

District Judge Julia E. Kobick: ELECTRONIC ORDER entered.

The plaintiffs' Motion to Enforce or Modify Preliminary Injunction, ECF 117 , is **DENIED WITHOUT PREJUDICE**.

On June 17, 2025, the Court certified two classes, ECF 115 , and issued a preliminary injunction requiring defendants Marco Rubio, in his official capacity as Secretary of State, and the U.S. Department of State to issue to a subset of those class members (the "PI Class") passports bearing a sex marker—"M," "F," or "X"—consistent with the applicant's gender identity, ECF 116 . Roughly one week later, the plaintiffs filed a motion to enforce the preliminary injunction, alleging that the defendants had neither complied with it nor meaningfully explained the steps they were taking to do so. ECF 117 , 118 . As the government explains in its opposition, ECF 123 , and supporting declaration, ECF 123-1, the State Department temporarily suspended the processing of passport applications for potential PI Class members after the preliminary injunction was entered so that it could develop compliant workflows. ECF 123-1, ¶ 9. But the government subsequently finalized those workflows and, since July 1, 2025, it has processed PI Class members' passport applications in accordance with the preliminary injunction. *See id.* ¶ 10.

The Court concludes that the defendants have made "diligent, good faith efforts, culminating in substantial compliance" with the preliminary injunction. *Langton v. Johnston*, 928 F.2d 1206, 1220 (1st Cir. 1991). Ryan M. Dooley, the Acting Deputy Assistant Secretary for Passport Services, avers that the State Department "fully understands its obligation to comply with" the preliminary injunction, and "intends to maintain the new processes and procedures developed to comply with the [preliminary injunction] for as long as [it] is in force." ECF 123-1, ¶¶ 8, 13. Indeed, the State Department has posted to its website an attestation form, which largely incorporates language from the preliminary injunction order, that applicants can fill out to self-identify as members of the PI Class. *Compare* ECF 116 , ¶ 3, *with* ECF 123-1, Ex. A. The State Department has also updated its "Sex Markers in Passports" web page to inform PI Class members of their right to apply for and receive a passport in accordance with the preliminary injunction. *See* ECF 123-1 ¶ 10; *id.* Ex. B. And it has developed an "information request letter" "to be sent to passport applicants who do not include the Attestation but who the Department has reason to believe may be members of the PI Class." *Id.* ¶ 11.

The plaintiffs nevertheless argue that the defendants are not in full compliance with the preliminary injunction for two reasons. *See* ECF 124 . They first take issue with the attestation form. Whereas the Court authorized the defendants to require PI Class members to attest, as relevant here, "my gender identity is different from the sex assigned to me at birth," ECF 116 , ¶ 3, the State Department's attestation form states only, "[m]y gender identity is different from my sex." ECF 123-1, Ex. A. The plaintiffs contend that by omitting the phrase, "assigned to me at birth," the attestation form "effectively imposes Defendants' substantive theory of sex on attesting class members." ECF 124 , at 5. That overstates the matter. The relevant sentence on the form reads: "If I am selecting a sex marker that is different from the sex marker on my original birth certificate . . . I confirm that at least one of the following is true": (1) "My gender identity is different from my sex," or (2) "I have been diagnosed with gender dysphoria." ECF 123-1, Ex. A (emphasis added). In context, the term "sex" clearly refers to the sex listed on the applicant's "original birth certificate." *Id.* Signing the attestation form entitles PI Class members

to obtain a passport in accordance with the preliminary injunction. As the plaintiffs acknowledge, it "does not indicate their acceptance of Defendants' conception of sex or gender identity." ECF 124 , at 5 n. 2.

The plaintiffs next fault the defendants because, as Dooley reports, "[c]ertain applicants seeking emergency passports" while overseas "may have difficulty obtaining such documents with 'X,' as not all Department systems are equally capable of printing all configurations of passports." ECF 123-1, ¶ 15. This speculative limitation—which will at most affect overseas travelers seeking a passport on an expedited basis—does not amount to noncompliance. The preliminary injunction does not explicitly address the issuance of passports on an expedited basis. *Cf. AccuSoft Corp. v. Palo*, 237 F.3d 31, 47 (1st Cir. 2001) ("[Civil] contempt may only be established if the order allegedly violated is clear and unambiguous." (quotation marks and citation omitted)). And Dooley avers that any impacted PI Class member will be able to later obtain, at no additional charge, a replacement passport bearing an "X" marker. ECF 123-1, ¶ 15. Moreover, the limitation does not give rise to an inference of bad faith or lack of diligence. *See Langton*, 928 F.2d at 1220. There is no evidence, for example, that the State Department has ever possessed the ability to issue passports bearing an X marker on an expedited basis at all overseas locations.

The plaintiffs lastly claim that the defendants have created an "unnecessary barrier" by refusing to use versions of the passport application forms that permit applicants to self-select an "M," "F," or "X" sex marker. ECF 124 , at 7. The defendants do not, however, have any obligation to use those forms, and the Court previously denied the plaintiffs' request to order the defendants to reinstate the passport policy pursuant to which those forms were promulgated. *See* ECF 74 , at 51-56.

The Court accordingly concludes that the defendants have made "diligent, good faith efforts, culminating in substantial compliance" with the preliminary injunction. *Langton*, 928 F.2d at 1220. The plaintiffs' motion, ECF 117 , is **denied without prejudice** to refiling in the event of future developments evincing the defendants' failure to substantially comply with the preliminary injunction. (Currie, Haley) (Entered: 07/09/2025)