

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ASHTON ORR, *et al.*,

*Plaintiffs,*

v.

DONALD J. TRUMP, *et al.*,

*Defendants.*

Case No. 1:25-cv-10313-JEK

**STATEMENT OF UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT  
ON COUNTS SIX AND SEVEN OF THE AMENDED COMPLAINT**

Pursuant to Local Rule 56.1, Plaintiffs hereby state the following undisputed facts in support of their Motion for Summary Judgment on Counts Six and Seven of the Amended Complaint:

1. In 1976, the U.S. Department of State began listing sex designations on issued passports. ECF 53-1 (Declaration of Matthew Pierce) ¶ 5.
2. In 1992, the U.S. Department of State began allowing passport applicants to amend the sex designations on their passports upon submission of evidence that the applicant underwent gender reassignment and, in 2010, upon submission of a certification from a physician that the applicant was receiving clinical treatment for gender transition. *Id.* ¶ 6.
3. In 2021, the U.S. Department of State began allowing passport applicants to fully self-select and/or amend the sex designations on their passports, including selecting an "X" sex designation, without submission of any additional evidence. *Id.* ¶¶ 7–8.

4. On January 20, 2025, President Trump signed Executive Order 14168, entitled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” which declares that “[i]t is the policy of the United States to recognize two sexes, male and female.” ECF 140 (“Administrative Record” or “AR”) at 5.

5. Executive Order 14168 defines “male” to mean “a person belonging, at conception, to the sex that produces the small reproductive cell” and “female” to mean “a person belonging, at conception, to the sex that produces the large reproductive cell.” *Id.*

6. Executive Order 14168 states that its purpose is to address “ideologues who deny the biological reality of sex [who] have increasingly used legal and other socially coercive means to permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women, from women’s domestic abuse shelters to women’s workplace showers.” *Id.*

7. Executive Order 14168 does not mention nor purport to override or otherwise disturb Executive Order 11295. *See id.* at 5–8.

8. On January 22, 2025, the U.S. Department of State issued a cable to Consular Affairs personnel to “suspend any application requesting an X sex marker” and “suspend any application where the applicant is seeking to change their sex marker from that defined in the executive order.” *Id.* at 9.

9. On January 30, 2025, the U.S. Department of State issued press guidance stating that “[o]n January 20, the White House executed Executive Order ‘Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government’” and that “[t]he Department of State will implement this Order in accordance with its terms.” *Id.* at 28.

10. On February 6, 2025, the U.S. Department of State stated, in an action memo to the Secretary of State, that “[a]lthough the executive order defines “male” and “female” at the point

of conception, it will be advantageous for CA [Consular Affairs] to adjudicate applications based on an applicant's biological sex at birth given that applicants provide vital records such as birth certificates, and because translating 'sex at birth,' rather than, 'sex at conception,' will decrease the incidences of an applicant's misunderstanding." *Id.* at 13–14.

11. On February 8, 2025, the Secretary of State issued guidance to all Consular Affairs personnel that “[a] passport or CRBA application requesting an X marker must be changed to a male or female sex marker when sufficient evidence of biological sex at birth is provided or, if that does not exist, a review of all available evidence establishing biological sex at birth by a preponderance of evidence,” that “[i]f a passport or CRBA application requests a sex marker that differs from their citizenship evidence, identification, and/or prior passport record, the documentation issued closest to an individual's birth should be used to establish the biological sex at birth,” and that “[t]he executive order directs the Department of Health and Human Services to provide guidance regarding the definitions set forth in the order within 30 days.” *Id.* at 38–40.

12. On November 26, 2024, the U.S. Department of State published 60-day public comment notices for the April 2022 version of Forms DS-11 and DS-82, and on November 29, 2024, for the April 2022 version of Form DS-5504. *Id.* at 60–64.

13. The April 2022 versions of Forms DS-11, DS-82, and DS-5504 were set to expire on April 30, 2025. *See* ECF 53-1 (Declaration of Matthew Pierce) ¶ 8.

14. In late January, 2025, the U.S. Department of State removed from its website the April 2022 versions of Forms DS-11, DS-82, and DS-5504 and replaced them by uploading the December 2020 versions of Forms DS-11, DS-82, which had been expired since 2023, and DS-5504, which had been expired since 2022. *See id.* at 17; ECF 33-5 (December 2020 version of

Form DS-11); ECF 33-6 (December 2020 version of Form DS-82); ECF 33-7 (December 2020 version of Form DS-5504).

15. On February 14, 2025, the U.S. Department of State published a 30-day public comment notice for the December 2020 version of Form DS-11. AR at 95–101.

16. On February 18, 2025, the U.S. Department of State published 30-day public comment notices for the December 2020 version of Forms DS-82 and DS-5504. *Id.* at 102–16.

17. After the 30-day public comment notice for the December 2020 version of Form DS-11 closed on March 17, 2025, the Office of Information and Regulatory Affairs (“OIRA”) issued a supporting statement stating that the State Department received 1,620 comments during the 30-day comment period. *See* Ex. S, OIRA Supporting Statement for Paperwork Reduction Act Submission, Application for a U.S. Passport OMB No. 1405-0004.

18. As of October 17, 2025, the official U.S. government website on which the public submits comments on proposed regulations states that 116,258 comments were received in response to the U.S. Department of State’s 30-day public comment notice for the December 2020 version of Form DS-11. *See* Regulations.gov, Agency Information Collection Activities; Proposals, Submissions, and Approvals: Application for a U.S. Passport; [https://www.regulations.gov/document/DOS\\_FRDOC\\_0001-6771](https://www.regulations.gov/document/DOS_FRDOC_0001-6771).

19. On August 27, 2025, Defendants filed the administrative record. *See* ECF 140.

20. The administrative record filed by Defendants does not contain evidence of the U.S. Department of State considering or describing, either publicly or internally, any effect that the actions taken in paragraphs 8–11 would have on potential stakeholders in policies regarding sex designations on passports, such as transgender, nonbinary, and intersex individuals who may be subject to psychological and physical harm if forced to present identity documents bearing sex

markers discordant with their gender identity. *See, e.g.*, ECF 30-6 (Affidavit of Chastain Anderson) at ¶¶ 12–13; ECF 78-3 (Expert Declaration of Sarah D. Caruthers) ¶¶ 53–61, 73–84, 91; ECF 78-14 (Expert Declaration of Ayden Scheim) ¶¶ 15–24.

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October 17, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2025, a true copy of the foregoing will be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record.

/s/ Isaac D. Chaput  
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