trial by jury before an independent judge, after an indictment, and in accordance with all the other procedural protections of the Fourth, Fifth and Sixth Amendments. It denies the plaintiffs freedom of speech, association, religion, and redress which the First Amendment guarantees and punishes conduct that is protected by the First and Ninth Amendments. *Aptheker v. Secretary of State*, 378 U.S. 500, 507 (1964)

FIFTH CAUSE OF ACTION

(22 CFR 51.60 is Overbroad in violation of the First and Fifth Amendments to the U.S. Constitution)

126. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and incorporated herein by presumed reference.

127. The Defendant is through his regulation 22 CFR §51.60 with 22 CFR §51.70 violating the law of due process protected by the Fifth Amendment to the Constitution of the United States since it is overbroad. It affects the denial of rights protected by fundamental, and other law, of those who cannot, by reason of volition or religion, apply or participate with the program related to the SSN, arbitrarily imposing upon rights whose protection is guaranteed by that Constitution.

128. The failure of the Defendant to confine his acts within the boundaries of the United States Constitution is arbitrary, capricious, in bad faith, without any rational basis and contrary to law, regulation and mandatory published procedure whereby I was seriously prejudiced, resulting in the unlawful denial of my passport renewal applications or cancelled my passport or its application, wrongfully causing me expenses and injury to my property right in the application and its process, injury to my property and liberty rights in travel and the applied-for passport necessary to that travel, and monetary suffering in the amounts and ways set forth in the demand for relief below.

SIXTH CAUSE OF ACTION

(Violation of 42 USC §408(a)(8))

129. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and

incorporated herein by presumed reference.

130. The Defendant did, and is, violating 42 USC §408(a)(8) where he unlawfully compels "the disclosure of the social security number of any person in violation of the laws of the United States." Though there is authorization for him to ask for such a number, it is unlawful for him to use his power of coercion over destroying my property an liberty rights attached to my passport, for which I obtained in 2008 and have been attempting to renew, since I am prohibited by the higher law of religion from identifying with such a number and he has been made aware of it.

131. The unlawful coercion by the Defendant upon me by unlawfully demanding that I identify with a SSN, willingly and knowingly attacking me in my duties of religion in violation of the laws of the United States, is a felonious act according to 42 USC §408(a). I was thereby seriously prejudiced, resulting in the unlawful denial of my passport renewal applications; wrongfully causing me expenses and injury to my property right in the application and its process, injury to my property and liberty rights in travel and the applied-for passport necessary to that travel, and monetary suffering in the amounts and ways set forth in the demand for relief below.

SEVENTH CAUSE OF ACTION
(Violation of 5 USC 552A)

132. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and incorporated herein by presumed reference.

133. The Defendant did and is violating the Privacy Act, 5 USC §552(a) where he says on his

passport application/renewal forms that " failure" to provide information requested on the form, including your social security number, may result in significant processing delays and/or the denial of your application. Yet he neglected to correctly state in what conditions make it voluntary and what make it mandatory; and in what conditions the consequence for not providing a SSN will result in a denial and what conditions the consequence for not providing a SSN will result in approval. He failed to particularly notify of the fact, and apply the provisions for, "good cause."

134. The unlawful failure of the Defendant to apply the requirements and boundaries of the Privacy Act, 5 USC 552a, injured me and my rights where I was seriously prejudiced, resulting in the unlawful denial of my passport renewal applications or cancelled my passport or its application; wrongfully causing me expenses and injury to my property right in the application and its process, injury to my property and liberty rights in travel and the applied-for passport necessary to that travel, and monetary suffering in the amounts and ways set forth in the demand for relief below.

EIGHTH CAUSE OF ACTION
(Violation of First and Fifth Amendments, Abridging The Right of Redress of Grievances by Hiding Perpetrators)

135. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and incorporated herein by presumed reference.

136. The Defendant unlawfully refused to comply with law, regulation and his own rules and policy in assigning an Authorizing Officer and an Appeal Officer who is named and can be known to

me in the application for passport renewal processing, who can be communicated to about my case with which they are cognizant and for which they are accountable. The Defendant refused to provide that information forthrightly, and denied to me that information when I requested or demanded it. The Defendant is thereby hiding perpetrators of unlawful actions cited in this complaint.

137. The unlawful refusal to disclose to me the names of the actors who refused to comply with law, regulation and his own rules and policy and deny my passport renewal, and injure me for the sake of my practice of Christian religion violates the self-executing provisions of the First, Fifth and/or Ninth Amendments to the Constitution of the United States. I was thereby seriously prejudiced, resulting in the unlawful denial of my passport renewal applications or cancelled my passport or its application, , wrongfully causing me expenses and injury to my property right in the application and its process, injury to my property and liberty rights in travel and the applied-for passport necessary to that travel, and monetary suffering in the amounts and ways set forth in the demand for relief below.

NINTH CAUSE OF ACTION
(Violation of 18 USC §241, Conspiracy against rights)

138. The allegations contained in Paragraphs 1 through 113 of this Complaint are re-alleged and incorporated herein by presu*med reference.*

139. In violation of 18 USC § 241, the Defendant and his agents, unlawfully conspired to injure, oppress, threaten, or intimidate me in the District of Columbia and across state boarder lines in the free exercise or enjoyment of any right or

privilege secured to me by the Constitution or laws of the United States, and is doing so in retaliation to my attempts to exercise my rights protected by those laws regarding my property right, privilege, and equal access to the renewal of my previously secured passport and to also freely exercise religion.

140. The wonton violation of 18 USC § 241 conspiring to deny me the exercise of rights and privileges of the right renew my passport while also exercising my Christian religion was arbitrary, capricious, in bad faith, without any rational basis and contrary to law, regulation and mandatory published procedure whereby I was seriously prejudiced, resulting in the unlawful denial of my passport renewal applications or cancelled my passport or its application; wrongfully causing me expenses and injury to my property right in the application and its process, injury to my property and liberty rights in travel and the applied-for passport necessary to that travel, and monetary suffering in the amounts and ways set forth in the demand for relief below.

RELIEF

The Plaintiffs demand the Court to:

141. Assume jurisdiction of this case;

142. Pursuant to 42 USC §2000bb-1, 5 USC §706, 28 USC §1361, §§2201-2201 and the statutes associated thereto, to the extent necessary to decision and when presented, decide relevant questions of law, interpret constitutional and statutory provisions and apply them, and determine the meaning or applicability of the terms of an agency action. Also:

(1) compel (mandamus or injunction) the

Defendant or agency to take action to restore the Plaintiff Carmichael's passport that was unlawfully cancelled by **voiding** the "cancellation" of Plaintiff Carmichael's passport; compel the Defendant or agency to take action to renew the Plaintiffs' passport for which they applied but were unlawfully delayed or denied notwithstanding their previous religious accommodation grants; or otherwise compel the renewal of their passport applications without fee unless the Defendant can show a lawful prohibition of their freely exiting and entering this and other friendly countries, and

(2) hold unlawful and set aside the Defendant or agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

(3) find, hold, and declare unlawful the actions of the defendant and any conspirators, co-

conspirators, or other persons acting under the color of official policy or power, that were arbitrary, capricious, in bad faith, without any rational basis and contrary to law, regulation and mandatory published procedure.

143. Enjoin Defendant and his agency to not deny passport applications for reasons of failure to be identified with a SSN on the basis of their religion, Plaintiffs, their families, and those of their religious belief and practice who cannot identify with a SSN for reasons of religion whether or not the SSA or any other agency may claim to have associated that person with a SSN.

144. Award to Plaintiffs a civil penalty against the Defendant pursuant to relief available under United States law, 5 USC 552a(g)(1), and attorney's fees pursuant to 5 USC 552a(g)(3); and actual damages sustained by them but in no case less than the sum of $1,000 and attorney's fees should they eventually be applicable pursuant to 5 USC 552a(g)(4).

145. Award money to Plaintiffs as restitution and a penalty against the Defendant in the amount of no more that $500,000 for the felonious acts by the organization pursuant to pursuant to 42 USC 408(b) and 28 USC §3571(a) and (c)(3).

146. Award money damages to Plaintiffs as a punitive measure, and for restitution, penalizing the Defendant and his agents in their official capacity violating 18 USC §241 conspiring to deny Plaintiffs' rights to the passport/renewal for which they applied, and for willfully injuring their right to access to a passport and to be protected by those laws protecting in the free exercise of my Christian religion.

147. Award money damages to Plaintiffs for the extra fees they paid for any additional applications which were not necessary, nor appropriate since their application was for renewal of their passports which were still valid when they began the process to renew it.

148. Provide other relief that might be known or found to be suitable, lawful, equitable or otherwise which is in the power of the court to grant in keeping with the Federal Tort Claims Act.

149. Award money to Plaintiffs for Cost of Attorney's fees and other expenses, pursuant to the Equal Access To Judgment Act, 5 U.S.C. §504; 28 U.S.C. §1361, §2412, with adjustments for particular specialty of legal aid and experts and for cost of living increases like the process set forth in *Carmichael v. United States*, 70 Fed. Cl. 81, 85 (2006).

SEVERABILITY

150. Any such paragraphs, counts, claims, or other things herein which might be determined based upon facts and law to be limited by immunity, qualified immunity, or sounding in tort not particularly allowable to be brought against the United States or an officer acting in their official capacity, or upon a person acting merely under the color of law of the United States or a State, shall be severable from this case specifically limited to where those portions are limited by immunity or qualified immunity or sounding in tort and where relief is not been provided by an Act of the Congress of the United States. Any such disqualification for reasons of immunity, qualified immunity or sounding in tort, shall be reserved for a separate suit where any

person discovered to be acting under the color of law rather than their official capacity can be held accountable for their own actions where the United States or Defendant Michael Richard Pompeo acting in his official capacity retain the blessings of sovereign immunity.

I, David Alan Carmichael, swear that the foregoing statements known by me first-hand are true. The other facts, deducible by the facts and circumstances, are believed by me to be true unless refuted by proof. Under the penalty of perjury under the laws of the United States:

Signed Date:

David Alan Carmichael
1748 Old Buckroe Road
Hampton, Virginia 23664
(757) 850-2672 / david@freedomministries.life

(New Page)

I, William Mitchell Pakosz, do swear that the foregoing statement of facts for which I have first-hand knowledge are true. The other facts, deducible by the facts and circumstances, are believed by me to be true unless refuted by proof. Under the penalty of perjury under the laws of the United States:

Signed _____
Date:_____
William Mitchell Pakosz
P.O. Box 25
Matteson, Illinois 60443
(708) 748-8585

(New Page)

I, Lawrence Donald Lewis, do swear that the foregoing facts in the statement of facts, known by me first-hand, are true. The other facts, deducible by the facts and circumstances, are believed by me to be true unless refuted by proof. Under the penalty of perjury under the laws of the United States:

Signed Date:

Lawrence Donald Lewis
966 Bourbon Lane
Nordman, Idaho 83848
(208) 443-3852
larrynordlewis@povn.com

Excerpts From Appeal Brief
U.S. Ct. App., D.C. Circuit, 23-5111 (Doc. 2036576)
(Jan. 21, 2024)

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STATEMENT OF ISSUES

3. The dismissal order should be vacated. The case is not moot since: a) Adjudication and damages relief remains owed under RFRA; **[Emphasis added]**

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"None of the Plaintiffs will be "paid-in-full" (obtained complete relief) until their complaint is fully adjudicated, a judgment is a matter of record, and all damages as a matter of law as well as equity are fully paid from all liable parties; or until there is a substantive consent decree where the Plaintiffs, their posterity, and those of their religious community can be reasonably sure that they will not be subjected to the same lawless persecution and torment by the Defendants, and suitable compensation can salve some of the hurt to the lives and liberties of the Plaintiffs." (quoting from ECF 137, p. 6, ¶13) **[Emphasis added]**

[Page 26-27 of 64]

37. In reaction to the Response (137/137-1,2,3,4), the District Court ordered, "It is hereby ORDERED that the Government send Mr. Lewis his passport at the address he provided in ECF No. 137-3." There was no declaratory judgment, discovery, exposure of

individual culpability, just the machinery to try to moot the case. Carmichael was ordered to "convey how he wants to take possession of his passport" notwithstanding Carmichael's demand for the rescission of the passport revocation was promised in the Government's remand motion reply (ECF 66, p. 5). The Court then took tactical control of the Government's case, and ordered them to "file any dispositive motion, on mootness or other grounds." The complainants filed objections (ECF 138).

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CASE SUMMARY

40. The District Court erroneously dismissed the case under the guise of mootness, though damages, declaratory, and injunctive relief is due. Damages were demanded in the complaint. The complainants used the term "co-conspirators" for the tortfeasors whose names were cloaked with pseudonyms such as "Customer Service Department." Money damages, including nominal, is "appropriate relief" under RFRA according to *Uzuegbunam, et al., v. Preczewski*, [p. 28 of 64] 592 U.S. ___ (March, 2021). **[Emphasis added]** There remains a case and controversy with inappropriate relief being offered Carmichael; and he continues to be contacted by people suffering the same injury of having their religious accommodation requests being completely ignored. Exposure of the systemic dysfunction by discovery has been denied in a clear-the-docket for the sake-of-efficiency at the cost-of-justice protocol. The case is ripe for de novo review, declaratory judgment, vacating and remand for discovery and full adjudication on the facts and merits.

ARTICLE III STANDING

41. We, Appellants, sufficiently alleged facts that we were injured in our natural rights in violation of the Constitution and the laws of the United States. The complaint expressly alleges, or it is deducible, that we have an injury in fact, traceable to the challenged conduct, and that a money relief is one of the means necessary to redress the injury (ECF 51). **[Emphasis added]**

> To satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a remedy that is likely to redress that injury. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)

CASE IS NOT MOOT WHERE DAMAGES RELIEF IS DUE

42. The District Court unjustly dismissed the case with prejudice under the false premise that damages relief was not available (ECF 124, 125) and the case was moot (ECF 149, 150). A money judgment is called for against the United States and persons in their private capacity called "co-conspirators" in the complaint [p. 29 of 64] (ECF 51, ¶7). Their identities were cloaked under names such as "Customer Service Department." **[Emphasis added]**

43. We alleged that the tortfeasors' actions were intentional, willful, malevolent, with hostility, and

were causal to the violations of law, where the Religious Freedom Restoration Act, the Privacy Act, and the Federal Tort Claims Act, provide remedy and relief. (Am. Comp., ¶¶ 95, 108, 109, 110, 111, 11;, Amend. Two ¶ 1., 2., 13, 18., 19, 20, 21, 25; 116, 118, 119, 124.f.-k, , 119, 125. 128, 140. **[Emphasis added]** Such conduct, violating the laws of the United States, including the Privacy Act, are felonies according to 42 U.S.C. ¶ 408(a)(8).

44. The Defendants were not entitled to the grant of their motions for dismissal or summary judgment as a matter of law, fact, and due process (ECFs 44, 45, 124, 125, 149, 150) since damages relief is due. Culpability and relief will be proved upon completion of discovery. **[Emphasis added]** Review is de novo.

DAMAGES ARE APPROPRIATE RELIEF UNDER RFRA

45. The remedial RFRA's use of the broad term "appropriate relief" means damages payments are available for an injury-in-fact by the United States through its agents acting in their official capacity, or by its agents who are liable in their private capacity for their unlawful acts done under the color or law.

46. In the case of *Uzuegbunam, et al., v. Preczewski, et al.*, the Supreme Court declared that the Government's discontinuance of a challenged policy did not leave [p. 30 of 64] the injured party without standing to sue. Nominal money relief is available even where an amount of compensatory damages cannot be proved, satisfying the redressability necessary for Article III standing where a plaintiff's claim is based on a completed

violation of a legal right. *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 797-802 (2021)

47. Money is claimed as relief due. (Amend. Compl., Mem. Attach 9., pp. 59 62; ECF 46-2, pp. 80-83 & ECF 51, p. 61). Appropriate relief under RFRA was not understood by the plaintiffs until explained by the Supreme Court during this litigation. Compensation relief was declared by the Supreme Court, Dec. 10, 2020, in Tanzin v. Tanvir, 592 U.S. ____ (2020). Compensation without knowing the *Tanzin* rule is found at Complaint, ECF 51, ¶ 147. Under the rule in *Uzuegbunam*, nominal damages are "appropriate relief" if other monetary relief demanded is not provable, ECF 51, ¶s 143-148. **[Emphasis added]**

> Later courts, however, reasoned that every legal injury necessarily causes damage, so they awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages), and they did so where there was no apparent continuing or threatened injury for nominal damages to redress. See, e.g., *Barker v. Green*, 2 Bing. 317, 130 Eng. Rep. 327 (C. P. 1824) (nominal damages awarded for 1-day delay in arrest because "if there was a breach of duty the law would presume some damage"); *Hatch v. Lewis*, 2 F. & F. 467, 479, 485-486, 175 Eng. Rep. 1145, 1150, 1153 (N. P. 1861) (ineffective assistance by criminal defense attorney that does not prejudice the client); *Dods v. Evans*, 15 C. B. N. S. 621, 624, 627, 143 Eng. Rep. 929, 930-931 (C. P. 1864) (breach of contract); *Marzetti v. Williams*, 1 B. & Ad. 415, 417-418, 423-428, 109 Eng. Rep. 842, 843, 845-

847 (K. B. 1830) (bank's 1-day delay in paying on a check); *id.*, at 424, 109 Eng. p. 17 of 48 [p. 31 of 64] Rep., at 845 (recognizing that breach of contract could create a continuing injury but determining that the fact of breach of contract by itself justified nominal damages). *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 798 (2021). ***

Applying what he called Lord Holt's "incontrovertible" reasoning, Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" whenever "no other [kind of damages] be proved." *Webb v. Portland Mfg. Co.*, 29 F.Cas. 506, 508-509 (No. 17,322) (CC Me. 1838). Because the common law recognized that "every violation imports damage," Justice Story reasoned that "[t]he law tolerates no farther inquiry than whether there has been the violation of a right." *Ibid.* Justice Story also made clear that this logic applied to both retrospective and prospective relief. *Id.*, at 507 (stating that nominal damages are available "wherever there is a wrong" and that, "[a] fortiori, this doctrine applies where there is not only a violation of a right of the plaintiff, but the act of the defendant, if continued, may become the foundation, by lapse of time, of an adverse right"). *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 798

48. We intend to prove compensatory damage, but where compensatory damage cannot be quantified at trial, nominal damages are appropriate relief by default. **[Emphasis added]**

They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages. See, e.g., *Dods*, 15 C. B. N. S., at 621, 627, 143 Eng. Rep., at 929, 931 (prevailing plaintiff entitled to nominal damages as a matter of law even where jury neglected to find them); see also *Stachura*, 477 U.S. at 308, 106 S.Ct. 2537 (rejecting the argument that courts could presume, without proof, damages greater than nominal). *Uzuegbunam*, at 800

INJURIES WARRANT DAMAGES UNDER RFRA

49. Like in *Uzuegbunam*, the Defendants completed a violation of our constitutional rights. With wanton, willful, intelligent; and not merely negligent but reckless disregard for statutory obligations and prohibitions protecting us from [32 of 64] government coercion, they demanded that we abandon our religious practice or be denied rights, benefits, and privileges, and suffer unlawful detention.

Damages are given as a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. 2 Greenl. Ev. (10th ed.) sect. 253. *Birdsdall v. Coolidge,* 93 U.S. 64 (1876)

50. The restraint of our travel liberty constitutes false imprisonment. In the States where the Plaintiffs reside, false imprisonment is an injury-in-

fact that is actual damages, and warrants an award of pecuniary compensation. **[Emphasis added]**

Virginia - "False imprisonment is restraint of one's liberty without any sufficient cause therefor[; it is not essential that a person is] confined in jail or in the custody of an officer." *Zayre of Va., Inc. v. Gowdy,* 207 Va. 47, 50-51 (1966).

Idaho - "In false imprisonment or unlawful restraint the primary right involved is the liberty of the citizen, the right of freedom of locomotion, the right to come and go or stay, when or where one may choose. In the main the authorities disclose that in order to constitute an unlawful restraint or false imprisonment the essential thing is the restraint of the person. The statute defines it as "the unlawful violation of the personal liberty of another." (I. C. A., sec. 17-1215, supra.) The true test seems to be not the extent of the restraint, nor the means by which it is accomplished, but the lawfulness thereof. There need be no actual force or threats, nor injury done to the individual's person, character or reputation. Neither is it necessary that the wrongful act be committed with malice or ill will or even with the slightest wrongful intention. Nor is it necessary that the act be under color of any legal or judicial proceeding. All that is necessary is that the individual be restrained of his liberty, compelled to remain or go where he does not wish to, prevented from moving from one place to another as he may deem proper and desire, without sufficient authority, either

directly or indirectly in any manner or by any means, by words alone, by acts alone, or by both, by merely operating on the will of the individual, through reasonable fear of personal difficulty, by actual or apparent force, etc., and the detention must be against the will of the person detained." *Griffin v. Clark*, [33 of 64] Idaho 364, 372-373 (Idaho 1935) (42 P.2d 297)

The United States of America - "The right to travel is a part of the `liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." *Aptheker v. Secretary of State* at 505-506 citing Kent v. Dulles, 357 U.S. 116 at 125-126. . . . "The substantiality of the restrictions cannot be doubted. The Denial of a passport, given existing domestic and foreign laws, is a severe restriction upon, and in effect a prohibition against, world-wide foreign travel." *Aptheker* at 507

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CASE AND CONTROVERSY REMAINS WHERE GOVERNMENT CONTINUES UNLAWFUL CONDUCT

54. The remedy and relief by declaratory judgment and injunction is still [p. 35 of 64] necessary due to

the Government's continued violations of the same law. Carmichael continues to have standing where he is directly injured by the Government's indirect assault through injuring of others to whom Carmichael is duty bound to serve. The District Court applied the wrong standard. It was up to the Government to "demonstrate" the wrong will not be repeated. Instead of clear and convincing evidence, the Court erred in its discriminatory speculation.

> The case may nevertheless be moot if the defendant can demonstrate that "there is no reasonable expectation that the wrong will be repeated." The burden is a heavy one."" United States v. W.T. Grant Co., 345 U.S. 629

55. The District Court asserted that Carmichael's being ". . .'harangued' by other individuals seeking his assistance who purportedly share similar religious beliefs . . . " was not a sufficient injury. The Court incorrectly said, "Carmichael does not argue that he himself will likely be directly injured by Defendants in the future—nor could he" (ECF 150, p. 7). Carmichael did assert a personal direct injury from the indirect assault upon other people:

> "The Defendants have so far asserted that applicants not responding exactly as the ultra vires form demands will guarantee a denial of their passport application (ECF 24-1, pp. 9, 18, 20; ECF 30, pp. 3, 4, 11). The Court has not made a finding of fact and law on those issues and the Defendants are unleashed to deny passports to those who are not getting assistance from Carmichael to obtain a passport (ECFs 127-1,

127-2). Until the District Court does its duty to adjudicate, and to enjoin the Defendants, Carmichael will continue to be harangued by the Defendants' victims and the courts will be subjected to multiple suits." (ECF 144, pp. 17-18)

56. The record has instances of others' religious accommodations being denied [p. 36 of 64] during the litigation (ECF 127-1, 127-2); after the U.S. Attorney testified of the agency's intention to grant accommodations (ECF 80). Carmichael is now injured by the assault on his wife, who he has a duty to protect according to scripture and rights retained pursuant to the Ninth Amendment. **[Emphasis added]**

57. Appellant's wife, Mrs. Carmichael, requested religious accommodation with her passport application on Dec. 27, 2022. She replied to a request for more information, May 2023, and was ignored. She gave notice of the law violation to Secretary Blinken, Aug. 2023. She notified him of her intent to sue him and sent a copy to U.S. Attorney Byerley, Dec. 2023. Mr. Carmichael asked Mr. Byerley what his position would be if two people wanted to join the case. After telling Mr. Byerley it was Leslie, her passport was issued that day. (Appendix – Affidavits, Leslie and David Carmichael). **[Emphasis added]**

A defendant's voluntary cessation of a challenged practice ordinarily does not deprive a federal court of its power to determine the legality of the practice. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289. If it did, courts would be compelled to leave the defendant free to return to

> its old ways. Thus, the standard for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203. The heavy burden of persuading the court that the challenged conduct cannot reasonable be expected to recur lies with the party asserting mootness. *Ibid.* Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167 (2000). (Boulton reply p. 13)

58. Mr. Mahoney suffered the same injury as Appellant Lewis. He filed his [p. 37 of 64] passport renewal application in March, 2023. The Government sent a demand for Mahoney to provide a SSN or an affidavit. Mr. Mahoney sent a letter July 5, 2023, stating, "Due to my Spiritual beliefs, I don't use the SSN. My allegiance is to my Creator Yahweh." The government sent him another demand for a SSN or affidavit, saying his passport renewal would be denied without it. Mr. Mahoney contacted Carmichael for help. Mr. Mahoney sent a thorough explanation of his religious beliefs and practices by letter to the agency, Sept., 2023. Ignored, Mr. Mahoney notified Mr. Blinken of his intention to sue, Dec. 2023. Mr. Carmichael told Attorney Byerley by email that Mr. Mahoney was the other person who intended to join. Attorney Byerley read the email on Monday, Jan. 8, 2024. That day, Mr. Mahoney's passport renewal was

issued (Appendix – Affidavit, Mahoney). **[Emphasis added]**

> Both sides agree to the abstract proposition that voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i. e., does not make the case moot. *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290 (1897); *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37 (1944); *Hecht Co. v. Bowles*, 321 U.S. 321 (1944). A controversy may remain to be settled in such circumstances, *United States v. Aluminum Co. of America*, 148 F. 2d 416, 448 (1945), e. g., a dispute over the legality of the challenged practices. *Walling v. Helmerich & Payne, Inc., supra*; *Carpenters Union v. Labor Board*, 341 U. S. 707, 715 (1951). The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion. *United States v. Trans-Missouri Freight Assn., supra*, at 309, 310. For to say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right, *Labor Board v. General Motors Corp.*, 179 F. 2d 221 (1950). The courts have rightly refused to grant defendants such a powerful weapon against public law enforcement. *United States v. W. T. Grant Co.*, 345 U.S. 629, 632; 97 L. Ed. 2d 1303, 73 S. Ct. 894 (1953) (Boulton Reply p. 15)

59. Carmichael is an injured party, co-dependent to each victim of the Government's ongoing abuse (ECF 151, Obj. 21; Append. D.A. Carm. Affd.).

> In opposing the suggestion of mootness, appellants rely on *Church of Scientology v. United States,* 485 F.2d 313 (9th Cir. 1973), contending that there is still a justiciable controversy because "under substantial authority the appellant cannot be deprived of a determination of the merits simply because the appellees want to take a 'walk' from the case and hide their misconduct." *United States v. Ford*, 650 F.2d 1141, 1143 (1981) (Boulton Reply p. 17)

> "Without review now, Burlington will be subjected to continued risk of similar agency action in the future. Particularly since without review Burlington faces the prospect of never securing any judicial remedy, these hardships are adequate to sustain judicial review" *Burlington N. R.R. Co. v. Surface Transp. Bd.*, 75 F.3d 685, 692 (D.C. Cir. 1996) (ECF 151, Obj. 21).

60. It is demonstrated by the instances of Mrs. Carmichael and Mr. Mahoney, that the objections of Carmichael and Lewis are true, "It is an ongoing policy and practice of the defendants' to obstruct the issuance of passports to Carmichael, association Lewis and those in their families and religious " (quoting ECM 151, Obj. 34, p. 23, ¶ 40).

> "First, a plaintiffs challenge will not be moot where it seeks declaratory relief as to an ongoing

policy. *Id.* at 1429. In *Super Tire Engineering v. McCorkle*, 416 U.S. 115, 125, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974) *Del Monte Produce Co. v. United States*, 570 F.3d 316, 321 (D.C. Cir. 2009), Second, even though the specific action that the plaintiff challenges has ceased, a claim for declaratory relief will not be moot even if the "plaintiff has made no challenge to [an] ongoing underlying policy, but [p. 39 of 64] merely attacks an isolated agency action," so long as "the specific claim fits the exception for cases that are capable of repetition, yet evading review, or falls within the voluntary cessation doctrine." *Id.* (internal quotation marks and citations omitted) Del Monte Fresh Produce Co. v. United States, 570 F.3d 316, 321 (D.C. Cir. 2009)

[Pages 50 – 61]

DISTRICT COURT ERRED DENYING LEWIS'S INJUNCTIVE RELIEF

86. Lewis moved the Court to compel the Government to issue his renewed passport in accordance with the application and supporting documentation that was the subject of this litigation (ECF 84; 84-2, Mem. in Supp.). He pled for the relief [p. 51 of 64] (ECFs 15, 51, pp. 2, 4, 59-62). He provided actual evidence of the law that controlled passport photos (ECF 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9). He was correct as a matter of fact and law, and was owed injunctive relief: "Where multiple causes of action are alleged, plaintiff need only show likelihood of success on one claim to justify injunctive relief." *Kirwa v. United States*

Department of Defense, 285 F.Supp.3d 21 citing *McNeil-PPC, Inc. v. Granutec, Inc.*, 919 F. Supp. 198, 201 (E.D.N.C. 1995); see also *Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985).

87. Evading the Court's order to respond, the Government moved to dismiss again (ECF 99). The Government claimed that there was no equitable relief available to Carmichael or Lewis. Treating the Government's motion for dismissal, in one sense, as the Government's response to Lewis's motion to compel, Lewis replied (ECF 102).

88. Lewis correctly replied that there is no contest that Lewis's photo was suitable at the time of his application citing the Foreign Affairs Manual, 8 FAM 402.1-2, supplied as an exhibit with his motion (ECF 84-8). Lewis correctly replied that the law and regulations held that there was no need to provide a new photograph. His motion to compel should have been adjudicated. Judgment on the merits and injunctive relief for Lewis was the duty of the Court **[Emphasis added]**.

> ""9. Let's not forget, we did not ask the Defendants to process our applications "at this time." Those applications were processed at the time of their being submitted, and were unlawfully denied. Such renewal passport denial is subject to vacatur and the compelling of issuance on the basis of what was put to the Defendants upon submission of the applications."" [p. 52 of 64]
>
> 10. The Defendants' action holding our passports hostage to an unnecessary "new" photograph is not only contrary to the published

policy they cite in the Exhibit A letter, 8 FAM 402.1 (See actual text ECF 84-8), it is not rational, reasonable, or fair; it is arbitrary and capricious; and it perpetuates the Plaintiffs *ex neat republica* without due process and ultra vires.

11. The passport renewal applications of the Plaintiffs from 2018 and 2019 are still on the desk of the Defendants', with all the required information due at time of application as required by law and regulation (ECF 99-3, ¶ 3.). We are not in a situation of - new-application-filed-by- the-Plaintiffs post religious-accommodation."" (ECF 102, pp. 4-5)

THE COURT ARBITRARILY SET THE BAR TOO HIGH ON LEWIS'S MOTION TO COMPEL

89. The Court ignored the obligation of the express rules upon the Government to produce the administrative record, and for the Court to facilitate discovery in its review of the agency action. In bias against the pro se plaintiff, Lewis's motion to compel was excluded for consideration because he did not specify the particular paragraphs in the complaint that he wanted to apply to his motion in exclusion to all other paragraphs (ECF 125, Dism. Order Mem., p. 8). Reading the motion and the complaint as a whole, the Court reasonably discerned that it was a ""motion for summary judgment on Lewis . . . claims for equitable relief, i.e., issuing renewed passports, because they are asking the Court to "compel" Defendants to do exactly what they request in their complaint's prayer for relief. See 2d Am. Compl. ¶ 142(1) (demanding that the Court "compel renewal

of their passport applications").. . . which do not even explain which causes of actions are relied on, do not demonstrate entitlement to judgment in Plaintiffs' favor beyond any genuine [p. 53 of 64] dispute of material fact."" (ECF 125, p. 8)

90. The Court completely ignored the gravity of Lewis's motion for immediate injunctive relief. The Court's "dispute of material fact" reference must be alluding to only the first half, and completely ignoring the second half, of Lewis's statement in his motion to compel, ""Notwithstanding there is a factual dispute as to whether the guiding document text uses the word "issue" or "application", the matter of whether the reference for the photograph validity date is a matter of law."" **[Emphasis added]** (ECF 102, p. 9, ¶ 19). The Court converted his uncontroverted facts in support of Lewis's motion for injunctive relief into a challenge to the Government's dismissal summary judgment motion dispute of facts (ECF 125, p. 8). Lewis was 100% right on the law and facts, and the District Court in partnership with the Government was unlawfully keeping a passport out of his hands.

91. The Court's bias is shown in their oblique acknowledgement that the Government's position is unsupportable that Lewis's passport should be denied for his not volunteering a new photograph. "Accordingly, the source of Defendants' insistence on requiring an updated photograph for Lewis—and, therefore, one of the roadblocks to Lewis receiving his passport—is unclear. (*Id.*, p. 27.) That place is where an unbiased Court should have said, 'Lewis's demand for injunctive relief is granted. The Government cannot support its allegation that a new photograph is necessary to replace the one

provided with the application." The Court should [p. 54 of 64] have gone on to declare that both the first and last denials of Lewis's passport renewal applications were unlawful. A de novo review ought to be able to find it a fact that 8 FAM 402.1-2(2) photograph regulation required Lewis's passport photo to be current at application, and that there being no evidence that it was not, it is presumed to be accurate as of the date of his application. The dismissal of his application the second time was unlawful. The case to needs to be remanded to the District Court for discovery of identification of the tortfeasors, their culpability and their liability for judgment on the merits and damages relief.

THE COURT ABANDONED THE JUDICIARY IN ITS ADMINISTRATIVE ORDER

92. When the District Court ordered the Government to issue Lewis's passport by Minute Order, May 25, 2023, without a judicial review of the record, without declaration of the application of the facts to the law, the District Court's order was administrative rather than judicial. The Court, it is true, has power "to affirm, modify, or set aside" the order of the Commission "in whole or in part." § 313(b). But that authority is not power to exercise an essentially administrative function. See *Ford Motor Co. v. Labor Board*, 305 U. S. 364, 305 U. S. 373-374; *Jacob Siegel Co. v. Federal Trade Commission*, 327 U. S. 608. 93. The last known determination by the agency was denial of Lewis's passport for non-religious reasons. The District Court abused discretion by its evasion of

adjudicating Lewis's case and controversy. Declaratory judgment is due after discovery, and a trial on the merits, which will find that Lewis prevails [p. 55 of 64] substantially on his claim and gets the complete relief that is due him. **[Emphasis added]**

94. The Government's denial of Lewis's passport the second time was unlawful, and frivolously defended by the Government, and abusively facilitated by the District Court. It is a new trespass upon Lewis that warrants damages relief. Due process by discovery, in accordance with the Rules, is still wanting. **[Emphasis added]** The ultimate issuing of Lewis's passport, at the eleventh hour, by order of the Court (Minute Order, May 25, 2022) without finding of fact or conclusion of law to reverse the Court order (ECF 124, 125), is an abuse of discretion. The order denies due process and judgment on the merits to Lewis and needs to be vacated. Upon its de novo review, the Circuit Court needs to declare that the record is sufficient to show that Lewis's first and second denial of his passport renewal application was unlawful, and to vacate the dismissal orders of the District Court related to Lewis's claims.

DECLARATORY RELIEF BASED ON DISCOVERABLE FACTS DETERMINES APPROPRIATE RELIEF FOR REVOKED PASSPORT

95. A case and controversy remains regarding the appropriate relief related to Carmichael's demand for the recission of the passport revocation. Carmichael's January 2018 passport renewal was

issued in accordance with the law, and was approved by someone who applied the law. It was revoked contrary to law. The appropriate relief demanded by Carmichael was not only recission of the revocation injunctive relief (ECF 51, pp. 59-60, ¶ 142(1)), there remains discovery [p. 56 of 64] and declaratory judgment relief to identify the facts and solidly apply the law to them for the protection of the people. To be sure, the Government promised the recission relief in their Reply to their Remand motion (ECF 66, p. 5) until they played bait-Carmichael-to-moot-his-case litigation games (ECF 80). Carmichael demanded declaratory judgment relief under 28 U.S.C. § 2201, and under the APA if no other statute applies. Where, however, a complaint seeks injunctive relief together with declaratory relief and the injunctive relief features have been rendered moot by subsequent events, a court must still proceed to do complete justice by entertaining the plea for declaratory relief. *Bisno v. Sax* (1959) 175 Cal.App.2d 714 [346 P.2d 814]. Therefore, the issue presented by appellees' motion to dismiss is whether effective declaratory relief can be granted to appellants should the judgment below be reversed and the action remanded for trial. *Shultz v. O'Rourke* (1931) 118 Cal.App. 207 [4 P.2d 797]." *City of Coronado v. Sexton*, 227 Cal.App.2d 444, 38 Cal. Rptr. 827 (Cal. Ct. App. 1964) cited by *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992)

96. The Court's repeating the "not taking yes for an answer" quip of the U.S. Attorney hints at bias for the Appellee (ECF 125, 150, quoting Def filing). It indicates abuse of discretion whereby it is clear that the Court did not read the submissions of

Carmichael explaining his motive to uphold the law rather than to usurp it for convenience: "The case and controversy before the court is due to the ultra vires activities of the Defendants. When a passport comes to me in the mail, and I find that even that "replacement" passport document is a result of ultra vires activities, I have the moral and civil duty to not participate or benefit from the act. As I said in my opposition to the statement in the order, "To partner with the evasion of the application of law is a [p. 57 of 64] partnership with sedition. In good faith, I cannot abate in my standing for complete relief as a matter of law."" (ECF 101, p. 2, ¶ 4) **[Emphasis added]**

97. Legitimate discovery is necessary to determine facts of the replacement passport legitimacy by the Rules of Evidence rather than trial by non-adversarial declaration. Carmichael contends that a replacement passport requires an application and a recent photograph unless the Government is making up rules as they go in a moot-the-case scheme (ECF 85, ¶ 5 & ECF 90, p. 1, ¶ 2). As a matter of law 'the Department' did not revoke the passport. Somebody misleading Mr. Rolbin is not the action of 'the Department.' The unlawful revocation with no pre revocation notice is void ab initio.

98. The Government admitted that it can rescind the revocation (ECF 66, p. 5). That shows injunctive relief of the voiding of the revocation of Carmichael's Jan 2018 passport, which is the object of the case and controversy, it appropriate relief. Its speculations of possible inconveniences to Carmichael are irrelevant.

99. The Court abused discretion where it made a

declaratory judgment without a finding of fact and conclusion of law on the merits that the replacement passport was "his passport" to which he was ordered to take possession. A minute order is no substitute for legitimate exercise of Article III power. The District Court's unwarranted reliance upon disputed material facts and unsubstantiated and often proven wrong Government declarations in its erroneous order by summary judgment, and the Court's partnership with the Government to evade the [p. 58 of 64] appropriate due process that is the path to judgment on the merits, warrants the Circuit Court's de novo review. **[Emphasis added]**

RELIEF

100. Upon de novo review, declare where the District Court erred as to law, made clearly erroneous conclusions as to facts, and abused its discretion in its Minute Orders, and formal Orders. Declare the following:

> A) The Appellants' case is not moot. They have declaratory, injunctive and damages relief available under 28 USC §§ 1361 and 2202; 42 USC §2000bb, where they have Article III standing. . . .
>
> E) The RFRA and the FTCA provide for "adequate relief" which is compensatory or nominal damages from the United States for its employees causing injury in their official capacity. RFRA provides relief in damages for injuries by persons in their individual capacity, tortfeasors, who violate the law or abuse the power of their office. Use of the term "co-conspirators" is a legitimate way for pro se

plaintiffs to depict the defendants whose identities are cloaked. **[Emphasis added]**

F) The District Court erred in law or abused discretion where it refused to demand the complete record on review or provide discovery.

G) The remand, by minute order of January 25, was an abuse of discretion, violating the rule of *Limnia, Inc. v. U.S. Dep't of Energy*, 857 F.3d 379 (D.C. Cir. 2017). Since it is deducible the Government should have known by its records that nothing was wanting to issue Lewis's passport and rescind the revocation of Carmichael's. Liability for damages relief is conceivable for prolonging the trespass on the Appellants. **[Emphasis added]** [p. 60 of 64]

H) The minute order of May 25, 2022, as well as those of January 20 and April 19 and May 7, of 2021, was an abuse of discretion where the Court evaded its Judicial duty, grossly neglecting to declare the authority of its orders according to the merits. Carmichael's claim for declaration and injunctive relief of revocation rescission is actionable.

101. Vacate the orders dismissing Counts One, Four as to Carmichael, and Five of the District Court order of August 28, 2020 (ECFs 44, /45). 102. Vacate the orders dismissing the Appellants' claims on March 25, 2022 (ECF 124, 125) and March 20, 2023 (ECF 149, 150) 103. Vacate dispositive "Minute Orders" such as those of January 20, 2021, April 19, 2021 May 7, 2021, and May 25, 2022. 104. Order Secretary Blinken to: Make exception to those who do not identify with a SSN for sincerely held religious beliefs or activities; Institute a training regimen for all passport adjudicators to ensure the

injunction is properly enforced. Produce the whole record.; order the rescission of the revocation of Carmichael's passport January, 2018, unless it can be demonstrated by actual evidence that it was not lawfully issued upon a motion for relief from judgment or order. Give notice of its rescission to those who were notified of its revocation.

105. Remand the case and order the District Court to: Have the Chief Judge consider reassigning the case; Commence discovery; Adjudicate the claims to the[p. 61 of 64] end of complete relief. **[Emphasis added]**

106. Provide other relief by declaration or order, according to equity, and according to the discernment and the power of the Circuit Court.

Excerpts from Petitioner Response to Respondent Motion to Dismiss, Invoking the Rule in *Uzuegbunam v. Precewski*
Case 1:19-cv-02316-RC, ECF 144 (Jul. 29, 2022)

[ECF 144, pp. 19-22 of 26]

32. In their status report of May 24, 2022 (ECF #136), the Defendants continued to play the Court and the Plaintiffs. They explained that Mr. Lewis's case is moot because they intended to some day issue a replacement passport to him, holding the carrot on the stick if he would just give him something for which they already possessed. Eight (8) days earlier, Mr. Lewis had sent a letter to the Defendants explaining that he had no intention of taking a passport as a mutual concession but that the Defendants fulfill their duty according to the law (ECF 137-3). Mr. Lewis address, the same one on his passport renewal application, was on that letter. Yet, the Defendants told the Court that one day Mr. Lewis would have a passport (effectively) if he would just bend his knee.

33. The Defendants continued, and continue in this latest motion, to play the Court with false statements saying that they've taken "steps to bring resolution to the outstanding issues [p. 19 of 26] bearing on Plaintiffs' claims for equitable relief." As if it were a noble undertaking, they said "The Department determined that it could issue Lewis a new passport, valid for a full ten years, based on the passport photograph that Lewis had previously submitted with his application." <u>They did not tell the Court that despite their knowing that this passport was owed to Mr. Lewis as a matter of law, prior to the status report, they tried to use their</u>

duty of law as if it were a carrot-on-a-stick settlement offer to have Mr. Lewis embrace a fulfillment of his claims for equitable relief. "Your letter did not state whether Mr. Lewis has any outstanding issues given that the Department has indicated it will accept his photograph with the photograph as originally submitted and is prepared to issue a regular passport that will be valid for 10 years. Can you confirm whether he accepts this proposal? It would seem to me that his claims are fully resolved, but please advise if he has a different view as to what needs to be remedied in light of the Court's most recent order." (Att. 6, May 16, 2022, Def. Email Re: ICAO and Lewis) **[Emphasis added]**

34. The Defendants have established the threshold for the "reasonable" time required for a passport to be issued once the Department knows that a passport is due to the applicant. Though the Court did not find fact or conclude law in its May 25, 2022 order, nor provide the pecuniary damages and other statutory and equitable relief due the Plaintiffs, the Court imposed the duty upon the Defendants to issue the passport to Mr. Lewis. **[Emphasis added]** That took six (6) days for them to issue the passport, sent by express mail, getting it to Mr. Lewis by one week (7 days) from the Court's order of May 25, 2022 (ECF-140-3, 2nd Declaration of Paul Peek). The delays in fulfilling their duty as a matter of law exceeding six days of issuance or seven days for receipt shall be the basis of time for which Mr. Lewis, Mr. Pakosz, Mrs. Boulton and Mr. Carmichael are due pecuniary damages for false imprisonment, among other things.

35. The case is not whether the Defendants did

not exercise their discretion whether it could [p. 20 of 26] accommodate the Plaintiffs, the case goes to the matter of whether the Defendants had an obligation to accommodate the Plaintiffs as a matter of law.

Cases Cited By the Defendants Support the Plaintiffs' Standing

36. When the Defendants cited *Taylor v. Resol. Tr. Corp.*, they neglected to quote a portion of that citing where it indicates that the Plaintiffs case is not moot – " and former employees can recover damages for past retaliation suffered while employed... .... In *Bois v. Marsh*, 801 F.2d 462 (D.C. Cir. 1986), ... Although we held that her claims for damages were still live and proceeded to analyze them on the merits F.3d 1497, 1502 (D.C. Cir. 1995) (Emphasis added) , 801 F.2d at 468-71..." *Taylor v. Resol. Tr. Corp* 56 **[Emphasis added]**

37. The Defendants' statement is false where they say, "Simply put, Plaintiffs brought this case to obtain passports without having to identify with a social security number." The unlawful denial of the passports is not the complete relief that we sought. We seek damages to the fullest extent allowed by law based upon the facts and conclusions of law as they apply to each bad actor under the color of law who had hidden behind a 'Bureau of Consular Affairs' pseudonym. **[Emphasis added]**

38. The Defendants wrongly paint a notion that there is a burden upon the Plaintiffs to prove facts or law to overcome a presumption of mootness when the Court is duty bound to apply relief wherever it may be had. **[Emphasis added]** Mootness is a

"demanding standard"; it applies "only if 'it is impossible for a court to grant any effectual relief whatever.'" *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019) (quoting Chafin v. Chafin, 568 U.S. 165, 172 (2013)).

Damages Are Due and Judiciable

39. There is no genuine dispute of material fact that persons acting under the color of law, under the guise of pseudonyms, unlawfully denied passports to Plaintiffs Lewis, Pakosz, and Boulton. There are more wrongs and injuries to the Plaintiffs in consequence of the willful, [p. 21 of 26] intelligent, etc., acts done in hostility to the religion of the Plaintiffs. The common law, those rights retained by the Plaintiffs and their posterity, offers pecuniary satisfaction in damages.[1] Those pecuniary damages give just relief for the wrong of the Plaintiffs' rights being withheld and invaded; where receiving a passport three-years-after-the-fact cannot be an adequate remedy; where the sufferer must be given pecuniary satisfaction in damages. "The instruments whereby this remedy is obtained (which are sometimes considered in the light of the remedy itself) are a diversity of suits and actions... where it is the (Plaintiffs') right of prosecution to judgment which everyone is due."[2] **[Emphasis added]**

40. The Plaintiffs, notwithstanding their lack of training in tort law, sufficiently alleged with so many words that there are of the Defendants those who are liable for damages. Those damages are pecuniary whether or not there is chattel involved.

"It is a well established principle of the common

law that in actions of trespass and all actions on the case for torts, a jury may inflict what are called 'exemplary,' 'punitive,' or 'vindictive' damages upon a defendant, having in view the enormity of his offense, rather than the measure of compensation to the plaintiff. We are aware that the propriety of this doctrine has been questioned by some writers, but, if repeated judicial decisions for more than a century are to be received as the best exposition of what the law is, the question will not admit of argument. By the common as well as by the statute law, men are often punished for aggravated misconduct or lawless acts by means of a civil action, and the damages inflicted by way of penalty or punishment given to the party injured. In many civil actions, such as libel, slander, seduction &c., the wrong done to the plaintiff is incapable of being measured by a money standard, and the damages assessed depend on the circumstances, showing the degree of moral turpitude or atrocity of the defendant's conduct, and may properly be termed 'exemplary' or 'vindictive', rather than 'compensatory.'" *Scott v. Donald*, 165 U.S. 58 (1897) citing Day v. Woodworth, 54 U.S. 363, 13 How. 371

41. It is the duty of the District Court to ascertain the extent of the violations of law, to examine the evidence of culpability of each actor, to determine which persons are liable for the injuries done, and the amount of damages to be paid whether the nomination be one dollar, a [FN1 *Sir William Blackstone's Commentaries, Book the Third, Private Wrongs, Chapter the Eighth, Of Wrongs and*

Their Remedies; Respecting the Rights of Persons] [FN2] *Id, Quote of Maxim – Justinian "jus prosequendi in judicio quod alicui debetur"* [p. 22 of 26] minimum of one thousand dollars adjusted for inflation based upon the Privacy Act, or the statutory maximum of five hundred thousand dollars if the person liable for the tort is the United States. **[Emphasis added]**

> Applying what he called Lord Holt's "incontrovertible" reasoning, Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" whenever "no other [kind of damages] be proved." *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 508–509 (No. 17,322) (CC Me. 1838). Because the common law recognized that "every violation imports damage," Justice Story reasoned that "[t]he law tolerates no farther inquiry than whether there has been the violation of a right." *Ibid.* Justice Story also made clear that this logic applied to both retrospective and prospective relief. *Uzuegbunam v. Preczewski*, 592 U.S. _____ Slip Op. p. 6 (2021)

Excerpts From Petitioners' Objections To May 25, 2022 Minute Order and Notice of Intentions To Move For Stay In Circuit Court
Case 1:19-cv-02316-RC, ECF 138, (Jun. 1, 2022)

[ECF 138, pp. 2-3 of 4]

6. The District Court errored as a matter of law as well as abused its discretion where it issued mandamus by minute order without a finding of fact and conclusions of law on the substantial
[p. 3 of 4]
matter of the passport renewal application approval of Plaintiff-Appellant Lewis. Whether or not Mr. Lewis's passport was unlawfully denied, how it was denied, and why it has remained denied for three years is the substance of the merits of Mr. Lewis's complaint. The absence of a finding of fact and conclusions of law is fruit of the District Court's unwarranted denial of the Plaintiffs Appellants' motions for discovery. **[Emphasis added]**

> The heavy burden of demonstrating an abuse of discretion is made more difficult for appellant by the trial judge's failure to make, as required by Super.Ct.Dom.Rel.R. 52(a), written findings of fact and separate conclusions of law. This court has declared on a number of occasions that such findings of fact and conclusions of law are a prerequisite to meaningful appellate review. Petition of G.F.C., Jr. and L.M.C., D.C. App., 314 A.2d 486 (1974). See also Sheridan v. Sheridan, D.C.App., 267 A.2d 343 (1970); Butler v. Butler, D.C.App., 239 A.2d 616 (1968); O'Lea v. O'Lea, D.C.Mun.App., 138 A.2d 486 (1958).

7. Fact and law related to all of the Appellants' passport denials or revocations is the basis upon which damages are the appropriate relief for the unlawful restraint upon the Plaintiffs Appellants, confining them within the borders for over three years without due process and in violation of the laws protecting religion. A real judgment is necessary for the sake of the public interest, complete relief, and for the qualification of costs under the Equal Access to Justice Act. **[Empasis added]**

Excerpts From Petitioners' Response to Status Report, Saying Equitable Relief Not Complete
Case 1:19-cv-02316-RC, ECF 137 (May 24, 2022)

[ECF 137, pp. 5-6 of 10]

12. We reject the notion that Plaintiff Lewis will have fully received equitable relief when he confirms the address to which he would like the Department to send his passport. The substance of the response of Mr. Lewis, and the response of Mr. Carmichael, was due to the Defendants invitation to treat the matter of Mr. Lewis passport renewal as a carrot on a stick. The response was done in such a way as to ensure that the Plaintiffs in no way were conceding to the judge's arbitrary dismissal, and the court's sua sponte setting up the Plaintiffs to participate in a new remand/settlement agreement with the lawless Defendants. The Defendants have a duty as a matter of law to issue the renewed passport, sending it to the address listed on the application. That address happens to be the service of process address for Mr. Lewis that is listed on the Docket and that is cited in every filing and certificate of service from the beginning to inopportune end of his case in the District Court. The Defendants, and their new Attorney, continue to play games with the Plaintiffs, the court, and the law. **[Emphasis added]**

13. Notice the scheme of the Defendants manifested in their attempting to bait the Plaintiffs into a seemingly voluntary "paid-in-full" status where the Defendants Attorney states, [p. 6 of 10] "Accordingly, the Department respectfully suggests that Plaintiff Lewis will have fully received the equitable relief he seeks in this matter when he

confirms the address to which he would like the Department to send his passport." None of the Plaintiffs will be "paid-in-full" (obtained complete relief) until their complaint is fully adjudicated, a judgment is a matter of record, and all damages as a matter of law as well as equity are fully paid from all liable parties; or until there is a substantive consent decree where the Plaintiffs, their posterity, and those of their religious community can be reasonably sure that they will not be subjected to the same lawless persecution and torment by the Defendants, and suitable compensation can salve some of the hurt to the lives and liberties of the Plaintiffs. **[Emphasis added]**

Excerpts From Petitioners' Response to Order, Opinion and Memorandum of March 25, 2022
Case 1:19-cv-02316-RC, ECF 127 (Apr. 4, 2022)

[ECF 127, pp. 30-37 of 43]

Legal Standards Rule 12(b)(1)

63. The Court ignored, it "must grant opportunity of conducting additional discovery before making its decision." ECF-106, ¶63 citing *Clair v. Chico*, 880 F.2d 199 (9th Cir., Cal., 1989). The Plaintiffs have vehemently declared that they can demonstrate requisite jurisdictional facts if afforded discovery.

64. The Court ignored, "fundamental fairness requires that non-moving party be afforded opportunity to conduct discovery so that he can if possible meet his burden of establishing jurisdiction." ECF-106, ¶63, citing *Mill v. United States*, 530 F. Supp 611 (E.D. Pa., 1982). The Court cannot rely upon the Declaration of Jonathan Rolbin. It is not evidence that constitute facts, except to show that there is evidence to establish jurisdiction, discoverable by searching for the documents, procedures and witnesses or conspirators that he did not directly quote or name. WE need the right to expose the false statements of Jonathan Rolbin and the violations of law by him and co-conspirators.

65. The Court should not have dismissed our case "where that determination was intermeshed with merits of the claim and there was dispute as to material fact. ECF-106, ¶63, citing *Lawrence v. Dunbar*, (1990, CA 11 Fla) 919 F2d 1525. **[Emphasis added]** The Court erroneously rested

its conclusions on assertions by the Defendants' Attorney, not supported by evidence. The full scope of the violations of law, regulation, policy, etc. that were violated, and the scope of the malevolence of the violator and the threshold of their ministerial duties are facts to go to the jurisdictional question upon which the Court is dismissing the case.

66. The Court ignored that the "District court should have read all of pro se plaintiff's [p. 31 of 43] filings together before dismissing case for lack of subject matter jurisdiction." ECF-106, ¶63, citing " *Richardson v. United States* (1999, App DC) 338 US App DC 265, 193 F3d 545. The Court's failure to track, cite or address those matters precipitated the Court's errors.

Legal Standards Rule 12(b)(6)

67. The Court abusively and erroneously ignored, "Courts are cautious in dealing with motions to dismiss for failure to state claim on which relief can be granted, particularly where to grant motion would terminate litigation before parties have had their day in court." *Gainey v. Brotherhood of R. & S.S. Clerks, etc.*, 177 F Supp 421 (D.C. Pa., 1959). ECF 106, ¶64.

68. The Court ignored, "Complaint should not have been dismissed on Rule 12(b)(6) motion for failure to plead facts sufficient to demonstrate malice and thus overcome defendants' immunity, since under Rule 9(b) malice may be averred generally, and no further proof was required at that point in litigation." ECF 106, ¶64 citing *Vector Research v. Howard & Howard Attorneys P.C.*, 76 F3d 692, (6th Cir., Ohio, 1996). (Emphasis added)

The Court's running lock step with the Defendants' perception of the necessity of certain magic-words to aver malice contradicts the rule that "malice may be averred generally." **[Emphasis added]**

69. The Court violated the Rule that requires "proper evidence." "Rule 12(b)(6) does not give district court authority to consider matters outside pleadings; if movant wishes to test factual underpinnings of complaint, it may submit proper evidence outside pleadings and move for summary judgment under Rule 56. LaBounty v. Adler, 933 F2d 121 (2nd Cir., N.Y., 1991)." ECF 106, ¶64 That which has been submitted by the Defendant is not "proper evidence." It has not been moved for by the Defendant to be "proper evidence" and what they have submitted so far would not stand up to our objections if they moved for it to become "proper evidence" for the record, and it has been a substantial part of our protests. The Court scratched it head trying to [p. 32 of 43] figure out why the Plaintiffs did not comply Defendants' with the not-proper-evidence of the photograph requirement. When the actual written policy was presented by the Plaintiffs, the Court found out just how not proper were the assertions by the Defendants' Attorney and Defendants' denial-letter writer.

70. The Court ignored that this "Complaint that presents claim turning on factual issues and inferences may not be terminated under Rule 12(b)(6). *Walker v. National Recovery, Inc.*, (42 F. Supp. 2d 773), (7th Cir., Ill, 1999)". ECF 106, ¶64. The full quote of the paragraph from that case says, "When the evidence is one-sided, then it is possible to end the case by summary judgment under Fed.R.Civ.P. 56. When the plaintiff decides to stand

on her complaint and forego factual development, then the case may come to an end by judgment on the pleadings under Fed.R.Civ.P. 12(c). But a complaint that presents a claim turning on factual issues and inferences, as this one does, may not be terminated under Rule 12(b)(6)." If the case is one sided at all, it should be for the Plaintiffs. Those material facts are currently artfully closed in Pandora's box called discovery. Just the opposite of forgoing factual development, we are vehemently fighting the Court and Defendants' obstruction of it. Like Walker, our claim turning on factual issues and inferences should not be dismissed. **[Emphasis added]**

71. The Court ignored that the dismissal motion by the Defendants is actually a defense on the merits and should not be dismissed "... and motion should be considered as answer, then plaintiff was entitled to be fully heard and to introduce competent evidence upon factual question thereby presented. *Porter v Prentice*, 155 F2d 967 (7th Cir., Ill., 1946)." ECF 106, ¶64 Among other things that constitute a challenge on the merits, the Defendants aver that our co-conspirators (unable to be named without discovery) were acting in their official capacity and we claim that they cannot be. We claimed that the facts material to that determination are sequestered in [p. 33 of 43] violation of the rules and the law of due process. The Defendants claim that they have lawfully denied the Plaintiffs passports and we claim that they have unlawfully denied them. That is an argument on the merits, resting upon material facts that are hidden. What has come to light supports the Plaintiffs' positions. These material facts among others dismantle the mootness and

other positions relied upon by the Court in abusively and erroneously dismissing the case. **[Emphasis added]**

72. The Court ignored that the plaintiffs still have a "personal stake in litigation which is not moot; consequently, case or controversy still exists, and defendant's motion to dismiss complaint pursuant FRCP 12(b)(1) and (6) will be denied." ECF 106, ¶64, citing *Edge v. C. Tech Collections, Inc.*, 203 F.R.D. 85 (E.D. N.Y., 2001). **[Emphasis added]**

Legal Standards Rule 56

73. The Court ignored that there is a significant amount of evidence upon which this case turns that goes to the matter of the relief yet due the Plaintiffs. It is all so far hidden by the Defendants whose conduct in their administration we've alleged to be unlawful. The Rules of appellate procedure require the whole administrative record to be reviewed by the court before the Court takes action based upon the law as applied to the documentary facts. "On motion for summary judgment, if question of fact exists concerning existence of defense, issue cannot be determined on affidavits. *Hanna v. United States Veterans' Administration Hospital*, 514 F.2d 1092 (3d Cir. 1975). Under the circumstances, the judgment must be set aside for failure to comply with Rule 56(e)." *Peterson v. U.S.*, 694 F.2d 943, 946 (3rd Cir. 1982). ECF 106, ¶65 **[Emphasis added]**

74. The Court ignored that all the Defendants have supplied in their motion for dismissal is the Declaration of Kristin N. Watkins. For the purpose of summary judgment, Kristin N. Watkins's

declaration is not only outside the record, it is not evidence. A real affidavit would be verifying by personal knowledge the authenticity of a document, not merely summarizing Kristin [p. 34 of 43] of 43 N. Watkins conclusions about the document. ""Fed.R.Civ.P. 56(e) requires a party who files an affidavit to "attach thereto and serve therewith" sworn or certified copies of all papers referred to in the affidavit.6 (Fn6 - This rule provides that "[s]worn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.)"" *Peterson v. U.S.*, 694 F.2d 943, 945 (3rd Cir., N.J., 1982)1 (Emphasis added.). We know by subsequent filings of the Plaintiffs, documentary evidence, Kristin Watkins Declaration had falsehoods that needed to be scrutinized according to the Rules of Evidence. Even when the falsehood was exposed, rather than due process according to the rules of court and evidence, the Court imagined how it could be less false. ECF 106, ¶66.

75. The Court ignored that the threshold for Summary Judgment has not been met since, "Movant for summary judgment must demonstrate entitlement beyond a reasonable doubt." Citing *Mustang Fuel Corp. v. Youngstown Sheet & Tube Co.*, 516 F.2d 33 (10th Cir., Okla., 1975), on remand 411 F.Supp. 705 ECF 106, ¶67. "A motion for summary judgment is not a substitute for a trial, and on such a motion court must decline to decide any factual issue whose answer admits of reasonable doubt." *Streeter v. Erie R. Co.*, 25 F.R.D. 272 (S.D.N.Y. 1960) "Moving party must prove his right to summary judgment with such clarity that the nonmoving party cannot recover under any

discernible circumstance." *Williams v. Taylor*, 677 F.2d 510 (5th Cir., Miss., 1982). "Summary judgment should be granted only when truth is clear, where basic facts are undisputed and parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts. *Sindermann v. Perry*, 430 F.2d 939 (5th Cir., Tex., 1970). Summary judgment is an extreme and treacherous device which should not be granted unless the moving party has established a right to judgment with such clarity as to leave no room for controversy and unless the other party is not entitled to recover under any discernible [p. 35 of 43] circumstance. *Anderson v. Industrial Elec. Reels, Inc.*, 812 F.Supp. 999 (D. Neb., 1993) "Denial of motion for summary judgment is appropriate when legal issues are of particular significance or particularly complex, or where legal issues can be intellingently resolved only upon fully developed record." *Anthony Grace & Sons, Inc. v. U.S.*, 345 F.2d 808, Ct.Cl. (1965) "Summary judgment is rarely proper in cases raising equitable defense of unclean hands because summary judgment is notoriously inappropriate for determination of claims in which issues of intent, good faith, and other subjective feelings play dominant roles, particularly when parties allege fundamentally conflicting facts." *Haft v. Dart Group Corp.*, 841 F.Supp. 549, (D.Del., 1993) ECF 106, ¶67. The Court wrongfully evaded trial notwithstanding the critically important factual issues. It is discernable that the non-movant will prevail if given the right to expose the facts that expose the wrongdoers and the violations of law. The truth has been made unclear by the Defendant and Court's obfuscating actions.

The parties are in disagreement regarding material factual inferences that may be drawn from the known facts as well as those that are so far hidden. The Court is engaging in and extreme and treacherous dismissal despite the controversy. The legal issues are of particular significance and particularly complex, and the legal issues cannot be resolved without a fully developed record. Otherwise, the Court is dizzied over the Plaintiffs' briefings. There are substantive issues of intent, bad faith, and other subjective feelings that play dominant roles, particularly when parties allege fundamentally conflicting facts. [Emphasis added]

Legal Standards Damages

76. The Court ignored "in the Federal Tort Claims Act, Congress waived the sovereign immunity of the United States." ECF 106, ¶68. citing *Peterson v. U.S.*, 694 F.2d 943, 944 (3rd Cir., N.J., 1982)." The Plaintiffs invoked that Act in the beginning of their complaint when [p. 36 of 43] citing the United States as a Defendant. ECF No. 1, p. 3, ¶3 & ECF No. 51, p.3, ¶8.

77. The Court ignored "Damages are given as a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. Compensatory damages and actual damages mean the same thing; that is, that the damages shall be the result of the injury alleged and proved, and that the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party." 2 Greenl. Ev. (10th ed.) sect. 253. *Birdsdall v. Coolidge*, 93

U.S. 64 (1876)." **[Emphasis added]**

78. The Court ignored, Barring the Plaintiffs from leaving the country is an injury in fact, just as is kidnapping, false imprisonment, denying rights benefits and privileges because we did not give a SSN in violation of the laws of the United States, injuring us in the loss of a passport in violation of our fundamental rights of the 1st, 5th, and 9th Amendments, etc. Are actual injuries. **[Emphasis added]**

79. The Court ignored, "Although actual malice must be proved to justify punitive damages, legal malice inferred from circumstances is sufficient to support award of compensatory damages." 1976 *Tweedy v. J.C. Penney Co.*, 216 Va. 596, 221 S.E.2d 152. That "legal malice" applies in this case, and warrants discovery and adjudication of the facts and law based upon accessible "proper" evidence. **[Emphasis added]**

80. The Court ignored "False imprisonment is restraint of one's liberty without any sufficient cause therefor[; it is not essential that a person is] confined in jail or in the custody of an officer." *Zayre of Va., Inc. v. Gowdy*, 207 Va. 47, 50-51 (1966). The Defendants in their official capacity have restrained our liberty by means of people violating law in their non-official capacity under the color of their official capacity. And the Defendant United States is subject to [p. 37 of 43] damages where those acting in a ministerial capacity or in violation of their ministerial capacity cause the false imprisonment restraint of our liberty without any sufficient cause and is or ought to be subject to damages under the Tort Claims Act. That injury does not go away because the official capacity Defendants or not

official capacity Defendants eventually get around to fulfilling their ministerial obligations of correcting their records. **[Emphasis added]**

Excerpts From Petitioner's . . . OPPOSITION TO "DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT"

Case 1:19-cv-02316-RC, ECF 106 (Aug. 20, 2021)

[ECF 106, pp. 49-57 of 65]

IX. Plaintiffs Damages Claims Will Prevail After Discovery Ripens Them Since Those Acting Maliciously In Their Official Or Private Capacities Are Hidden

105. Privacy Act, Due Process, and Religious liberty injuries in our case came from real people ignoring the law, conspirators who, some under obligation of an oath, knew or had the [p. 50 of 65] duty to know that they were violating the law. Even if there were not statutory monetary relief from the United States, there are people who did act, and are acting, under the color of law, maliciously, against the law. In so doing, they are acting in their private capacity and are not yet particularly named because the record of their wrong-doing has been unlawfully sequestered. **[Emphasis added]**

106. Jonathan Rolbin, Kristen Watkins, Christine McClean, Steven Miller, Paul Peek, Florence Fultz, Michael Richard Pompeo are each suspect of being actors and conspirators to the violation of our rights under the United States Constitution, the Privacy Act, 42 U.S.C. § 408, 18 U.S.C. 242, 22 U.S.C. § 2721 and the Religious Freedom Restoration Act. Christine McClean was the only known actor besides Mr. Pompeo until the

involvement of others was introduced in the Defendants' extra-record declaration filings and memoranda.

107. Discovery is necessary for the Court to examine evidence to see: who it is and was, who did or are, violating the law; are acting unilaterally or in collusion, or under orders; who are under an oath to support and defend the Constitution and to uphold the law of the United States, and who those are who are agents acting willfully, negligently, intelligently or recklessly. They are defendants who are described as co-conspirators in the complaint and who are liable. **[Emphasis added]**

X. There Are Damages Due For Religious Freedom Restoration Act And Fifth Amendment Violations

108. The Defendants erroneously argue that the 42 U.S.C. § 2000bb-1(c) remedy to seek relief after-the-fact somehow negates a before-the-fact due process violation. They also argue erroneously that there are no damages due since the violator was the immune official of the immune department of the immune most powerful government on the planet. And... since damages cannot be due, there is no cause of action. Therefore, 42 U.S.C. § 2000bb-1(c) must be held as no remedy at all, and the Plaintiffs case must be dismissed. Under that logic, 42 U.S.C. § 2000bb-1(c) has obliterated a civil prohibition against government abuse as old as Magna Charta. [p. 52 of 65] If there is no relief but merely a statutory remedial façade, taxpayer-funded power-exerters, like the co-conspirators in our case, are free to abuse power to the injury of any person's life,

liberty and property according to each bureaucrat's recalcitrant whim. **[Emphasis added]**

109. The Defendant's say that immunity bars damages relief from Secretary Pompeo, or his successor, since he is sued in his official capacity. That is no bar to damages relief in this case. The Defendants erroneously summarize that "only official capacity claims are at issue in this litigation." The United States is subject to damages according to congressional act as mentioned in paragraph 8 of the complaint (ECF 51, from ECF 46-2, Motion-Mem. Attach. 9), The complaint cited other defendants, "...co-conspirators and agents that shall be identified or confirmed upon discovery" which includes those acting in or out of their official capacity. **[Emphasis added]**

110. The conspiracy statute 18 U.S.C. § 242 was one of the counts in the complaint, as well as violations of the Privacy Act, as well as violation of 42 U.S.C. § 408 which says that denied rights, benefits and privileges to us for not identifying with a SSN, in violation of United States Law is a mala prohibita felony. Such violations by their nature are by perpetrators acting under the color of law, not in their official capacity. They are those who violated laws of the United States, as well as the constitution, and therefore their acts are subject to punitive or other damages depending on the facts of their particular behaviors and the chains of law that would otherwise bind them in an official capacity. The actual name of those co-conspirators are not revealed in their under the color of law correspondence. "Sincerely, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison" is a pseudonym for

some actual natural person who violated the law to our injury. No thanks to the initial 90 days of unwarranted additional time without good cause or excusable neglect, and going on ten-months of frivolous "remand period" tactical delay, our access to fresh memory of the hostile witnesses [p. 53 of 65] must be victim of natural decay. It is shameful. Nonetheless, though delay may decrease our odds of credible discovery, we have standing and the court has the grant of power over our remedy and relief. The Defendants motion for dismissal under Rule 12(b)(1) and (6), and summary judgment fails. **[Emphasis added]**

. . . [Continue to XII. and ¶112.]

XII. The Term Actual Damages Is Identical To The Term Compensatory Damages As A Matter Of Law According To The United States Supreme Court. Compensation Relief For Unlawful Writ Ne Exeat Republica Without Due Process Is Therefore Due As Damage In Fact [p. 54 of 65]

112. The term actual damages is compensatory damages or "compensation." The U.S. Supreme Court said, "the phrases compensatory damages and actual damages are identical." *Birdsdall v. Coolidge*, 93 U.S. 64 (1876). The definition of actual damages is not limited to measurable dollar injuries or personal property injuries that can be particularly valued at the latest suggested retail price. The compensation for violation of due process

manifesting in a liberty injury, actual damage, is "Compensatory damages" which are actual damages. A loss of a leg is an actual damage that has no price tag. The injury to the Plaintiffs must include the cost to the life, livelihood, and liberty of the injured Plaintiffs, before and after commencement of litigation, is a matter of fact to be determined by a jury. **[Emphasis added]**

> Damages are given as a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. Compensatory damages and actual damages mean the same thing; that is, that the damages shall be the result of the injury alleged and proved, and that the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party. 2 Greenl. Ev. (10th ed.) sect. 253. *Birdsdall v. Coolidge*, 93 U.S. 64 (1876)

113. Discovery will verify the malice inferred from circumstances to justify punitive damages. Although actual malice must be proved to justify punitive damages, legal malice inferred from circumstances is sufficient to support award of compensatory damages. *Tweedy v. J.C. Penney Co.*, 216 Va. 596; 221 S.E.2d 152 (1976) **[Emphasis added]**

114. In legal contemplation, the restraint of our liberty constitutes false imprisonment.

> "False imprisonment is restraint of one's liberty without any sufficient cause therefor[; it

is not essential that a person is] confined in jail or in the custody of an officer." *Zayre of Va., Inc. v. Gowdy*, 207 Va. 47, 50-51 (1966). "If a person is under a reasonable apprehension that force will be used unless he willingly submits, and he does submit to the extent that he is denied freedom of action, this, in legal contemplation, constitutes false imprisonment." *Id.* at 51 115. In the States where the Plaintiffs reside, false imprisonment is an injury-in-fact that warrants an award of pecuniary compensation damages, or actual damages, notwithstanding the [p. 55 of 65] lack of a retail receipt. It is a matter of fact for a jury's determination. **[Emphasis added]**

XIII. The Religious Freedom Restoration Act Contemplates All Categories of Damages As "Appropriate Relief" Payable By The United States Or Those In Their Private Capacity Depending On The Facts

116. The Defendants' claim that the RFRA does not waive sovereign immunity is erroneous.. Certainly, the remedial RFRA's use of the broad term "appropriate relief" contemplates any damages payments due for an injury-in-fact by the United States through its agents acting in their official capacity, or by its agents who are liable in their private capacity for their unlawful acts done under the color or law. **[Emphasis added]**

117. It is not necessary that the RFRA expressly state "sovereign immunity is waived" just as those words are not used in the Federal Tort Claims Act.

Under the Federal Tort Claims act, the United States is liable for those wrongful injurious actions take by those agents of the United States in their official capacity as any "legal" person would be. The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages. 28 U.S. Code § 2674 - Liability of United States

118. The Federal Tort claims act does not say "sovereign immunity is waived." In fact, it itemizes where immunity is specifically retained to those natural persons who are acting in their official capacity (See 28 U.S.C. 2674, 3rd para.) who themselves are immune from liability as an employee, legislator or judge. Proving that a natural person injured us while acting in their official capacity is necessary to prove the liability for money damages by the artificial person, the United States. RFRA does not reserve any particular immunity. The Congress exercised its prerogative in RFRA to use broad terms that are contemplated in law to be liberally construed. Whether or not the United States is liable for actions taken by those in their official capacity, or whether natural persons are liable for actions taken in their private capacity acting under the [p. 56 of 65] color of law or their office, turns on facts that must be considered post-discovery. **[Emphasis added]**

119. The Defendants misguide the Court saying "Several circuit courts have explicitly held that RFRA's waiver of sovereign immunity does not extend to money damages." The United States

Supreme Court has given important guidance on the topic of damages in our case, particularly in a situation where the Defendant argues that their intention to change their behavior makes a case moot for want of available quantifiable money relief. In the case of *Uzuegbunam, et al., v. Preczewski, et al.*, **[Emphasis added]** "The college officials ultimately chose to discontinue the challenged policies rather than to defend them, and they sought dismissal on the ground that the policy change left the students without standing to sue. The parties agreed that the policy change rendered the students' request for injunctive relief moot, but disputed whether the students had standing to maintain the suit based on their remaining claim for nominal damages." *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 797 (2021). The Eleventh Circuit held that while a request for nominal damages can sometimes save a case from mootness, such as where a person pleads but fails to prove an amount of compensatory damages, the students' plea for nominal damages alone could not by itself establish standing. The U.S. Supreme Court disagreed, as summarized in the Syllabus: "A request for nominal damages satisfies the redressability element necessary for Article III standing where a plaintiff's claim is based on a completed violation of a legal right. Pp. 797-802."

120. We establish that we have an injury in fact which raised causes of action on several counts, and the injury is a result of the challenged conduct. To satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must

also seek (3) a remedy that is likely to redress that injury. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)

121. Thus, we now refute the Defendants' attempt to escape scrutiny by their claiming that [p. 57 of 65] there is no relief which the court can provide. Discovery, declaratory judgment, injunction, mandamus, are relief that is due as well as monetary relief (Amended Complaint, Mot. Memo. Attach 9., pp. 59-62; ECF 46-2, pp. 80-83). The damages contemplated by the general terms in the amended complaint, paragraph 148, include and are not limited to nominal damages. That is relief which the Court can provide. **[Emphasis added]**

> Later courts, however, reasoned that every legal injury necessarily causes damage, so they awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages), and they did so where there was no apparent continuing or threatened injury for nominal damages to redress. See, e.g., *Barker v. Green*, 2 Bing. 317, 130 Eng. Rep. 327 (C. P. 1824) (nominal damages awarded for 1-day delay in arrest because "if there was a breach of duty the law would presume some damage"); *Hatch v. Lewis*, 2 F. & F. 467, 479, 485-486, 175 Eng. Rep. 1145, 1150, 1153 (N. P. 1861) (ineffective assistance by criminal defense attorney that does not prejudice the client); *Dods v. Evans*, 15 C. B. N. S. 621, 624, 627, 143 Eng. Rep. 929, 930-931 (C. P. 1864) (breach of contract); *Marzetti v. Williams*, 1 B. & Ad. 415, 417-418, 423-428, 109 Eng. Rep. 842, 843, 845-847 (K. B. 1830) (bank's 1-day delay in paying on

> a check); *id.*, at 424, 109 Eng. Rep., at 845 (recognizing that breach of contract could create a continuing injury but determining that the fact of breach of contract by itself justified nominal damages). *Uzuegbunam, et al., v. Preczewski*, et al., 141 S.Ct. 792, 798 (2021). ***

122. The Supreme Court's decision in *Uzuegbunam* was not available to the Plaintiffs when the original complaint was filed or amended. The Plaintiffs did not understand the term "appropriate relief" as it related to standing until they read *Tanzir* (Oct. 2020) months after it was decided and after the complaint was amended; and more recently *Usuegbunam*. None-the-less, nominal damages are contemplated among others in paragraph 148 of the amended complaint (ECF 46-2, p. 82 of 88 & ECF 51, p. 61). The case should not be dismissed without the Plaintiffs being able to amend the complaint to be consistent with the law that has recently been made clear by the United States Supreme Court. **[Emphasis added]** Amendment of the complaint needs to be done post-discovery for the sake of both efficiency and justice. **[Emphasis added]**

> Applying what he called Lord Holt's "incontrovertible" reasoning, Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" [p. 58 of 65] whenever "no other [kind of damages] be proved." *Webb v. Portland Mfg. Co.*, 29 F.Cas. 506, 508-509 (No. 17,322) (CC Me. 1838). Because the common law recognized that "every violation imports damage," Justice Story reasoned that

"[t]he law tolerates no farther inquiry than whether there has been the violation of a right." *Ibid.* Justice Story also made clear that this logic applied to both retrospective and prospective relief. *Id.*, at 507 (stating that nominal damages are available "wherever there is a wrong" and that, "[a] fortiori, this doctrine applies where there is not only a violation of a right of the plaintiff, but the act of the defendant, if continued, may become the foundation, by lapse of time, of an adverse right"). *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 798 (Placement earlier?)

123. The *Uzuegbunam* Court could be quoted en masse because of it being on point with our opposition to the grounds upon which the Defendants base their motion for dismissal. Thus there is no doubt that we have the burden to prove compensatory damage, but that is a matter of fact for a jury. And where compensation cannot be materially proven, nominal damages are appropriate relief at a minimum by default. **[Emphasis added]**

They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages. See, e.g., Dods, 15 C. B. N. S., at 621, 627, 143 Eng. Rep., at 929, 931 (prevailing plaintiff entitled to nominal damages as a matter of law even where jury neglected to find them); see also Stachura, 477 U.S. at 308, 106 S.Ct. 2537 (rejecting the argument that courts could presume, without

proof, damages greater than nominal). *Uzuegbunam*, at 800 **[Emphasis added]**

124. Like in *Uzuegbunam*, the Defendants have completed a violation of our constitutional rights when they unlawfully denied and revoked our passport renewals, and when they did so without pre-enforcement adversarial due process, and when they did so with wanton, willful, intelligent and not merely negligent but reckless disregard for statutory obligations and prohibitions. **[Emphasis added]**

Excerpts From Petitioner's . . . PLAINTIFF LEWIS'S REPLY TO DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL, AS DEFENDANTS' RESPONSE IS EMBEDDED IN THEIR MOTION FOR DISMISSAL

Case 1:19-cv-02316-RC, ECF 102 (Jul. 19, 2021)

[ECF 102, p. 17 of 17, ¶26.]

. . . The Defendants in submissions to the "court" record, show their behavior was not merely arbitrary and capricious, but contrary to law and published policy. We are perpetually injured by the writ ne exeat republica that is unlawfully imposed on us, to which a complete remedy is not available not withstanding the potential for monetary damages relief. **[Emphasis added]** On the face of what's been before the court, any further delay in the approval of our passport renewal applications is a gross injustice and reprehensible.

s/*Lawrence Donald Lewis*
Lawrence Donald Lewis
966 Bourbon Lane
Nordman, Idaho 83848

Excerpts From Petitioners' Response to Respondents' Status Report ECF 80
Case 1:19-cv-02316-RC, ECF 82 (Mar. 19, 2021)

[ECF 82, p. 9 of 11]

D. There Is No Need For The Plaintiffs To File A New Application. It Would Work Another Injustice And Injury To The Plaintiffs

11. We have no need to file a new DS-82 form until ten years after the Defendants grant the passport renewals for which Plaintiffs Pakosz and Lewis already applied; and not until January 2028 in the case of Carmichael since his passport was unlawfully revoked and the Defendants have a duty to rescind the revocation. Any suggested need to file a new application contradicts the premise of the Defendants remand motion. The Defendants promised the approval the 2018 and 2019 passport renewals of Pakosz and Lewis, and the rescission of Carmichael's passport revocation upon the fulfillment of identification verification. Those promises have nothing to do with, and no suggestion of, a new application submitted in 2021. Such a new DS-82 application jeopardizes our actionable case that is currently before the Court.

E. The Approval Of The Current Renewal Applications Of Lewis And Pakosz, And The Voiding Of The Revocation Of Carmichael's Passport, Cannot Moot The Case Where There Is Not Yet Complete Relief

12. Our case continues to be actionable as an Article III case, due to the concrete injury suffered by us at the Defendants' unlawful hands. The case will not be mooted even after the Court orders the Defendants to fulfill their obligations to approve the passport renewals for Lewis and Pakosz, and rescind the revocation of Carmichael's passport. **[Emphasis added]** The actions of the Defendants without doubt will be proven to be at least arbitrary and capricious as a result of discovery. The Plaintiffs predict that the Defendants' actions will be proven to be malevolent. We've demanded appropriate relief that is not merely nominal. All causes of action demand appropriate relief. *Uzuegbunam, et al. v. Preczewski, et Al.* 592 U.S. ____ (March 8, 2021) **[Emphasis added]**

Excerpts From Respondents' Status Report,
Case 1:19-cv-02316-RC, ECF 80 (Mar. 19, 2021)

[ECF 80, pp. 1-2 of 3]

2. After the Court's Remand Order, the Department conducted a thorough review of Plaintiffs' prior passport applications and submissions in this litigation. The Department recently completed this review and has determined that there is no need to request any additional evidence from the Plaintiffs during the remand period. Specifically, based on Plaintiffs' prior passport submissions and court records, the Department is satisfied with (1) the sincerity of Plaintiffs' [p. 2 of 3] religious beliefs; and (2) the adequacy of the citizenship and identity evidence previously submitted by each Plaintiff.

3. Accordingly, the Department is inviting Plaintiffs to submit Form DS-82, U.S. Passport Renewal Application for Eligible Individuals, with new photographs, using the following instructions:

a. Plaintiffs are not required to identify any Social Security Number in their Form DS-82 applications and should write 'refused for religious reasons.'

b. Plaintiffs are not required to submit any fees with their applications.

c. Plaintiffs do not need to submit their previous passports.

d. Plaintiffs must send their completed applications, along with a new photograph that conforms with instructions included in the Form DS-82, to the below address: **[Emphasis added]**

National Passport Center

c/o Charles Badger 207
International Drive Portsmouth, NH 03801

4. Assuming that Plaintiffs otherwise meet the Department's eligibility requirements to receive a passport, see 22 C.F.R. § 51.60, the Department intends to issue passports to them upon receipt of the information and photographs described above (notwithstanding the exclusion of any Social Security Number on the Form DS-82).

5. Defendants appreciate the opportunity provided by the Remand Order to reevaluate the passport-related actions relevant to this action in order to accommodate Plaintiffs, should they duly submit the requested information described above. Defendants believe that these minimal requirements are reasonable and provide a clear path forward to resolving Plaintiffs' lawsuit without the need for further litigation.

Excerpts From Petitioners' REPLY TO "DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A REMAND, STAY, CERTIFICATION FOR INTERLOCUTORY APPEAL"

Case 1:19-cv-02316-RC, ECF 78 (Mar. 2, 2021)

[ECF 78, pp. 6-7 of 15]

10. We are each conscious of irreparable injury to each of our lives due to the unlawful denial and delay of our passports. We each have suffered the irreparable injury of denial of our pursuit of relationships that resulted from the denial and revocation of our passports. Those details of fact will become more relevant as we consider tort and other statutory damages relief. **[Emphasis added]** Our concern right now is the ultimate reach for justice. This ultimate reach for justice can only be attained by someone in competent authority, the Court, ordering the State Department actors [p. 7 of 15] of the highest and lowest rank to obey and apply the law.

Excerpts From Petitioners' MOTION FOR DECLARATORY JUDGEMENT OR PARTIAL FINDING OF FACTS AND CONCLUSIONS OF LAW REGARDING REMAND ORDER OF JANUARY 19, 2021

Case 1:19-cv-02316-RC, ECF 75 (Feb. 25, 2021)

[ECF 75, pp. 4-5 of 5]

12. Considering our pleas and the law cited our Memorandum In Support, Section XI, paragraphs A. through D., find fact and conclude law as to whether remand undermines or causes unnecessary interference or delay with the plaintiffs discovery for the purpose of complete relief on all causes of action; and whether:

A. Remand undermines or cause delay with plaintiffs' discovery and complete relief regarding RFRA. **[Emphasis added]**

B. Remand undermines or causes delay with plaintiffs' discovery and complete relief regarding Privacy Act.

C. Remand undermines or causes delay with plaintiffs' discovery and complete relief regarding the claims on the Fifth Amendment and due process.

D. The premise upon which the remand motion is based has any support in fact; otherwise find that the motion on its face is frivolous and for the purpose to delay or deny plaintiffs discovery and complete relief.

13. According to the findings of fact and conclusions of law, limited to the Courts record which does not include the agency record, and without recourse to discovery thus far, the Court is moved to report such findings of fact and

conclusions of law as it relates to the Court's remand order of January 19, 2021. As a matter of the statutes, the Rules, and the compelling and persuasive motions and arguments of the Plaintiffs, the Court should rescind its remand order and should commence discovery. Since the Plaintiffs cannot move for summary judgment until all discovery is finished, the Court should sua sponte coerce the [5 of 5] Defendant to either grant passport to Plaintiffs William Mitchell Pakosz and Lawrence Donald Lewis, and to void the revocation of Plaintiff David Alan Carmichael's passport or alternatively show evidentiary proof why such partial relief should not be granted. Should the Court not be persuaded by our motion and memorandum, grant our alternative motion to certify the court's finding of fact, conclusions of law, and the Court's order for our interlocutory appeal to the D.C. Circuit.

14. We refrain from submitting a proposed order due to the complexity of the relief sought here. **[Emphasis added]**

Excerpts From PETITIONERS' MOTION FOR RULE 16(B) SCHEDULING CONFERENCE
Case 1:19-cv-02316-RC, ECF 55 (Dec. 3, 2020)

[ECF 55, pp. 1-2 of 21]
. . . The parties have conferred in accordance with Rule 26 (f) as reported herein. The format here below conforms to the outline provided in Local Rule 16(c), Matters To Be Discussed By The Parties:

a) Conferring By The Parties On October 20, 2020, the Plaintiffs sent to the Defendants, "Plaintiffs' Motion For Rule 16(b) Conference (draft 1 for Defendant consideration)" (Plaintiff Joint Status Report Attachment 1) (hereinafter "PJSR Att. #"). Along with that motion draft, the Plaintiffs submitted to the Defendants a letter regarding "Carmichael, et al. v. Pompeo, et al., 1:19-cv-2316-RC, Rule 26(f) Party Conference For Initial Discovery And First Scheduling Conference" (PJSR Att. 2). In that letter (PJSR Att. #2), the Plaintiffs detailed particular items that they believe ought to be submitted by the Defendants in their initial disclosures. The Plaintiffs pointed out that there were people, records, and other things relied upon by the Defendants in support of their dispositive motions but they have not yet identified or provided access to those people, records, etc..

1) The Defendants only response or attempt to 'confer' was three weeks later in an email on November 9th (PJSR Att. 3). The email introduced the Defendants' plan to file for a stay of proceeding and remand to the Defendant Department of State.

[ECF 55, pp. 9-10 of 21]
(a) **The Plaintiffs goal in bringing the litigation is**:
(i) To obtain passport renewal and the voiding of the revoked passport.

(ii) To have, retain, and renew their passports without being identified with a damnable SSN of any sort, as a matter of their obligations of religion and their natural and reserved rights.

(iii)To have the law upheld and applied, which laws appear intended to protect the Plaintiffs, their posterity, and their religious community from the injuries to which the Defendants are subjecting the Plaintiffs.

(iv) To obtain monetary relief in compensatory, punitive, and tort damages. **[Emphasis added]**

(v) To motivate the change of practice and policy of the Defendants by the means of a judgment or a settlement agreement that establishes justice, upholds that law of the land, and glorifies the Living God by the show of the magistrate demonstrating the acts and character of a minister of God for our good.

Excerpt From PETITIONERS' RESPONSE TO MOTION FOR VOLUNTARY REMAND
Case 1:19-cv-02316-RC, ECF 65 (Dec. 30, 2020)

[ECF 65, pp. 17-18 of 23]

XV. The Plaintiffs Demands For Relief On Defendants' Violations Of The RFRA Need To Be Adjudicated In The Court That Has Original Jurisdiction

49. Within the last two weeks, the Plaintiffs discovered that the Supreme Court has explained that money damages are available to the Plaintiffs as a matter of "appropriate relief" for the Government's violation of the Religious Freedom Restoration Act. **[Emphasis added]**

> "More than a year after respondents sued, the Department of Homeland Security informed them that they could now fly, thus mooting the claims for injunctive relief. The District Court then dismissed the individual-capacity claims for money damages, ruling that RFRA does not permit monetary relief.
> The Second Circuit reversed. 894 F.3d 449 (2018). It determined that RFRA's express remedies provision, combined with the statutory definition of "Government," authorizes claims against federal officials in their individual capacities. Relying on our precedent and RFRA's broad protections for religious liberty, the court concluded that the open-ended phrase "appropriate relief" encompasses money damages against officials. We granted certiorari, 589 U. S. ___ (2019), and now affirm." *Tanzin v. Tanvir*, 592 U.S. ____ (2020)

50. The money damages available by the Plaintiffs' Second Cause of Action cannot obtain complete relief for their RFRA claim with the machination of the Defendants'

remand. There needs to be discovery to find the people who acted unlawfully, negligently, willfully, intelligently, negligently, malevolently, in bad faith, etc., in order to determine the extent of damages that are due the Plaintiffs for complete relief. **[Emphasis added]**

> ""A "government," under RFRA, extends beyond the term's plain meaning to include officials. And the term "official" does not refer solely to an office, but rather to the actual person "who is invested with an office." 10 Oxford English Dictionary 733 (2d ed. 1989). Under RFRA's definition, relief that can be executed against an "official . . . of the United States" is "relief against a government." 42 U. S. C. §§2000bb–1(c), 2000bb–2(1).
>
> Not only does the term "government" encompass officials, it also authorizes suits against "other person[s] acting under color of law." §2000bb–2(1). The right to obtain relief against "a person" cannot be squared with the Government's reading that relief must always run against the United States. Moreover, the use of the phrase "official (*or other* person . . .)" underscores that "official[s]" are treated like "person[s]."""" *Ibid.*

51. The Plaintiffs reserved the right to amend the complaint to include persons who are found to have been the principals responsible for the unlawful conduct of the Defendants and the injury to the Plaintiffs (ECF 51, p. 3, para. 7.). The initial disclosures that are due the Plaintiffs, and the discovery moved-for by the Plaintiffs, are necessary for justice. A finding of fact and law that preserves law, provides complete relief for the Plaintiffs, and protects society.

Excerpt From Petitioners' Petition for Rehearing
D.C. Circuit, 23-5111, Doc. No. 1208643674

[Doc. 1208643674, p. 1, filed pdf p. 7 of 20]

RFRA IS A WAIVER OF SOVEREIGN IMMUNITY

2. Our appeal brief p. 17 of 48, is correct where we said, "In the case of *Uzuegbunam, et al, v. Preczewski, et al.*, the Supreme Court declared that the Government's discontinuance of a challenged policy did not leave the injured party without standing to sue. Nominal money relief is available even where an amount of compensatory damages cannot be proved, satisfying the redressability necessary for Article III standing where a plaintiffs claim is based on a completed violation of a legal right. *Uzuegbunam, et al, v. Preczewski, et al.*, 141 S.Ct. 792, 797-802 (2021)" (23-5111, Doc. #2036576, pp. 16-17, |s 20.). Yet the circuit court is silent on our argument just as was the district court. **This point justifies the rehearing. It calls for the reversal of the circuit court's dismissal order. It warrants our demand for the vacating of the district court dismissal. The mandate must compel adjudication of the complaint with full discovery in order to reveal the names, duties, and unlawful acts of the co-conspirator tortfeasors who are not**

[Doc. 1208643674, p. 2, filed pdf p. 8 of 20]

immune from liability whether or not the United States is liable for damages.

3. Neither the district court nor the circuit court can be excused for not applying the rule of Uzuegbunam when it was presented to them.

> Court of Appeals has power not only to correct error in judgment under review, but to make such disposition of case as justice requires, and in determining what justice does require, court is bound to consider any change, either in fact or in law, which has supervened since judgment was entered. *Abbot v. Bralove*, 176 F.2d 64, 85, U.S. App. (D.C. 1949)

4. The appeal brief explained that the unlawful revocation and denials of our passports caused us to be in a state of *writ ne exeat republica* without due process in violation of our constitutionally protected rights (Appeal Brief, 23-5111, Doc. #2036576, p. 9., ^ 26).

> The United States of America - "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. .. . Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country,. .. may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." Aptheker v. Secretary of State at 505-506 citing Kent v. Dulles, 357 U.S. 116 at 125-126. . . . "The substantiality of the restrictions cannot be doubted. The Denial of a passport, given existing domestic and foreign laws, is a

severe restriction upon, and in effect a prohibition against, world-wide foreign travel." Aptheker at 507

5. We suffered injury due to the unlawful acts of the rogue unnamed tortfeasor co-conspirators. That is a case and controversy for Article III jurisdiction, and for the remaining monetary relief that is due. Even if the circuit court were correct in its reliance upon *Webman v. Federal Bureau of Prisons*, 441 F.3d 1022 (D.C. Cir.
[Doc. 1208643674, p. 3, filed pdf p. 9 of 20]
2006), saying that the United States as a party is not liable for money damages under the Religious Freedom Restoration Act (Hereinafter, "RFRA"), the co conspirator tortfeasors acting under the color of law are liable for money damages.

RFRA IS A WAIVER OF SOVEREIGN IMMUNITY

6. When reading *Webman v. Fed. Bureau of Prisons*, F.3d 1022 (D.C. Cir., 2006), cited by the circuit court, it appears that the circuit court is wrong about RFRA not waiving sovereign immunity regarding money damages. The dissenting judge in Webman expressed the logic that if injunctive relief is considered "appropriate relief5 then other relief in the form of money is contemplated. The Supreme Court took that logic further and made it the rule in Uzuegbunam which appropriately supplants the D.C. Circuit's ruling in *Webman*.

7. We briefed this in our reply to the government's response to our appeal brief, and the circuit court evaded addressing the merits of our

position on pages 5-7 of our Appellants' Reply. We initiated the discussion saying that the district court had to take jurisdiction over the otherwise Sovereign United States when the district court ordered the United States to issue Lewis's passport. (Appellant Reply, 23-5111, Doc. #2044643, pp. 5-6, ¶14).

> The general rule is that a suit is against the sovereign if "the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration," *Land v. Dollar*, 330 U. S. 731, 330 U. S. 738 (1947), or if the effect of the judgment would be "to restrain the Government from acting, or to compel it to act." *Larson v. Domestic & Foreign Corp., supra*, at 337 U. S. 704; *Ex parte New York*, 256 U. S.
>
> [Doc. 1208643674, p. 4, filed pdf p. 9 of 20]
>
> 490, 256 U. S. 502 (1921). *Dugan v. Rank*, 372 U.S. 609, 621 (1963).'" (Appellant Reply, 23-5111, Doc. #2044643, pp. 5-6, ¶15)

8. We went on to address the government's argument regarding the *Webman* rule. We pointed out that the district court and the government Defendant did not deny that RFRA's "appropriate relief' provided injunctive relief described by *Dugan*, at 621. We then addressed the circuit court's *Webman* decision where we expressed that RFRA's application of "appropriate relief' argued against its position that RFRA does not waive Sovereign immunity:

> Nobody denies that RFRA's "appropriate relief" provides injunctive relief described by Dugan at 621, citing Larson

as "to restrain the Government from acting, or to compel it to act", which is described as "interfere with the public administration" in Dugan at 621 citing Land. The D.C. Circuit admits "No one disputes that BOP and other arms of the federal government may be sued for at least some forms of relief under RFRA. *Webman v. Fed. Bureau of Prisons*, 441 F.3d 1022, 1025 (D.C. Cir., 2006). Without any justification from the words in the RFRA, the *Webman* court said, "We therefore hold that RFRA does not waive the federal government's sovereign immunity for damages." Id. at 1027. Circuit Judge Tatel showed the illogic of the *Webman* opinion and the reasonable logic of why the RFRA's appropriate relief includes damages as appropriate relief against the government Sovereign. ""Interpreting such a statute to authorize only equitable relief would make little sense: . . . It thus makes no difference that the hypothetical statute does not expressly authorize damages, for the type of injury the statute addresses makes clear that damages are "appropriate."" *Webman* at 1027." (Appellant Reply, 23-5111, Doc. #2044643, p. 6, ¶16)

9. The circuit court just completely ignored our substantive argument that indicates *Webman* is overturned by the overruling Supreme Court decision in *Uzuegbunam v. Preczewski*. We said: "The complaint read as a whole, shows that damages relief was pled. It is owed by the Sovereign, or the "co-conspirators" or
[Doc. 1208643674, p. 5, filed pdf p. 10 of 20]
both." (Appellant Reply, 23-5111, Doc. #2044643, p. 6, ¶17)

OUR CLAIM AGAINST THE PEOPLE WITH THE PSEUDONYM "CO CONSPIRATORS" REMAINS WITHOUT ADJUDICATION

10. Our complaint, several memoranda, and our appeal filings pointed out that we filed a case against a person whose name could not be known without the process of discovery. We listed Mr. Pompeo in his "official" capacity but we also named co-conspirators that did not have a name, nor were identified as in an official capacity. We understood at the writing of the complaint that it was the opinion of the courts that Mr. Pompeo is immune from liability when acting in his official capacity. The United States, by act of Congress in the Federal Tort Claims Act might be liable should we be injured by a wrong act that was performed by Mr. Pompeo or his delegate who acted in their ministerial official capacity. However, if one of Mr. Pompeo's employees acts merely under the color of their office, violating the law, willingly and knowingly injuring us in our life, liberty and other rights, they are liable for damages to provide us compensation and other relief. We understood that the United States, and Mr. Pompeo acting for the United States, is perfect. They are the law. They cannot violate the law in their official capacity since their acts are a function of the powers established pursuant to the Constitution of the United States of America. But if an imperfect statute, regulation or procedure compels an employee to injure us, the United States is liable for appropriate relief according to RFRA.
[Doc. 1208643674, p. 5, filed pdf p. 11 of 20]

11. The "co-conspirators" cannot be acting on behalf of the United States or Mr. Pompeo in his official capacity but are acting only under the color of their office. The definition of conspirators is "persons partaking in conspiracy."1 The definition of

conspiracy is: A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawfully means to the commission of an act not in itself'. Idem. Now that we've had five years of on-the-fly 'introduction to legal writing' we would plainly use the preface "not-in-their-offlcial-capacity-conspirators" rather than just presuming that everyone, especially the legal-expert court understands that a conspirator cannot be acting in an official capacity. We sufficiently raised the claim in our complaint and other filings that "co-conspirators" meant tortfeasors in their private capacity acting under the color of their office. The Defendants and courts have waived contesting our claim regarding it.

12. In the circuit court, our Statement of Issues to Be Raised, 23-5113, Doc. # 2004141, evinces that ours is a complaint against tortfeasors who are subject to damages liability in their private capacity where we said:

[Fn1 Black's Law Dictionary, Abridged Sixth Edition by Henry Campbell Black, M.A., West Publishing Co., 1991]

[Doc. 1208643674, p. 7, filed pdf p. 12 of 20]

> a. "Discovery needs to be compelled to expose the malevolent, name- cloaked actors for damages liability and judgment on the merits" (*Idem*, p.3, 13. g.).
>
> b. ""5. e. Compensatory, punitive, or nominal damages are due each of the Appellants from either the United States or those in their personal

capacity, referred to as "co-conspirators" whose names are cloaked thus far."" {*Idem*, p. 4,15.e.)

c. "Damages are due from private individuals as well as the United States." {Idem, p. 4, ¶7.)

d. "Each day of unlawful restraint, being denied a passport in violation of law, without lawful justification, by knowing, willful, negligent and malevolent conduct, and knowingly false statements to the court, using the color of lawful agency action as merely a means to legislate by bureaucrat, constitutes consecutive injuries for the sake of particular damages suffered by each Appellant and due them for various types of appropriate damages relief" {*Idem*, p. 11,120.)

13. In the Appeal brief, 23-5111, Doc. #2036576, we said:

a. "The case is not moot since: a) Adjudication and damages relief remains owed under RFRA;" (Idem, p. 1,13. a))

b. "The complainants used the term co-conspirators to indicate tortfeasors liable for damages in their individual capacity since their actual names were cloaked by pseudonyms such as p. 2 of 48 Customer Service Department." (*Idem*, p. 1,13. e))

14. Whether or not we can obtain compensation up to five hundred thousand dollars as we complained, we are owed at least one dollar $1.00 as nominal damages under RFRA according to the United States Supreme Court. Both courts failed to address that issue squarely put to them. The appeal brief opening summary stated: ""Damages were demanded in the complaint. The complainants

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used the term "co-conspirators" for the tortfeasors whose names were cloaked with pseudonyms such as "Customer Service Department." Money damages, including nominal, is "appropriate relief' under RFRA according to Uzuegbunam, et al, v. Preczewski, p. 15 of 48 592 U.S.___(March, 2021).""
(Idem, p. 14, 40.)

Summary of Immunity Issue

15. We made allegations in the complaint, reiterated them in our filings, and the Defendants demonstrated even without discovery that their actions fulfilled the rule of *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016): that we are injured in fact, that the injury is traceable to the challenged conduct, and that money damages is likely to redress that injury, even if it is nominal. The "irreducible constitutional minimum" of Article III standing is satisfied. *Ibid*, at 338. The appeal brief showed where it was argued extensively in our district court filings (Appeal brief, 23-5111, Doc. #2036576, pp. 15-16, ¶s 41-44.). Just like the district court, the circuit court is silent.

CASE IS NOT MOOT WHERE DAMAGES RELIEF IS DUE

16. In our complaint, and other filings in both courts, we alleged that the tortfeasors' actions were intentional, willful, malevolent, with hostility, and were causal to the violations of law, where the Religious Freedom Restoration Act, the Privacy Act, and the Federal Tort Claims Act, provide remedy

and relief (Am. Comp., ¶¶ 95, 108, 109, 110, 111, 112, Amend. Two ¶ 1., 2., 13, 18., 19, 20,21,

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25; 116, 118, 119, 124.f.-k,, 119, 125. 128, 140)(Appx. 107; 110-112; 116; 120 121; 126-127; 131-134; 137). We said, "The Defendants' were not entitled to the grant of their motions for dismissal or summary judgment as a matter of law, fact, and due process (ECFs 44/45, 124/125, 149/150)(Appx. 1-70) since damages relief is due. Culpability and relief will be proved upon completion of discovery. Review is *de novo*" Regarding immunity, the Supreme Court Chief quoted the D.C. Circuit in the case of *United States v. Trump*, 91 F.4th 1173, saying:

> Citing *Marbury v. Madison*, 1 Cranch 137 (1803), the court distinguished between two kinds of official acts: discretionary and ministerial. 91 F. 4th, at 1189-1190. It observed that "although discretionary acts are 'only politically examinable,' the judiciary has the power to hear cases" involving ministerial acts that an officer is directed to perform by the legislature. *Ibid*, (quoting Marbury, 1 Cranch, at 166). ." *Larson v. Domestic & Foreign Corp., supra*, at 337 U. S. 704

17. The D.C. Circuit's opinion in *United States v. Trump*, citing *Marbury v. Madison*, explained that immunity does not apply when the government officer fails to act lawfully when they have a duty to act and there is injury to the person who suffers from the unlawful behavior of the government officer:

Marbury distinguished between two kinds of official acts: discretionary and ministerial. As to the first category. Chief Justice Marshall recognized that "the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience." *Marbury*, 5 U.S. (1 Cranch) at 165-66. When the President or his appointed officers exercise discretionary authority, "[t]he subjects are political" and "the decision of the executive is conclusive." *Id.* at 166. Their discretionary acts, therefore, *1190 "can never be examinable by the courts." *Id.* "But," Chief Justice Marshall

[Doc. 1208643674, p. 10, filed pdf p. 15 of 20]

continued, "when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others." *Id.* (emphases added). Under these circumstances, an executive officer acts as a "ministerial officer... compellable to do his duty, and if he refuses, is liable to indictment." *Id.* at 150; see id. at 149-50 ("It is not consistent with the policy of our political institutions, or the manners of the citizens of the United States, that any ministerial officer having public duties to perform, should be above the compulsion of law in the exercise of those duties."). Based on these principles. Chief Justice Marshall concluded that, although discretionary

> acts are "only politically examinable," the judiciary has the power to hear cases "where a specific duty is assigned by law." *Id.* at 166. Marbury thus makes clear that Article III courts may review certain kinds of official acts — including those that are legal in nature. *United States v. Trump*, 91 F.4th 1173, 1189-1190 (D.C. Cir. Feb. 26,2024)

18. If, according to *Marbury* and the D.C. Circuit, the officer upon whom our rights are dependant violates the Constitution, statutes, regulations and the agencies written policies is "liable to indictment", he is therefore liable to civil damages for the same unlawful act. If by discovery, the tortfeasors "co- conspirators" can show that they were not flagrantly violating the law but were merely carrying out edicts that themselves were unconstitutional, the United States is responsible for compelling them to injure us. The United States is then liable for money damages that we claimed for appropriate relief under RFRA.

> Damages are given as a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. 2 Greenl. Ev. (10th ed.) sect. 253. *Birdsdall v. Coolidge*, 93 U.S. 64 (1876)

19. The remedial RFRA's use of the broad term "appropriate relief' means
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damages payments are available for an injury-in-fact by the United States through its agents acting in their official capacity, or by its agents who are

liable in their private capacity for their unlawful acts done under the color or law. Being stripped of our right to travel without warrant of law is an Article III injury. Carmichael's being stripped of his right to travel without notice of the government's intention to do so is an Article III injury. An opportunity to move for injunction would have kept the injury from occurring. The cowardly *Pearl Harbor* type notice of war (notice of revocation) after the attack is un-American. It is in the public interest to have the unlawful acts fully adjudicated.

> The discontinuation of an illegal practice by going out of business, or otherwise, after institution by a public agency of a proceeding to prevent future violations of law does not make question "moot," where there is need for a determination of a question of law to serve as a guide to the public agency in future similar matters, and where there has been a decision in lower court which may be used as a precedent in future activities of such public agency. *Walling v. Mutual Wholesale Food & Supply Ca*, 141 F.2d 331 (C.C.A. Minn. 1944)

20. Again, the circuit and district courts ignored the Supreme Court's rule declared in *Uzuegbunam, et al, v. Preczewski, et al.* ". . . discontinuance of a challenged policy does not leave the injured party without standing to sue. Nominal money relief is available even where an amount of compensatory damages cannot be proved, satisfying the redressability necessary for Article III standing where a plaintiffs claim is based on a completed violation of a legal right." *Uzuegbunam, et al, v. Preczewski, et al.*, 141 S.Ct. 792, 797-802 (2021).

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Neither court has that discretion.

> The United States Court of Appeals for the District of Columbia Circuit is bound by the rulings of the United States Supreme Court. Continental Distilling Corp. v Old Charter Distillery Co., 188 F.2d 614 (U.S. App. D.C. 1950)

21. Nominal damages are "appropriate relief if other monetary relief demanded is not provable, ECF 51, ¶s 143-148 (Appx. 139).

> Later courts, however, reasoned that every legal injury necessarily causes damage, so they awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages), and they did so where there was no apparent continuing or threatened injury for nominal damages to redress. See, e.g., *Barker v. Green*, 2 Bing. 317, 130 Eng. Rep. 327 (C. P. 1824) (nominal damages awarded for 1- day delay in arrest because "if there was a breach of duty the law would presume some damage"); *Hatch v. Lewis*, 2 F. & F. 467, 479, 485-486, 175 Eng. Rep. 1145, 1150, 1153 (N. P. 1861) (ineffective assistance by criminal defense attorney that does not prejudice the client); *Dods v. Evans*, 15 C. B. N. S. 621, 624, 627, 143 Eng. Rep. 929, 930-931 (C. P. 1864) (breach of contract); *Marzem'v. Williams*, 1 B. & Ad. 415, 417-418, 423-428, 109 Eng. Rep. 842, 843, 845-847 (K. B. 1830) (bank's 1-day delay in paying on a check); *id.*, at 424, 109 Eng. Rep., at 845 (recognizing that breach of contract could create a continuing injury but

determining that the fact of breach of contract by itself justified nominal damages). *Uzuegbunam, et ah, v. Preczewski, et al.*, 141 S.Ct. 792, 798 (2021).
***

Applying what he called Lord Holt's "incontrovertible" reasoning. Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" whenever "no other [kind of damages] be proved." *Webb v. Portland Mfg. Co.,* 29 F.Cas. 506, 508-509 (No. 17,322) (CC Me. 1838). Because the common law recognized that "every violation imports damage," Justice Story reasoned that "[t]he law tolerates no farther inquiry than whether there has been the violation of a right." *Ibid.* Justice Story also made clear that this logic applied to both retrospective and prospective relief Id, at 507 (stating that nominal damages are available "wherever there is a wrong" and that, "[a] fortiori.

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this doctrine applies where there is not only a violation of a right of the plaintiff, but the act of the defendant, if continued, may become the foundation, by lapse of time, of an adverse right"). *Uzueghunam, et al, V. Preczewski, et al.*, 141 S.Ct. 792, 798

22. Nominal damages are appropriate relief by default.

They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages. See, e.g., *Dods*, 15 C. B. N. S.,

at 621, 627, 143 Eng. Rep., at 929, 931 (prevailing plaintiff entitled to nominal damages as a matter of law even where jury neglected to find them); see also *Stachura*, All U.S. at 308, 106 S.Ct. 2537 (rejecting the argument that courts could presume, without proof, damages greater than nominal). Uzuegbunam, at 800

Excerpt From Petitioners' Joint Petition for Rehearing En Banc

D.C. Circuit, 23-5111, Doc. No. 2082923

[Doc. 2082923, p. 13 of 25]

RFRA IS A WAIVER OF SOVEREIGN IMMUNITY

7. When reading *Webman v. Fed. Bureau of Prisons*, 441 F.3d 1022 (D.C. Cir., 2006), cited by the Circuit Court, it appears that the Circuit Court was wrong about RFRA not waiving sovereign immunity regarding money damages. The dissenting judge in *Webman* expressed the logic that if injunctive relief is considered "appropriate relief" then other relief in the form of money is contemplated. The Supreme Court took that logic further and made it the rule in *Uzuegbunam* which appropriately supplants the D.C. Circuit's ruling in *Webman*.

8. We briefed this in our reply to the government's response to our appeal brief, and the Circuit Court evaded addressing the merits of our position on pages 5-7 of our Appellants' Reply. We initiated the discussion where we pointed out that the District Court had to take jurisdiction over the otherwise Sovereign United [Doc. 2082923, p. 14 of 25] States when the District Court ordered the United States to issue Lewis's passport. (Appellant Reply, 23-5111, Doc. #2044643, pp. 5-6, ¶14)

> The general rule is that a suit is against the sovereign if "the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration," *Land v. Dollar*, 330 U. S. 731, 330 U. S. 738 (1947), or if the effect of the judgment would be "to restrain the Government from acting, or to compel it to

act." *Larson v. Domestic & Foreign Corp., supra*, at 337 U. S. 704; *Ex parte New York*, 256 U. S. 490, 256 U. S. 502 (1921). *Dugan v. Rank*, 372 U.S. 609, 621 (1963).'"" (Appellant Reply, 23-5111, Doc. #2044643, pp. 5-6, ¶15)

9. We went on to address the government's argument regarding the *Webman* rule. We pointed out that the District Court and the government Defendant did not deny that RFRA's "appropriate relief" provided injunctive relief described by Dugan, at 621. We then addressed the Circuit Court's *Webman* decision pointing our that its interpretation of RFRA's application of "appropriate relief" argued against its position that RFRA does not waive Sovereign immunity: **[Emphasis added]**

"16. Nobody denies that RFRA's "appropriate relief" provides injunctive relief described by Dugan at 621, citing Larson as "to restrain the Government from acting, or to compel it to act", which is described as "interfere with the public administration" in Dugan at 621 citing Land. The D.C. Circuit admits "No one disputes that BOP and other arms of the federal government may be sued for at least some forms of relief under RFRA. *Webman v. Fed. Bureau of Prisons*, 441 F.3d 1022, 1025 (D.C. Cir., 2006). Without any justification from the words in the RFRA, the *Webman* court said, "We therefore hold that RFRA does not waive the federal government's sovereign immunity for damages." Id. at 1027. Circuit Judge Tatel showed the illogic of the *Webman* opinion and the reasonable logic of why the RFRA's appropriate relief includes damages as appropriate relief against the government Sovereign. ""Interpreting such a statute to authorize only equitable relief would make little sense: . . . It thus makes no difference that the hypothetical statute does not expressly authorize damages, for the type of [Doc. 2082923, p. 15 of 25] injury the statute addresses makes clear that damages are "appropriate."" *Webman* at

1027." (Appellant Reply, 23-5111, Doc. #2044643, p. 6, ¶16) [**Emphasis added**]

10. The Circuit Court just completely ignored our substantive argument that indicates *Webman* is overturned by the overruling Supreme Court decision in *Uzuegbunam v. Preczewski.* We said: "The complaint read as a whole, shows that damages relief was pled. It is owed by the Sovereign, or the "co-conspirators" or both." (Appellant Reply, 23-5111, Doc. #2044643, p. 6, ¶17)

OUR CLAIM AGAINST THE PEOPLE WITH THE PSEUDONYM "CO CONSPIRATORS" REMAINS WITHOUT ADJUDICATION

11. Our complaint, several memoranda, and our appeal filings pointed out that we filed a case against a person whose name could not be known without the process of discovery. We listed Mr. Pompeo in his "official" capacity but we also named co-conspirators that did not have a name, nor were identified as in an official capacity. We understood at the writing of the complaint that the general opinion of courts is that Mr. Pompeo is immune from liability when acting in his official capacity. The United States, by act of Congress in the Federal Tort Claims Act might be liable should we be injured by a wrong act that was performed by Mr. Pompeo or his delegate who acted in their ministerial official capacity. However, if one of Mr. Pompeo's employees acts merely under the color of their office, violating the law, willingly and knowingly injuring us in our life, liberty and other rights, they are liable for damages to provide us compensation and other relief. We [Doc. 2032923, p. 16 of 25] understood that the United States, and Mr. Pompeo acting for the United States, is perfect. They are the law. They cannot violate the law in their official capacity since their acts are a function of the powers established

pursuant to the Constitution of the United States of America. **[Emphasis added]**

12. The "co-conspirators" cannot be acting on behalf of the United States or Mr. Pompeo in his official capacity but are acting only under the color of their office. The definition of conspirators is "persons partaking in conspiracy." [[Fn1 Black's Law Dictionary, Abridged Sixth Edition by Henry Campbell Black, M.A., West Publishing Co., 1991] The definition of conspiracy is: A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawfully means to the commission of an act not in itself", Idem. Now that we've had five years of on-the-fly 'introduction to legal writing' we would plainly use the preface "not-in-their-official-capacity-conspirators" rather than just presuming that everyone, especially the legal-expert court understands that a conspirator cannot be acting in an official capacity. After hearing words used in oral arguments in the D.C. and Ninth Circuits, we might use the term "tortfeasors." We will hereinafter make sure that we spell out "in their individual capacity." None-the-less, we sufficiently raised the claim in our complaint and [Doc. 2082923, p. 17 of 25] other filings that declared the meaning and intent of our words that were ignored by both courts. **[Emphasis added]**

13. In the Circuit Court, our Statement of Issues to Be Raised, 23-5113, Doc. # 2004141, evinces that ours is a complaint against tortfeasors who are subject to damages liability in their individual capacity where we said:

a. "Discovery needs to be compelled to expose the malevolent, name cloaked actors for damages liability and judgment on the merits" (Idem, p.3, ¶3. g.).

b. ""5. e. Compensatory, punitive, or nominal damages are due each of the Appellants from either the United States or those in their personal capacity, referred to as "co-conspirators" whose names are cloaked thus far."" (*Idem*, p. 4, ¶5. e.)

c. "Damages are due from private individuals as well as the United States." (*Idem*, p. 4, ¶7.)

d. "Each day of unlawful restraint, being denied a passport in violation of law, without lawful justification, by knowing, willful, negligent and malevolent conduct, and knowingly false statements to the court, using the color of lawful agency action as merely a means to legislate by bureaucrat, constitutes consecutive injuries for the sake of particular damages suffered by each Appellant and due them for various types of appropriate damages relief." (Idem, p. 11, ¶20.)

14. In the Appeal brief, 23-5111, Doc. #2036576, we said:

a. "The case is not moot since: a) Adjudication and damages relief remains owed under RFRA;" (*Idem*, p. 1, ¶3. a))

b. "The complainants used the term co-conspirators to indicate tortfeasors liable for damages in their individual capacity since their actual names were cloaked by pseudonyms such as p. 2 of 48 Customer Service Department." (*Idem*, p. 1, ¶3. e)) [**Emphasis added**]

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15. Whether or not we can obtain compensation up to five hundred thousand dollars as we complained, we are owed at least one dollar $1.00 as nominal damages under RFRA according to the United States Supreme Court. Both courts failed to address that issue squarely put to them. The appeal brief opening summary stated: ""Damages were demanded in the complaint. The complainants used the term "co-conspirators" for the tortfeasors whose names were cloaked with pseudonyms such as "Customer Service

Department." Money damages, including nominal, is "appropriate relief" under RFRA according to *Uzuegbunam, et al., v. Preczewski,* p. 15 of 48 592 U.S. ___ (March, 2021)."" (*Idem*, p. 14, ¶ 40.) [**Emphasis added**]

Summary of Immunity Issue

16. We made allegations in the complaint, reiterated them in our filings, and the Defendants demonstrated even without discovery that their actions fulfilled the rule of Spokeo, Inc. v. Robins, 578 U.S. 330 (2016): that we are injured in fact, that the injury is traceable to the challenged conduct, and that money damages is likely to redress that injury, even if it is nominal. The "irreducible constitutional minimum" of Article III standing is satisfied. *Ibid*, at 338. The appeal brief showed where it was argued extensively in our District Court filings (Appeal brief, 23-5111, Doc. #2036576, pp. 15-16, ¶s 41-44.). Just like the District Court, the Circuit Court is silent. [**Emphasis added**]

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CASE IS NOT MOOT WHERE DAMAGES RELIEF IS DUE

17. In our complaint, and other filings in both courts, we alleged that the tortfeasors' actions were intentional, willful, malevolent, with hostility, and were causal to the violations of law, where the Religious Freedom Restoration Act, the Privacy Act, and the Federal Tort Claims Act, provide remedy and relief. (Am. Comp., ¶¶ 95, 108, 109, 110, 111, 112, Amend. Two ¶ 1., 2., 13, 18., 19, 20, 21, 25; 116, 118, 119, 124.f.-k, , 119, 125. 128, 140)(Appx. 107; 110-112; 116; 120 121; 126-127; 131-134; 137). We said, "The Defendants' were not entitled to the grant of their motions for dismissal or summary judgment as a matter of law, fact, and due process (ECFs 44/45, 124/125, 149/150)(Appx. 1-70) since damages relief is due. Culpability and relief will

be proved upon completion of discovery. Review is *de novo*." On July 1, 2024, Supreme Court Chief Justice Roberts quoted the D.C. Circuit in the case of *United States v. Trump*, 91 F.4th 1173, saying: [**Emphasis added**]

> Citing *Marbury v. Madison*, 1 Cranch 137 (1803), the court distinguished between two kinds of official acts: discretionary and ministerial. 91 F. 4th, at 1189–1190. It observed that "although discretionary acts are 'only politically examinable,' the judiciary has the power to hear cases" involving ministerial acts that an officer is directed to perform by the legislature. *Ibid.* (quoting Marbury, 1 Cranch, at 166). *Trump v. United States, 603 U.S.* _____ (2024, Slip Op.)

18. Specifically, the D.C. Circuit's opinion in United States v. Trump, citing Marbury v. Madison, explained that immunity does not apply when the government officer fails to act lawfully when they have a duty to act and there is [Doc. 2082923, p. 20 of 25] injury to the person who suffers from the unlawful behavior of the government officer: [**Emphasis added**]

> Marbury distinguished between two kinds of official acts: discretionary and ministerial. As to the first category, Chief Justice Marshall recognized that "the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience." Marbury, 5 U.S. (1 Cranch) at 165-66. When the President or his appointed officers exercise discretionary authority, "[t]he subjects are political" and "the decision of the executive is conclusive." Id. at 166. Their discretionary acts, therefore, *1190 "can never be examinable by the courts." Id. "But," Chief Justice Marshall continued, "when the legislature proceeds to impose on that officer other duties;

when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others." Id. (emphases added). Under these circumstances, an executive officer acts as a "ministerial officer... compellable to do his duty, and if he refuses, is liable to indictment." Id. at 150; see id. at 149-50 ("It is not consistent with the policy of our political institutions, or the manners of the citizens of the United States, that any ministerial officer having public duties to perform, should be above the compulsion of law in the exercise of those duties."). Based on these principles, Chief Justice Marshall concluded that, although discretionary acts are "only politically examinable," the judiciary has the power to hear cases "where a specific duty is assigned by law." Id. at 166. Marbury thus makes clear that Article III courts may review certain kinds of official acts — including those that are legal in nature. *United States v. Trump*, 91 F.4th 1173, 1189-1190 (D.C. Cir. Feb. 26, 2024)

19. If, according to *Marbury* and the D.C. Circuit, the officer upon whom our rights are dependant violates the Constitution, statutes, regulations and the agencies written policies is "liable to indictment", he is therefore liable to civil damages for the same unlawful act. If by discovery, the tortfeasors "co- [Doc. 2082923, p. 21 of 25] conspirators" can show that they were not flagrantly violating the law but were merely carrying out edicts that themselves were unconstitutional, then the United States is responsible for compelling them to injure us, then the United States is liable for money damages that we claimed for appropriate relief under RFRA. [**Emphasis added**]

> Damages are given as a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. 2 Greenl. Ev. (10th ed.) sect. 253. *Birdsdall v. Coolidge*, 93 U.S. 64 (1876)

20. The remedial RFRA's use of the broad term "appropriate relief" means damages payments are available for an injury-in-fact by the United States through its agents acting in their official capacity, or by its agents who are liable in their private capacity for their unlawful acts done under the color or law. Carmichael's being stripped of his right to travel without warrant of law is an Article III injury. Being stripped of his right to travel without notice of their government's intention to do so is an Article III injury. An opportunity to move for injunction would have kept the injury from occurring. The cowardly Pearl Harbor type notice of war (revocation) after the attack is un-American. It is in the public interest to have the unlawful acts fully adjudicated. [**Emphasis added**]

> The discontinuation of an illegal practice by going out of business, or otherwise, after institution by a public agency of a proceeding to prevent future violations of law does not make question"moot," where there is need for a determination of a question of law to serve as a guide to the public agency in future similar matters, and where there has been a decision in lower court which may be used as a precedent in future activities of such public agency. *Walling v. Mutual Wholesale Food & Supply Co.*, 141 F.2d 331 (C.C.A. Minn. 1944)

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21. In the case of *Uzuegbunam, et al., v. Preczewski, et al.*, the Supreme Court declared that the Government's discontinuance of a challenged policy did not leave the injured party without standing to sue. Nominal money relief is available even where an amount of compensatory

damages cannot be proved, satisfying the redressability necessary for Article III standing where a plaintiff's claim is based on a completed violation of a legal right. *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 797-802 (2021). The United States Court of Appeals for the District of Columbia Circuit is bound by the rulings of the United States Supreme Court. *Continental Distilling Corp. v Old Charter Distillery Co.,* 188 F.2d 614 (U.S. App. D.C. 1950) [**Emphasis added**]

22. Nominal damages are "appropriate relief" if other monetary relief demanded is not provable, ECF 51, ¶s 143-148 (Appx. 139). [**Emphasis added**]

> Later courts, however, reasoned that every legal injury necessarily causes damage, so they awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages), and they did so where there was no apparent continuing or threatened injury for nominal damages to redress. See, e.g., *Barker v. Green*, 2 Bing. 317, 130 Eng. Rep. 327 (C. P. 1824) (nominal damages awarded for 1 day delay in arrest because "if there was a breach of duty the law would presume some damage"); *Hatch v. Lewis*, 2 F. & F. 467, 479, 485-486, 175 Eng. Rep. 1145, 1150, 1153 (N. P. 1861) (ineffective assistance by criminal defense attorney that does not prejudice the client); Dods v. Evans, 15 C. B. N. S. 621, 624, 627, 143 Eng. Rep. 929, 930-931 (C. P. 1864) (breach of contract); *Marzetti v. Williams*, 1 B. & Ad. 415, 417-418, 423-428, 109 Eng. Rep. 842, 843, 845-847 (K. B. 1830) (bank's 1-day delay in paying on a check); id., at 424, 109 Eng. Rep., at 845 (recognizing that breach of contract could create a continuing injury but determining that the fact of breach of contract by [Doc. 2082923, p. 23 of 25] itself justified nominal damages). *Uzuegbunam, et al., v. Preczewski, et al.*, 141 S.Ct. 792, 798 (2021). ***

Applying what he called Lord Holt's "incontrovertible" reasoning, Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" whenever "no other [kind of damages] be proved." *Webb v. Portland Mfg. Co.*, 29 F.Cas. 506, 508-509 (No. 17,322) (CC Me. 1838). Because the common law recognized that "every violation imports damage," Justice Story reasoned that "[t]he law tolerates no farther inquiry than whether there has been the violation of a right." *Ibid.* Justice Story also made clear that this logic applied to both retrospective and prospective relief. *Id.,* at 507 (stating that nominal damages are available "wherever there is a wrong" and that, "[a] fortiori, this doctrine applies where there is not only a violation of a right of the plaintiff, but the act of the defendant, if continued, may become the foundation, by lapse of time, of an adverse right"). *Uzuegbunam, et al., v. Preczewski*, et al., 141 S.Ct. 792, 798.

23. Nominal damages are appropriate relief by default.

They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages. See, e.g., *Dods*, 15 C. B. N. S., at 621, 627, 143 Eng. Rep., at 929, 931 (prevailing plaintiff entitled to nominal damages as a matter of law even where jury neglected to find them); see also *Stachura*, 477 U.S. at 308, 106 S.Ct. 2537 (rejecting the argument that courts could presume, without proof, damages greater than nominal). *Uzuegbunam*, at 800