

Attachments to Declaration of Lisa Zeidner Marcus, ECF No. 101-3

Supporting Defendants' Opposition to
Plaintiffs' Motion for Partial Summary Judgment

<u>Def.' Ex. #</u>	<u>Description:</u>
Ex. H	Excerpts of Plaintiffs' Responses to Defendants' Requests for Admission, including all such responses—specifically Plaintiffs' Responses to Defendants' Request for Admission Nos. 1 and 3—cited in Defendants' Statement of Genuine Disputes of Material Fact.
Ex. I	Excerpts of Defendants' Responses to Plaintiffs' Requests for Admission, including all such responses—specifically Defendants' Responses to Plaintiffs' Request for Admission Nos. 10 and 11—cited in Defendants' Statement of Genuine Disputes of Material Fact.
Ex. J	Excerpts of Defendants' Responses to Plaintiffs' Interrogatories, including all such responses—specifically Defendants' Second Resp. to Pls.' First Set of Interrogatories at 22— cited in Defendants' Statement of Genuine Disputes of Material Fact.
Ex. K	Excerpts of the transcript of Terri Nathine Francis “Frankie” Day, including all such portions Defendants rely on in their Statement of Genuine Disputes of Material Fact.
Ex. L	Excerpts of the transcript of Andrew Dvash-Banks, including all such portions Defendants rely on in their Statement of Genuine Disputes of Material Fact.
Ex. M	Excerpts of the transcript of Margaret Ramsay, including all such portions Defendants rely on in their Statement of Genuine Disputes of Material Fact.
Ex. N	Excerpts of the transcript of Larilyn Reffett, including all such portions Defendants rely on in their Statement of Genuine Disputes of Material Fact.
Ex. O	Excerpts of the transcript of Paul Peek, including all such portions Defendants rely on in their Statement of Genuine Disputes of Material Fact.
Ex. P	DEFS001648-49 (Aug. 29, 2014 letter from Consul General, U.S. Embassy Bangkok, describing rationale behind asking for DNA testing at Embassies and Consulates worldwide)

Defendants' Opposition Exhibit H

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 ANDREW MASON DVASH-
26 BANKS and ETHAN JACOB
27 DVASH-BANKS,

28 Plaintiffs,

v.

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

Defendants.

Case No. 2:18-cv-00523-JFW-JCx

**PLAINTIFFS' RESPONSES TO
DEFENDANTS' FIRST SET OF
DISCOVERY REQUESTS**

1 Defendants' near wholesale failure to respond meaningfully to Plaintiffs' discovery
2 requests or to do so in a timely manner. Plaintiffs reserve the right to modify or
3 supplement their responses and objections to this interrogatory.

4 Subject to, and without waiver of, the Objections, Plaintiffs respond as
5 follows:

6 Plaintiffs state that they have not distinguished between Andrew and Ethan
7 for purposes of Interrogatory No. 6, therefore no further response to Interrogatory
8 No. 7 is required.

9 **Interrogatory No. 8:**

10 Identify all bases for your contention that Defendants treated you differently
11 than similarly situated persons, as alleged in paragraph 71 of your complaint and
12 implied throughout your Complaint.

13 **Response to Interrogatory No. 8:**

14 Plaintiffs incorporate their Objections by reference and further object to
15 Interrogatory No. 8 on the grounds that the term "bases," as used in Interrogatory
16 No. 8, is vague and ambiguous. Plaintiffs also object to Interrogatory No. 8 as
17 premature. Plaintiffs have propounded multiple discovery requests to elicit
18 information on this issue to which Defendants have not responded or have done so
19 in a partial and untimely manner. Plaintiffs reserve the right to modify or
20 supplement their responses and objections to this interrogatory. Plaintiffs further
21 object on the grounds that the Complaint speaks for itself and refer Defendants to
22 the Complaint. Plaintiffs also object to Interrogatory No. 8 on the grounds that it is
23 a contention interrogatory to which Plaintiffs need not respond at this stage of the
24 Action.

25 **V. RESPONSES TO REQUESTS FOR ADMISSION**

26 **Request for Admission No. 1:**

27 Admit that you (Andrew) and/or your husband (Elad) used an anonymous
28 egg donor to conceive Ethan, as alleged in paragraph 44 of your Complaint.

1 **Response to Request for Admission No. 1:**

2 Plaintiffs incorporate their Objections by reference.

3 Subject to, and without waiver of, any of the Objections, Plaintiffs admit that
4 Andrew and Elad used an anonymous egg donor to conceive Ethan and Aiden.

5 **Request for Admission No. 2:**

6 Admit that in the summer of 2015 you (Andrew) and your husband (Elad)
7 selected the anonymous egg donor used to conceive Ethan.

8 **Response to Request for Admission No. 2:**

9 Plaintiffs incorporate their Objections by reference.

10 Subject to, and without waiver of, any of the Objections, Plaintiffs admit
11 that, in June and July of 2015, Andrew and Elad selected the anonymous egg donor
12 used to conceive Ethan and Aiden and proceeded with arrangements to obtain the
13 donor eggs.

14 **Request for Admission No. 3:**

15 Admit that you (Andrew) and/or your husband (Elad) used a gestational
16 carrier to carry and give birth to Ethan.

17 **Response to Request for Admission No. 3:**

18 Plaintiffs incorporate their Objections by reference.

19 Subject to, and without waiver of, any of the Objections, Plaintiffs admit that
20 Andrew and Elad used a gestational carrier to carry and give birth to Ethan and
21 Aiden.

22 **Request for Admission No. 4:**

23 Admit that Amanda Marie Anne Adams was the gestational carrier who
24 carried Ethan.

25 **Response to Request for Admission No. 4:**

26 Plaintiffs incorporate their Objections by reference and further object to
27 Request for Admission No. 4 on the grounds that it seeks the discovery of private
28 information protected from disclosure by the right to privacy. Plaintiffs also object

1 twins. (See ¶¶ 1.8, 1.9, 1.10 and 14.1 of the Surrogacy Agreement.) Plaintiffs
2 further state that Andrew is listed as a parent of Ethan on Ethan’s Statement of
3 Live Birth. Plaintiffs further refer Defendants to the Declaration of Parentage of
4 Ethan, which declared Andrew and Elad to be Ethan’s parents “for all purposes in
5 law.”

6 **Request for Admission No. 13:**

7 Admit that your (Andrew’s) status as a legal parent of Ethan Dvash-Banks
8 was not established until September 28, 2016.

9 **Response to Request for Admission No. 13:**

10 Plaintiffs incorporate their Objections by reference and further object on the
11 grounds that Request for Admission No. 13 calls for a legal conclusion.

12 Subject to, and without waiver of, any of the Objections, Plaintiffs deny that
13 Andrew’s status as a legal parent of Ethan was not established until September 28,
14 2016, twelve days after Ethan’s birth.

15 **Request for Admission No. 14:**

16 Admit that you (Andrew) are not biologically related to Ethan.

17 **Response to Request for Admission No. 14:**

18 Plaintiffs incorporate their Objections by reference.

19 Subject to, and without waiver of, any of the Objections, Plaintiffs admit that
20 the DNA testing described in Plaintiffs’ Response to Request for Admission No. 6
21 did not find a biological connection between Andrew and Ethan.

22 **Request for Admission No. 15:**

23 Admit that you (Andrew) and/or your husband (Elad) arranged for DNA
24 testing to be conducted in September 2016, after Ethan and Aiden were born, to
25 establish the parentage of Ethan and Aiden.

26 **Response to Request for Admission No. 15:**

27 Plaintiffs incorporate their Objections by reference and further object to
28 Request for Admission No. 15 on the grounds that the phrase “establish the

Defendants' Opposition Exhibit I

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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 12 CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14 ANDREW MASON DVASH-
 15 BANKS, et al.,
 16 Plaintiffs,

17 v.

18 MICHAEL R. POMPEO, in his
 official capacity as U.S. Secretary of
 19 State, et al.,
 20 Defendants,

} **Case No. 2:18-cv-00523-JFW (JCx)**
 } **Defendants' Responses to Plaintiffs'**
 } **First Set of Requests for Admission**
 } Dec. 31, 2018

21 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and Local Rules
 22 36-1 through 36-3, Defendants hereby respond to Plaintiffs' First Set of Requests
 23 for Admission ("RFAs"), which Plaintiffs served on November 29, 2018.

24 **I. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

25 1. Defendants note that Plaintiffs did not serve their First Set of Requests
 26 for Admission until November 29, 2018, making Defendants' responses due on
 27
 28

1 **Request for Admission 10:**

2 Admit that for purposes of issuing certificates of citizenship in the Ninth
3 Circuit, CIS does not require a biological connection between the child and
4 the child’s U.S. citizen parent.

5 **Response:**

6 Upon conducting a reasonable inquiry, Defendants lack knowledge to
7 definitively answer on behalf of the U.S. Citizenship and Immigration
8 Services (“USCIS”), which is a component of the Department of Homeland
9 Security—an Executive agency separate from the Department of State.
10 Defendants understand generally and admit that for those applications for
11 certificates of citizenship that USCIS receives from applicants living in the
12 Ninth Circuit at the time of their application, USCIS applies the Ninth Circuit
13 caselaw of *Scales v. I.N.S.*, 232 F.3d 1159, 1165 (9th Cir. 2000).

14 **Request for Admission 11:**

15 Admit that *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005),
16 precludes the State Department from requiring a showing of a biological
17 connection between the U.S. citizen parent and child applicant in deciding
18 applications for Consular Reports of Birth Abroad and U.S. passports by or
19 on behalf of residents of states located in the Ninth Circuit.

20 **Specific Objection:**

21 Defendants object to this RFA because it calls for a legal conclusion, and
22 because it is overly broad, particularly insofar as it seeks a response regarding
23 U.S. passport applications, which include U.S. passport applications for
24 naturalized citizens as well as for individuals who acquired citizenship at birth
25 because they were born in the United States.
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1 Response:

2 Subject to and without waiving the above-stated objection, Defendants
3 generally deny this statement. Defendants deny the statement with respect to
4 deciding applications for Consular Reports of Birth Abroad (“CRBAs”) by or
5 on behalf of residents of states located in the Ninth Circuit because such
6 residents are not eligible for a CRBA. A CRBA, also known as form FS-240,
7 is a consular declaration of the fact of acquisition of U.S. citizenship at birth,
8 and it is only available to individuals who are located abroad. See 8 FAM
9 101.1-1. With respect to deciding applications for U.S. passports, insofar as
10 the wording of the RFA and the facts presented by this case refer to
11 applications for first-time passports that are submitted to a U.S. Embassy or
12 consulate abroad by individuals who also are applying for a CRBA, such
13 individuals would, again, be located abroad and not in a state within the Ninth
14 Circuit or of any particular state within the United States.

15 With respect to deciding applications for U.S. passports by or on behalf of
16 residents of states located in the Ninth Circuit, Defendants are not able to
17 either admit or deny the statement because as stated it is so broad that the
18 applicability or non-applicability of *Solis-Espinoza v. Gonzales*, 401 F.3d
19 1090 (9th Cir. 2005), cannot be determined.

20
21 **Request for Admission 12:**

22 Admit that the only basis for the State Department’s denial of Ethan’s
23 applications for a Consular Report of Birth Abroad and U.S. passport is that
24 Ethan and Andrew are not biologically related.

25 Response:

26 Defendants admit that one basis for denying the applications was that there
27 was insufficient evidence of a biological tie between the child applicant and
28

Defendants' Opposition Exhibit J

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 ANDREW MASON DVASH-
15 BANKS, et al.,
16 Plaintiffs,

17 v.

18 MICHAEL R. POMPEO, in his
19 official capacity as U.S. Secretary of
State, et al.,
20 Defendants,

} **Case No. 2:18-cv-00523-JFW (JCx)**
} **Defendants' Second Set of Responses**
} **to Plaintiffs' First Set of**
} **Interrogatories**
} November 16, 2018

21
22 On October 5, 2018, Defendants served Plaintiffs with “Defendants’ First
23 Set of Responses to Plaintiffs’ First Set of Interrogatories” (“Defendants’ First Set
24 of Responses”). Among other objections, Defendants’ First Set of Responses
25 objected to counting Plaintiffs’ Interrogatories and their discrete subparts as
26 consisting of only twenty requests. Defs.’ 1st Set Resps. ¶ 13. Defendants noted:
27 “When the Interrogatories and their discrete subparts are properly construed as
28

With respect to 14(A):¹²

1 The Department’s rationale, governmental interests, and concerns are in
2 faithfully executing the laws passed by Congress. The INA was enacted in 1952, a
3 time when it was commonly understood, that outside the adoption context, a
4 “parent” at birth referred to a biological parent. 8 FAM 301.4-1(D)(1)(a) provides,
5 “[t]he laws on acquisition of U.S. citizenship through a parent have always
6 contemplated the existence of a blood relationship between the child and the
7 parent(s) through whom citizenship is claimed. It is not enough that the child is
8 presumed to be the issue of the parents’ marriage by the laws of the jurisdiction
9 where the child was born. Absent a blood relationship between the child and the
10 parent on whose citizenship the child’s own claim is based, U.S. citizenship is not
11 acquired. The burden of proving a claim to U.S. citizenship, including blood
12 relationship and legal relationship, where applicable, is on the person making such
13 claim.”
14

With respect to 14(B):¹³

15 Defendants lack knowledge with respect the rationale, governmental
16 interests, and concerns of the Department of Homeland Security and its
17 components.
18
19
20

21 ¹² Interrogatory 14(A) asks: “Identify and describe the State Department’s...
22 rationale, governmental interests or concerns Concerning any decision not to treat
23 as a United States citizen a child born outside of the United States to a married
24 couple (of which one spouse is a United States citizen) when the United States
citizen is not the child’s biological parent but is listed as a parent on the child’s
birth certificate.”

25 ¹³ Interrogatory 14(B) asks: “Identify and describe... [US]CIS’s or DHS’s
26 rationale, governmental interests or concerns Concerning any decision not to treat
27 as a United States citizen a child born outside of the United States to a married
28 couple (of which one spouse is a United States citizen) when the United States
citizen is not the child’s biological parent but is listed as a parent on the child’s
birth certificate.”

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary of
State, et al.,

Defendants,

) Case No. **2:18-cv-00523-JFW (JCx)**
) **Defendants' Second Set of Responses**
) **to Plaintiffs' First Set of**
) **Interrogatories, Signature Page**

Certification of Bennett S. Fellows

I, Bennett S. Fellows, declare that I assisted in the preparation of and provided information for the Department of State's responses to Plaintiffs' Interrogatory Nos. 11(A)-20 in the above-captioned case. The responses are based upon information gathered in the course of my inquiry and information maintained in the regular course of agency activities, supplemented in some instances with personal knowledge. On behalf of the Department, I furnish the answers to Interrogatory Nos. 11(A)-20.

I declare under penalty of perjury that that these answers are true and correct.



Bennett S. Fellows
Division Chief
U.S. Department of State
Bureau of Consular Affairs, Office of Passport Services
Office of Adjudication, Policy Division

11-16-18
Date

Defendants' Opposition Exhibit K

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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14 WESTERN DIVISION

15 ANDREW MASON DVASH-
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his
20 official capacity as U.S. Secretary of
State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition
Testimony of Terri Nathine Frances
Day, Supporting Defendants' Motion
for Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22
23 Pursuant to this Court's Case Management Order, Defendants hereby file the
24 instant document for deponent Terri Nathine Frances Day. This document contains "only
25 those questions and answers, and any objections made at the time of the deposition to
26 those questions," Order at 11 (Dkt. No. 52), that Defendants are relying on to support
27 their partial motion for summary judgment, "with a citation to the appropriate page(s)
28

1 and line number(s) in the deposition transcript," *id.* Ms. Day's deposition was taken
2 Thursday, Deeber 20, 2018, in Charlotte, North Carolina.

3 ***

4
5 **Frances Day, Terri Nathine, (Page 29:17–30:3)**

6 By Zeidner-Marcus:

7 17 Q. And what was your role in adjudicating

8 18 those applications?

9 19 A. My role was to determine if the

10 20 applicant had a claim to U.S. citizenship either

11 21 through their parent or their place of birth or

12 22 whatever reason they were -- you know, whatever

13 23 reason they were claiming was their purpose for

14 24 getting it -- acquiring U.S. citizenship. So that

15 25 was my -- my job was to determine if that was --

16 30

17 1 according to Foreign Affairs Manual and the

18 2 guidelines that we had, if that was -- if they were

19 3 entitled to that citizenship.

20
21 **Frances Day, Terri Nathine, (Page 37:4–23)**

22 By Ms. Zeidner-Marcus:

23 4 Q. And can you explain what you mean by

24 5 "pending"?

25 6 A. "Pending," meaning in process, not

26 7 determined yet.

27 8 Q. And was it common to put applications

28 9 into this pending status?

1 10. . . . A. · Could you be a bit more specific? · What
2 11. · do you mean by "common"?
3 12. . . . Q. · Sure. · In your experience, adjudicating
4 13. · applications for U.S. passports and CRBA, was it
5 14. · your typical practice to put an application into
6 15. · pending status?
7 16. . . . A. · If the application called for it, yes,
8 17. · without a doubt I would have put it in a pending
9 18. · status, which -- so pending -- pending
10 19. · documentation could include a birth certificate, a
11 20. · photo, a signature that needed to be done. · It
12 21. · could mean a whole list of things. · So it was
13 22. · definitely something that was -- that happened
14 23. · fairly frequently.

15
16 **Frances Day, Terri Nathine, (Page 116:12 to 116:19)**

17 116

18 By Ms. Goldsmith:

19 12 wouldn't be able to issue or deny without that --
20 13 that DNA test, they were not happy with that.

21 14 Q. And how did you know that they weren't
22 15 happy at that point?

23 16 A. Well, they seemed upset. They were --
24 17 specifically, I think I spoke the most with Andrew,
25 18 the AMCIT dad. He was raising his voice. He
26 19 was -- I believe he began crying at one point.

1 **Frances Day, Terri Nathine, (Page 120:14–121:3)**

2 By Ms. Goldsmith:

3 Q. · And do you remember asking Andrew and

4 15· ·Elad how they created their family?

5 16· · A. · Those specific words or --

6 17· · Q. · Or in substance how they created their

7 18· · family.

8 19· · A. · I don't remember asking that. · If I had

9 20· · questions about the surrogate or about the

10 21· · surrogacy, about the ART, I would have asked those

11 22· · questions, yes. · It's an awkward thing to try to

12 23· · say, "Which of you donated sperm to put in an egg

13 24· · for a baby?" · So I might have said, like, you know,

14 25· · "So how were the boys conceived?" · Something like

15 121

16 1· · that, along those lines, yes.

17 2· · Might we have talked about, like, how

18 3· · they met or something? · I don't -- I don't recall.

19
20 **Frances Day, Terri Nathine, (Pages 231:04 to 233:18)**

21 231

22 By Ms. Zeidner Marcus:

23 4 Q. Okay. And was it your role to assess

24 5 whether there was a biological relationship between

25 6 the AMCIT father and one or both of the applicant

26 7 children?

27 8 A. Yes.

28 9 Q. And you sound fairly clear about that.

1 10 Are you clear about that?

2 11 A. Yes.

3 12 Q. But you also earlier said that you
4 13 don't remember whether you considered -- you don't
5 14 remember, sitting here today, whether you
6 15 considered these children to have been born in
7 16 wedlock or out of wedlock; is that also correct?

8 17 A. Correct.

9 18 Q. And -- okay. Would it have been your
10 19 role to assess whether there is a biological
11 20 relationship between the AMCIT father and the
12 21 applicant child under either the framework of
13 22 wedlock or the framework of out of wedlock?

14 23 MS. GOLDSMITH: Objection. Form.

15 24 THE WITNESS: Yes, that -- yes.

16 25 BY MS. MARCUS:

17 232

18 1 Q. Do you understand that it was -- it
19 2 would have been necessary, and it was necessary,
20 3 regardless of whether the children were born in
21 4 wedlock or out of wedlock -- let me start over.
22 5 I'm sorry.

23 6 Regardless of whether the children were
24 7 born in wedlock or out of wedlock, was it necessary
25 8 for the children to have a biological connection to
26 9 the AMCIT father in order for the children to
27 10 acquire citizenship at birth?

28 11 A. Yes.

1 12 Q. So is it your testimony that it would
2 13 not have made a difference to your final
3 14 adjudication decision for these cases whether you
4 15 had considered the children to be born in wedlock
5 16 or whether you had considered them to be born out
6 17 of wedlock?

7 18 A. Yes, that's correct.

8 19 Q. To be clear, it would not have made a
9 20 difference?

10 21 A. Correct, it would not have made a
11 22 difference.

12 23 Q. Would it have made a difference whether
13 24 you had adjudicated these applications under INA
14 25 301 versus INA 309 for these cases?

15 233

16 1 A. No, it would not have made a
17 2 difference.

18 3 Q. Why not?

19 4 A. Because the biological connection is
20 5 still required.

21 6 Q. And your understanding that the
22 7 biological connection is required, what is that
23 8 understanding based on?

24 9 A. It's based on the FAM, what I read in
25 10 the FAM.

26 11 Q. Is it based on anything else?

27 12 A. No.

28 13 Q. Was that something that you needed to

1 14 seek clarity from, from your supervisor?

2 15 A. No.

3 16 Q. Was it something that you needed to

4 17 consult with Maggie Ramsay about?

5 18 A. No.

6
7 **Frances Day, Terri Nathine, (Pages 233:19 to 234:20)**

8 233

9 By Ms. Zeidner Marcus:

10 19 Q. Was that the -- would you describe the

11 20 lack of a -- sorry. Let me start over.

12 21 When you're talking about the FAM --

13 22 when you've been talking today at various points

14 23 about the FAM, do you understand the FAM to be

15 24 something that is completely separated from the

16 25 Immigration and Nationality Act of 1952?

17 234

18 1 A. No.

19 2 Q. You don't consider them completely

20 3 separated?

21 4 A. I don't consider them completely

22 5 separated.

23 6 Q. Does the FAM have quotations from the

24 7 statute within it?

25 8 A. As far as my recollection goes, yes.

26 9 Q. Does it describe provisions as well in

27 10 addition to quoting them?

28 11 A. As far as my recollection goes, yes.

1 12 Q. Would you say that the FAM -- let me
2 13 start over. I'm sorry.

3 14 MS. MARCUS: Apologies to the court
4 15 reporter and to everybody else.

5 16 BY MS. MARCUS:

6 17 Q. Would you say that there are FAM
7 18 provisions that incorporate the Immigration and
8 19 Nationality Act of 1952?

9 20 A. To the best of my recollection, yes.

10
11 **Frances Day, Terri Nathine, (Pages 277:12 to 278:2)**

12 277

13 By Ms. Goldsmith:

14 12 Q. And you also stated in response to one
15 13 of Ms. Marcus's questions that, in your opinion, it
16 14 would not have made a difference whether you had
17 15 adjudicated E.J.'s application under Section 301
18 16 versus Section 309?

19 17 A. Based on my understanding, yes.

20 18 Q. What is the basis for your opinion that
21 19 it would not have made a difference whether you had
22 20 adjudicated E.J.'s application under Section 301
23 21 versus 309?

24 22 A. Because both require the biological
25 23 link -- both require the biological connection.

26 24 Q. And is your understanding that the
27 25 basis for that requirement is a provision in the

28 278

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1 FAM?

2 A. Yes.

Defendants' Opposition Exhibit L

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 ANDREW MASON DVASH-
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his
20 official capacity as U.S. Secretary of
State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition
Testimony of Andrew Dvash-Banks,
Supporting Defendants’ Opposition to
Plaintiffs’ Motion for Partial
Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

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23
24 Pursuant to this Court’s Case Management Order, Defendants hereby file the
25 instant document for deponent Andrew Dvash-Banks. This document contains “only
26 those questions and answers, and any objections made at the time of the deposition to
27 those questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support
28 their partial motion for summary judgment, “with a citation to the appropriate page(s)

1 and line number(s) in the deposition transcript,” *id.* Mr. Dvash-Banks’ deposition was
2 taken Wednesday, December 12, 2018, at 12:00 P.M., at 1888 Century Park East,
3 Los Angeles, California.

4 ***

5 **Dvash-Banks, Andrew Mason - Vol. I, relevant portions from 38:22–67:24:**

6
7 **Pages 38:22 to 40:22)**

8 38

9 22 How did you cross the border in

10 23 December 2016?

11 24 A We flew.

12 25 Q Into what airport?

13 39

14 1 A We flew into West Palm Beach airport.

15 2 Q Did you interact with U.S. customs

16 3 officials or visa officials when you entered on that

17 4 trip?

18 5 A Yes.

19 6 Q How long did that interaction take?

20 7 A I can't remember. I think it was just a

21 8 few minutes.

22 9 Q And were you with all of your family

23 10 together?

24 11 A It was with my husband and my sons.

25 12 Q You entered together and you proceeded

26 13 through customs together?

27 14 A Yes.

28 15 Q And when you entered --

1 16 A I -- I should say I think so. I'm pretty
2 17 sure we entered together. I don't know if I was in
3 18 a different line as an American citizen. I can't
4 19 recall. So I just don't want to give, like, wrong
5 20 testimony. I don't know if we were, like,
6 21 physically together or we were in different lines.
7 22 I just can't remember that.

8 23 Q Okay. But your general recollection is
9 24 that it only took a few minutes to get through
10 25 customs?

11 40

12 1 A That's my --

13 2 MS. LAWSON-REMER: Objection.

14 3 Mischaracterizes testimony.

15 4 THE WITNESS: That's my recollection.

16 5 BY MS. ZEIDNER MARCUS:

17 6 Q When you entered again in February 2017,
18 7 how did you enter?

19 8 A In February, we entered by plane.

20 9 Q And what airport did you fly into?

21 10 A LAX.

22 11 Q Did you interact again with U.S. officials
23 12 upon entering?

24 13 A Yes.

25 14 Q And how long did you interact with them on
26 15 that trip?

27 16 A I can't say for certain. But I believe it
28 17 was just a few minutes.

1 18 Q And did you all enter together?

2 19 A It's the same situation as West Palm
3 20 Beach. I'm not sure if we, like, physically entered
4 21 together or if we were in separate lines. I can't
5 22 recall.

6
7 **Pages 41:20 to 44:25**

8 41

9 20 BY MS. ZEIDNER MARCUS:

10 21 Q Can you please describe in your own words
11 22 how you would compare those two experiences.

12 23 A Compare those two experiences. The
13 24 experience with the customs and border officer?

14 25 Q Yes.

15 42

16 1 A Yeah. I can't recall if there was any
17 2 difference at all.

18 3 Q And then the next time you entered the
19 4 United States was June 2017?

20 5 A The next time we entered the United
21 6 States -- you mean the next time we entered, as in
22 7 me and my family?

23 8 Q Yes.

24 9 A Was in June 2017.

25 10 Q And did you interact with U.S. officials
26 11 upon entering the United States on that trip?

27 12 A Yes.

28 13 Q How did you enter the United States and

1 14 where?

2 15 A Entered on an airplane to LAX.

3 16 Q And how long was your interaction with the

4 17 U.S. officials on that entry experience?

5 18 A I think no more than a few minutes, to the

6 19 best of my recollection.

7 20 Q Have you as a family had any other

8 21 interactions with U.S. customs officials other than

9 22 those situations we've been talking about?

10 23 A Yes.

11 24 Q What were those interactions?

12 25 A With customs officials, we interacted in

13 43

14 1 September of 2018.

15 2 Q What was the occasion of that interaction?

16 3 A We just came back from a trip to Mexico.

17 4 Q How long were you in Mexico?

18 5 A Just five days.

19 6 Q Were you there for business or pleasure?

20 7 A Pleasure.

21 8 Q When you entered -- when you had this

22 9 interaction in September 2018, was it at the

23 10 airport?

24 11 A Yes.

25 12 Q And how long was that interaction?

26 13 A There were two interactions.

27 14 Q Can you explain.

28 15 A Sure. The first interaction was, like,

1 16 the regular immigration line that you go through.

2 17 Q Uh-huh.

3 18 A And then the second interaction was in a

4 19 separate room that we were moved to.

5 20 Q How long total?

6 21 A Between those two interactions, how much

7 22 time total?

8 23 Q Yes.

9 24 A Less than an hour total.

10 25 Q And generally speaking, will you walk me

11 44

12 1 through what occurred in that interaction -- let me

13 2 start by asking was this at LAX.

14 3 A It was, yes.

15 4 Q And you get in the immigration line as a

16 5 family. And then what happens next?

17 6 A We were called up to the desk of the

18 7 immigration officer to present our passports.

19 8 Q And were you interviewed by that officer?

20 9 A Yeah. Yeah.

21 10 Q How long did your interaction with that

22 11 officer take?

23 12 A Not sure exactly. Maybe ten minutes.

24 13 Q And then what happened?

25 14 A And then he asked for myself and my son to

26 15 go wait in a separate room.

27 16 Q One of your two children?

28 17 A Yes.

1 18 Q Was it AJ or EJ?

2 19 A It was EJ.

3 20 Q EJ?

4 21 A Yes.

5 22 Q And you were with also your husband and
6 23 your other son, AJ, at that time?

7 24 A Yes. Before -- before we were put in that
8 25 room, yes.

9

10 **Pages 45:05 to 46:05**

11 45

12 5 BY MS. ZEIDNER MARCUS:

13 6 Q Do you know what they did?

14 7 A My husband and AJ?

15 8 Q Yes.

16 9 A They were with my husband's parents and
17 10 his sisters.

18 11 Q And so their interaction with the customs
19 12 officials and the immigration officials ended after
20 13 the approximately ten-minute interview or discussion
21 14 at the desk; is that correct?

22 15 A Yes.

23 16 MS. LAWSON-REMER: Objection. Foundation.

24 17 THE WITNESS: Yes, that's correct.

25 18 BY MS. ZEIDNER MARCUS:

26 19 Q And then yours continued?

27 20 A Yes.

28 21 Q In another room with your son?

1 22 A Yes.

2 23 Q And what occurred in that room?

3 24 A We were asked to wait to speak to an --
4 25 what I figure -- I assume is an immigration officer.

5 46

6 1 And then they called us up to the window. And we
7 2 had to present our passports and our -- our
8 3 documentation. And we were asked a few questions.

9 4 Q What kind of questions were you asked?

10 5 A Regarding [E.J.]'s immigration status.

11

12 **Pages 47:21 to 50:05**

13 21 MS. ZEIDNER MARCUS: Thank you.

14 22 Q Before we took a short break, we were
15 23 talking about your interactions with immigration
16 24 officials in September 2018 upon returning from
17 25 Mexico.

18 48

19 1 A Uh-huh.

20 2 Q Do you recall that?

21 3 A Yes.

22 4 Q And you were describing an experience you
23 5 had in a separate room from your husband and one of
24 6 your children.

25 7 A Yes.

26 8 Q Who else was in that room other than you
27 9 and EJ?

28 10 A There were other travelers in the room.

1 11 Q How was the room set up?

2 12 A Some windows in the front and then a bunch
3 13 of chairs, like rows of chairs.

4 14 Q Was that a waiting area?

5 15 A Yes.

6 16 Q When you entered the room, did you -- what
7 17 did you do first?

8 18 A We were escorted to the room, and then the
9 19 immigration officer that escorted us into the room
10 20 asked us to take a seat.

11 21 Q In the waiting area?

12 22 A Yes.

13 23 Q How long were you seated in the waiting
14 24 area?

15 25 A I can't say exactly how long.

16 49

17 1 Q Approximately.

18 2 A Oh. Just like a guess?

19 3 Q Well -- can you say approximately how long
20 4 you were --

21 5 A I can guess. Maybe 15 minutes. Twenty
22 6 minutes.

23 7 Q Yeah. I'm not asking you to guess. I'm
24 8 asking -- it's a fine distinction, I suppose, but
25 9 I'm asking you to think about your recollection and
26 10 to describe it generally or approximately how long
27 11 you were waiting.

28 12 MS. LAWSON-REMER: Objection. Asked and

1 13 answered.

2 14 THE WITNESS: I -- I would say that I
3 15 don't know. So with a two-year-old -- time moves a
4 16 little bit differently when you're with a
5 17 two-year-old than when you're not. So I would guess
6 18 it felt like 20 minutes, I would say.

7 19 BY MS. ZEIDNER MARCUS:

8 20 Q And what happened next?

9 21 A We were called up to the window.

10 22 Q And how long were you at the window,
11 23 approximately?

12 24 A Approximately maybe 20 minutes.

13 25 Q And then after that, what happened?

14 50

15 1 A Then we left the room.

16 2 Q And broadly speaking, what was the
17 3 substance of the conversation you had at the window?

18 4 A The conversation at the window was,
19 5 broadly speaking, about [E.J.]'s immigration status.

20

21 **Pages 51:13 to 54:17**

22 13 BY MS. ZEIDNER MARCUS:

23 14 Q Do you recall any specific questions you
24 15 were asked?

25 16 A I'm trying to think. Yes.

26 17 Q And what do you recall?

27 18 A I recall one specific question was
28 19 regarding the documentation that we had for Ethan's

1 20 immigration status.

2 21 Q What was that documentation?

3 22 A It's called advance parole.

4 23 Q What question was asked regarding that

5 24 documentation?

6 25 A I don't remember the question that was

7 52

8 1 asked regarding that documentation.

9 2 Q What do you recall?

10 3 A I just recall being asked to present the

11 4 documentation, the advance parole.

12 5 Q Were you asked to present any other

13 6 documentation during that interview that you recall?

14 7 A We -- we didn't present any other

15 8 documentation, no, at that time. I -- I'm just -- I

16 9 can't recall if the officer that escorted us there

17 10 handed them our passports and the advance parole

18 11 document or if we presented it. So I'm sorry if I

19 12 said, like, we -- we presented the documentation.

20 13 I'm not sure if, like, we presented it or, like, it

21 14 was given to them. You know what I mean?

22 15 Q Sure.

23 16 Did you show those, the passports and the

24 17 advance parole documentation, to the first officer?

25 18 A Yes.

26 19 Q And -- and by that question I was

27 20 referring to before you came into the separate room.

28 21 A Yes.

1 22 Q And then you were escorted by a different
2 23 officer to the room.

3 24 A I'm not sure if it was a different or the
4 25 same.

5 53

6 1 Q And then the person -- the officer
7 2 interviewing you within the room also considered
8 3 this documentation?

9 4 A Yes.

10 5 MS. LAWSON-REMER: Objection. Foundation.

11 6 THE WITNESS: Yes.

12 7 BY MS. ZEIDNER MARCUS:

13 8 Q Do you remember any other -- anything else
14 9 about the interaction you had with the second
15 10 interviewing officer inside the room?

16 11 A Do I remember?

17 12 Q Any -- any other aspects of your
18 13 interaction with the interviewing officer within
19 14 this second phase of your interactions --

20 15 MS. LAWSON-REMER: Objection. Vague.

21 16 BY MS. ZEIDNER MARCUS:

22 17 Q -- inside the room?

23 18 A Any other aspects other than Ethan's --
24 19 EJ's immigration status, no, I do not recall any
25 20 other -- anything else that was mentioned.

26 21 Q Did -- how were you treated by the
27 22 immigration officers that you interacted with?

28 23 MS. LAWSON-REMER: Objection. Vague.

1 24 THE WITNESS: We were treated -- I mean,
2 25 my answer, I guess, would be we were treated normal,

3 54

4 1 treated fine. You know?

5 2 BY MS. ZEIDNER MARCUS:

6 3 Q And what was the outcome of the -- let me
7 4 rephrase.

8 5 Did you understand the interviewing
9 6 officer inside the -- the room to make some sort of
10 7 decision with respect to your entry into the United
11 8 States?

12 9 MS. LAWSON-REMER: Objection. Vague.

13 10 THE WITNESS: I believe that that
14 11 immigration officer determined whether we entered
15 12 into the United States or not.

16 13 BY MS. ZEIDNER MARCUS:

17 14 Q And what was the determination?

18 15 MS. LAWSON-REMER: Objection. Vague.

19 16 THE WITNESS: We were allowed to enter the
20 17 United States.

21
22 **Pages 55:02–12**

23 2 BY MS. ZEIDNER MARCUS:

24 3 Q Did -- in -- when you were being
25 4 interviewed by the officer in that room, do you
26 5 recall how long that interview took?

27 6 MS. LAWSON-REMER: Objection. Asked and
28 7 answered.

1 8 THE WITNESS: Yeah. I'm pretty sure it
2 9 was 20 minutes --

3 10 BY MS. ZEIDNER MARCUS:

4 11 Q And --

5 12 A -- approximately.

6

7 **Pages 56:03–11**

8

9 3 BY MS. ZEIDNER MARCUS:

10 4 Q Do you -- can you explain why this
11 5 interview took 20 minutes?

12 6 A I can't.

13 7 Q Were you asked any questions during the
14 8 interview that you felt uncomfortable answering?

15 9 A I would say no, to my recollection. I
16 10 mean, I guess it takes a lot to make me feel
17 11 uncomfortable, but -- I would think.

18

19

20 **Pages 57:06–21**

21 6 Did you at the time have an impression of
22 7 your interactions with that interviewing officer?

23 8 MS. LAWSON-REMER: Objection. Vague.

24 9 THE WITNESS: Impressions of my -- my
25 10 impression was that it was not necessary and that --
26 11 in my impression.

27 12 BY MS. ZEIDNER MARCUS:

28 13 Q Sure.

1 14 A And that it was inconvenient.

2 15 Q The secondary screening was unnecessary
3 16 and inconvenient?

4 17 A Correct. Yeah. So I guess that's why,
5 18 like, going back to the word, like, "uncomfortable,"
6 19 like, I said no, but, I mean, uncomfortable in the
7 20 sense that this was inconvenient and unnecessary,
8 21 then, yeah, it was uncomfortable.

9
10 **Pages 59:06 to 59:11**

11 59

12 6 Q Do you know why you were selected for
13 7 secondary screening?

14 8 A Do I know why I was selected? Yes, I know
15 9 why I was selected for secondary screening.

16 10 Q Why?

17 11 A Because of EJ's immigration status.

18
19 **Pages 59:16 to 60:16**

20 16 Q What is your husband's current immigration
21 17 status?

22 18 A My husband is a green card holder. I
23 19 guess you call that permanent resident.

24 20 Q What is EJ's current immigration status?

25 21 MS. LAWSON-REMER: Objection. Foundation.

26 22 THE WITNESS: I'm not an expert in this.

27 23 BY MS. ZEIDNER MARCUS:

28 24 Q Sure.

1 25 A So I don't know if he has an immigration
2 60

3 1 status. That would be my answer, but I'm not sure
4 2 about it just because --

5 3 Q Do you know whether AJ has an immigration
6 4 status?

7 5 A AJ -- by "immigration status" could, like,
8 6 a U.S. citizen be considered immigration status?

9 7 Q Probably not.

10 8 A Then AJ would not --

11 9 Q I don't know.

12 10 A -- have an immigration status.

13 11 Q So do you understand AJ's current status
14 12 to be that of United States citizen?

15 13 A Yes.

16 14 Q Do you understand EJ's current status as
17 15 not being that of United States citizen?

18 16 A Yes.

19
20 **Pages 60:21 to 63:19**

21 21 BY MS. ZEIDNER MARCUS:

22 22 Q It -- how did EJ -- I mean, how did EJ
23 23 enter the United States in -- the first time that he
24 24 entered in -- was -- was the first time that EJ
25 25 entered in February 2017?

26 61

27 1 A No.

28 2 Q What was the first time that he entered?

1 3 A It was December 2016.

2 4 Q December 2016.

3 5 A Yes.

4 6 Q And how did he enter at that time?

5 7 A On his Canadian passport.

6 8 Q When did he obtain the advance parole

7 9 document?

8 10 A I'm not sure of the dates when he obtained

9 11 it.

10 12 Q Approximately?

11 13 A Sometime in 2018. Obviously before our

12 14 Mexico trip.

13 15 Q In February 2017, you presented for EJ a

14 16 Canadian passport when he entered?

15 17 A Yes.

16 18 Q Did you present any other documentation at

17 19 that time for EJ?

18 20 A To my knowledge, no.

19 21 Q And what about AJ in February 2017? What

20 22 documentation did you present for him?

21 23 A I'm not sure.

22 24 Q And in June 2017 --

23 25 A Actually, I'm sorry. I take that back. I

24 62

25 1 am sure. It was a Canadian passport. In February

26 2 of 2017, for AJ, it was a Canadian passport.

27 3 Q It was a Canadian passport for both

28 4 children in February 2017?

1 5 A Yeah. Sorry. I just had to think about
2 6 that, you know.

3 7 Q Of course. Thank you.

4 8 In June 2017, what documentation did you
5 9 provide for each of your children on their entry
6 10 into the United States?

7 11 A In June of 2017, the documentation that we
8 12 provided for entrance? For EJ, it was his Canadian
9 13 passport. And for AJ, it was his American passport.

10 14 Q And then in September of 2018, what
11 15 documentation did you present for each of your
12 16 children at that time?

13 17 A The same as in June of 2017.

14 18 Q And in addition, for EJ, you presented the
15 19 advance parole document?

16 20 A Yes.

17 21 Q Did you volunteer that document, or were
18 22 you asked for it?

19 23 MS. LAWSON-REMER: Objection.

20 24 Actually, go ahead.

21 25 THE WITNESS: I can't remember. It was

22 63

23 1 definitely presented. But I just don't know if it
24 2 was volunteered or requested. I can't remember.

25 3 BY MS. ZEIDNER MARCUS:

26 4 Q Has EJ entered the United States at any
27 5 other time other than February 2017, June 2017, or
28 6 September 2018?

1 7 A Yes.

2 8 Q What other time?

3 9 A December 2016.

4 10 Q Okay. And in December 2016, what
5 11 documentation did you provide for your children upon
6 12 entry?

7 13 A Canadian passports.

8 14 Q When did your children obtain Canadian
9 15 passports?

10 16 A I'm not sure of the date, but it was
11 17 before December 2017 -- sorry -- before
12 18 December 2016 when we entered the U.S. for the first
13 19 time.

14

15 **Pages 64:16 to 65:08**

16 64

17 16 On any of these entries other than
18 17 September 2018, was EJ selected for secondary
19 18 screening?

20 19 MS. LAWSON-REMER: By "these entries" you
21 20 mean the ones that he has previously identified on
22 21 the record?

23 22 MS. ZEIDNER MARCUS: Correct.

24 23 MS. LAWSON-REMER: Okay.

25 24 THE WITNESS: To the best of my knowledge,
26 25 no.

27 65

28 1 BY MS. ZEIDNER MARCUS:

1 2 Q Other -- you have identified a number of
2 3 entries that EJ had.

3 4 A Yeah.

4 5 Q Do you recall any other entries that he
5 6 had into the United States other than the ones that
6 7 you have described on the record?

7 8 A I don't recall any others.

8
9 **Pages 65:14 to 66:15**

10 14 BY MS. ZEIDNER MARCUS:

11 15 Q You were with your family on all of these
12 16 entries that you described --

13 17 A By "family" you mean myself, my husband,
14 18 and my two children?

15 19 Q Yes.

16 20 A On those specific entries, yes, the four
17 21 of us were together.

18 22 Q Did you have any other entries into the
19 23 United States other than those that you have
20 24 described in which the four of you were together?

21 25 MS. LAWSON-REMER: In this time period?

22 66

23 1 MS. ZEIDNER MARCUS: Yes. Thank you.

24 2 THE WITNESS: In this same time period?

25 3 Yes.

26 4 BY MS. ZEIDNER MARCUS:

27 5 Q When was that?

28 6 A In May of 2017.

1 7 Q Were you selected for secondary screening
2 8 in that experience?

3 9 A I was alone. But to answer your question,
4 10 no, I was not selected for secondary screening.

5 11 Q And where did you enter at that time?

6 12 A Los Angeles.

7 13 Q Did your children ever enter on any other
8 14 occasion with your husband and not with you?

9 15 A No.

10
11 **Pages 67:03-24**

12 67

13 3 [Q] Other than the one in which you've entered
14 4 without EJ, the other entries that you have
15 5 described on the record, do those constitute, to the
16 6 best of your knowledge, all of the entries into the
17 7 United States that EJ has experienced?

18 8 MS. LAWSON-REMER: In this time period or
19 9 ever?

20 10 MS. ZEIDNER MARCUS: EJ, ever.

21 11 THE WITNESS: That EJ has experienced. To
22 12 the best of my knowledge, yes, that is all the times
23 13 that he has entered.

24 14 BY MS. ZEIDNER MARCUS:

25 15 Q And I may have already asked this, so
26 16 forgive me if I did. But the only time, to your
27 17 knowledge, that he was selected for secondary
28 18 screening was September 2018?

1 19 A To best of my knowledge, yes.

2 20 Q And on the other entries when you were

3 21 with your family, December 2016, February 2017,

4 22 June 2017, were any other members of your family

5 23 selected for secondary screening on those occasions?

6 24 A No.

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Defendants' Opposition Exhibit M

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 ANDREW MASON DVASH-
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his
20 official capacity as U.S. Secretary of
State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition
Testimony of Margaret “Maggie”
Ramsay, Supporting Defendants’
Opposition to Plaintiffs’ Motion for
Partial Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22
23 Pursuant to this Court’s Case Management Order, Defendants hereby file the
24 instant document for deponent Margaret “Maggie” Ramsay. This document contains
25 “only those questions and answers, and any objections made at the time of the deposition
26 to those questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support
27 their partial motion for summary judgment, “with a citation to the appropriate page(s)
28 and line number(s) in the deposition transcript,” *id.* Ms. Ramsay’s deposition was taken

1 Friday, December 7, 2018, at the U.S. Consulate, 360 University Avenue, Toronto,
2 Canada.

3 ***

4 **Ramsay, Margaret, (Page 131:22 to 133:23)**

5 131

6 By Ms. Zeidner Marcus

7 22 Q. Do you know whether Ms. Day
8 23 considered Ethan Dvash-Banks to be born in wedlock,
9 24 as that term is used in the FAM and the INA?

10 25 A. I think initially, as evidenced by

11 132

12 1 her case notes, she may have considered them in
13 2 wedlock because she saw a marriage certificate, but
14 3 believe after reviewing the guidance and as
15 4 evidenced by the final denial letter, ultimately
16 5 applied 309 of the INA to the decision-making.

17 6 Q. Is it your understanding, and if
18 7 you need to refer to the case notes to refresh your
19 8 memory on this, then you can do so and then point
20 9 me to that section, if you do so, but is it your
21 10 understanding that on the day that they visited,
22 11 the Dvash-Banks family visited the Consulate
23 12 Toronto that Ms. Day on that day considered them to
24 13 be a married couple, the adults in the family?

25 14 MS. GOLDSMITH: Objection, leading.

26 15 THE WITNESS: I think what may have
27 16 happened is when she was reviewing all the
28 17 documents and she saw a marriage certificate, she

1 18 started typing her notes, as we often do, and then
2 19 over the course of the interview discovered that we
3 20 would have to treat the case as a 309 case instead.

4 21 BY MS. ZEIDNER MARCUS:

5 22 Q. Do you know whether she
6 23 communicated to the Dvash-Banks family on that day
7 24 whether there was a particular provision that she
8 25 was going to be applying in the case?

9 133

10 1 A. I believe she may have told them
11 2 about the provisions of INA 309.

12 3 Q. What is that belief based on?

13 4 A. I think I heard her talk to them
14 5 about the requirements for it and the requirements
15 6 for a biological relationship as well.

16 7 Q. Is there a requirement for a
17 8 biological relationship under both 301 and 309, as
18 9 you understand and apply the -- let me start over.
19 10 The biological requirement that you were just
20 11 describing, what is that biological requirement?

21 12 A. There must be, in order for a U.S.
22 13 citizen parent to transmit citizenship to a child
23 14 at birth, there must be a biological relationship
24 15 between parent and child.

25 16 Q. Is that true for both INA 301 and
26 17 INA 309, in your understanding?

27 18 A. Yes.

28 19 Q. So would it have made a difference

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20 to the outcome of this case if Ms. Day had
21 adjudicated these applications under INA 301
22 instead of INA 309?

23 A. No.

Defendants' Opposition Exhibit N

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 ANDREW MASON DVASH-
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his
20 official capacity as U.S. Secretary of
State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition
Testimony of Larilyn Reffett,
Supporting Defendants’ Opposition to
Plaintiffs’ Motion for Partial
Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

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24 Pursuant to this Court’s Case Management Order, Defendants hereby file the
25 instant document for deponent Larilyn Reffett. This document contains “only those
26 questions and answers, and any objections made at the time of the deposition to those
27 questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support their
28 partial motion for summary judgment, “with a citation to the appropriate page(s) and line

1 number(s) in the deposition transcript,” *id.* Ms. Reffett’s deposition was taken Thursday,
2 December 6, 2018, at the U.S. Consulate, 360 University Avenue, Toronto, Canada.

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4
5 **Reffett, Larilyn, (Pages 92:06–93:06)**

6 By Ms. Klein:

7 Q. And in adjudicating applications
8 for a passport for a child born in September of
9 2016, is it your testimony that if that child was
10 born in Ontario, the consulate would require
11 submission of a Statement of Live Birth?

12 A. Generally speaking, we would
13 require a statement of some type issued by the
14 Registrar in Ontario.

15 Q. Okay. And are there written
16 materials stating what documentation needs to be
17 provided to the Toronto Consulate in support of a
18 U.S. passport application for a child?

19 A. That information is all on our
20 website. When you go to make your appointment for
21 the service, there is a checklist of information
22 that you would need to bring with you.

23 Q. And does that checklist require
24 that a Statement of Live Birth be brought to the
25 consulate?

26 A. I don’t know how it references the

27 93

28 1 document. As I mentioned, it is the equivalent of

1 a birth certificate and there are many different
2 versions here in Ontario. If you bring one of the
3 versions that doesn't meet the requirements, we
4 will request that you get the more comprehensive
5 version.
6

7 **Reffett, Larilyn, (Pages 167:18 to 168:19)**

8 167

9 By Ms. Klein:

10 18. Q. What are other circumstances that
11 19. would give rise to doubt of putative parentage?

12 20. A. I mean, every case is going to be
13 21. different and this is only putative parentage as
14 22. related by blood. Other things that might cause
15 23. someone to question whether parentage as related by
16 24. blood was potentially something they should look
17 25. into, I don't want to make a huge list of these

18 168

- 19 .1. because they are fraud concerns, but things like a
- 20 .2. birth certificate that was amended later to add
- 21 .3. potentially a parent or to change some biographical
- 22 .4. information; that would be something that would be
- 23 .5. considered a red flag for an adjudicating officer
- 24 .6. and that would cause a line of questioning that
- 25 .7. wouldn't be asked of other applicants.
- 26 .8. You know, other things about whether
- 27 .9. there would be questions about whether a putative
- 28 10. parent is related by blood, again, anything that

1 11. · would indicate the use of assisted reproductive
2 12. · technology, that will raise other questions.
3 13. · Anything on a birth certificate that
4 14. · would seem to indicate an adoption would raise
5 15. · questions.
6 16. · These all are indicators that we look
7 17. · at when we are looking at documents so that we are
8 18. · asking the correct chain of questions to get the
9 19. · information that we need to make the determination.

10
11 **Reffett, Larilyn, (Pages 177:04–25)**

12 By Ms. Klein:

13 4 Q. For children born in Ontario who
14 5 are applying for a U.S. passport at the Toronto
15 6 Consulate, does the consulate require that children
16 7 provide a document entitled a Notice of Live Birth?
17 8 A. No, we require that you provide us
18 9 with a document that has been issued by the
19 10 Registrar here that is an official Ontario birth
20 11 document, and we do require for minor children that
21 12 that document does include the names of both of the
22 13 parents for the purposes of meeting the two-parent
23 14 signature consent requirement so we have to be able
24 15 to see that on the birth certificate those are the
25 16 parents listed in order to allow them to sign the
26 17 application.

27 18 That was kind of what I was referencing
28 19 in saying that there are a couple of different

1 20 versions, and there is one version that does not
2 21 list the parents. That one we cannot accept
3 22 because we have to be able to identify that the
4 23 people standing in front of us taking the oath are
5 24 allowed to sign that application and allowed to
6 25 authorize documentation for the child.

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Defendants' Opposition Exhibit O

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)

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15 ANDREW MASON DVASH-
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19 MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary of
20 State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition
22 Testimony of Defendants’ 30(b)(6)
Witness Paul Peek, Supporting
23 Defendants’ Opposition to Plaintiffs’
24 Motion for Partial Summary
25 Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

26 Pursuant to this Court’s Case Management Order, Defendants hereby file the
27 instant document for deponent Paul Peek, who served as a 30(b)(6) witness for the
28 Department of State. This document contains “only those questions and answers, and
any objections made at the time of the deposition to those questions,” Order at 11 (Dkt.
No. 52), that Defendants are relying on to support their opposition to Plaintiffs’ motion

1 for partial summary judgment, “with a citation to the appropriate page(s) and line
2 number(s) in the deposition transcript,” *id.* Mr. Peek’s deposition was taken Thursday,
3 December 20, 2018, at 1700 New York Avenue, Northwest, Washington, District of
4 Columbia.

5 ***

6
7 **Peek, Paul, (Pages 178:20 to 179:18)**

8 178

9 By Mr. Edelman:

10 20. . . . Q. Okay. Now, if the child was born -- two
11 21. men married to each other, child is born outside the
12 22. United States, and the spouse whose sperm was used
13 23. for the assisted reproduction technology is not a
14 24. U.S. citizen, would the State Department recognize
15 25. the child as a U.S. citizen at birth?

16 179

17 .1. . . . A. It depends.
18 .2. . . . Q. What does it depend on?
19 .3. . . . A. Whether the U.S. citizen parent also
20 .4. contributed genetic material or was the gestational
21 .5. parent.
22 .6. . . . Q. Okay. So, again, I'm talking about two
23 .7. men, sperm from one of them; that person not a U.S.
24 .8. citizen. Question: Would the resulting child born
25 .9. outside the United States be considered a U.S.
26 10. citizen at birth?
27 11. . . . A. Let me elaborate on why I'm saying "it
28 12. depends" in my answer.

1 13. . . . Q. Please.
2 14. . . . A. Because one of the two men could be
3 15. someone whose has transitioned and is now a man but
4 16. is not always a man. So could theoretically have
5 17. contributed genetic material or been the gestational
6 18. parent.

7

8 **Peek, Paul, (Pages 180:16–181:10)**

9 16 Q Okay. So -- and just to close that
10 17 circle, if you go back to Plaintiffs' Deposition
11 18 Exhibit 4, which probably is in front of you, 7 FAM
12 19 1140, appendix E on page 4 -- tell me if you're
13 20 there. I know this gets confusing --
14 21 A The whole thing is 7 FAM appendix E --
15 22 1140 appendix E. Right.
16 23 Q Okay. And page 4. We're in the in
17 24 wedlock and of wedlock.
18 25 A Right.

19 181

20 1 Q Okay. Part (a), "The term 'birth in
21 2 wedlock' has consistently -- has been consistently
22 3 interpreted to mean birth during the marriage of the
23 4 biological parents to each other," correct?
24 5 A Yes.
25 6 Q And is that -- I'm trying to close off
26 7 this circle here. Is that what you mean in your
27 8 last answer when you talk about the requirement that
28 9 the biological parents be married to each other?

1 10 A Yes.

2
3 **Peek, Paul, (Pages 202:17 to 202:23)**

4 202

5 By Mr. Edelman:

6 17. . . . Q. Are there circumstances in which the

7 18. State Department treats children born into a

8 19. same-sex marriage to be children born in wedlock?

9 20. . . . A. Yes.

10 21. . . . Q. And what are those circumstances?

11 22. . . . A. If both parents had a biological

12 23. relationship to the child.

13
14 **Peek, Paul, (Pages 333:4 to 333:17)**

15 333

16 By Mr. Edelman:

17 4. . . . Q. Sure. In what circumstances does a child

18 5. born to a same-sex female couple acquire U.S.

19 6. citizenship under INA section 301(g)?

20 7. . . . A. I am looking at 8 FAM 304.3-1, which I

21 8. think would also answer your previous question. To

22 9. read it aloud, paragraph (b), "A child born abroad

23 10. to a U.S. citizen gestational mother who is the

24 11. legal parent of the child at the time of birth in

25 12. the location of birth, whose genetic parents are an

26 13. anonymous sperm donor and the U.S. citizen wife of

27 14. the gestational legal mother, is considered for

28 15. citizenship purposes to be a citizen born in wedlock

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16. of two U.S. citizens, with a citizenship claim
17. adjudicated under INA 301(c)."

Peek, Paul, (Pages 335:10 to 335:14)

335

By Mr. Edelman:

10. What is the State Department's
11. understanding of USCIS' actions taken to follow the
12. 9th Circuit's decision in Scales?
13. A. That, in the jurisdiction of the
14. 9th Circuit, they comply with the ruling.

Defendants' Opposition Exhibit P

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)



Embassy of the United States of America

Bangkok, Thailand

August 29, 2014

Dear PII

Thank you for your letter to Ambassador Kenney dated August 8 concerning your experiences at the U.S. Embassy in Bangkok when you applied for Consular Reports of Birth Abroad (CRBA) for your sons, PII and PII. Ambassador Kenney asked that I respond to your letter on her behalf. Our office has been fully engaged with Thai authorities to find expedited measures to allow surrogate-born children to depart the country safely and legally with their U.S. citizen commissioning parents.

Please know that we take the concerns voiced in your letter very seriously. Thailand's commercial surrogacy industry has grown rapidly, with few regulations and, because of general concerns regarding the fraud environment in Thailand, we have always been cautious in proceeding with verifying the birth of U.S. citizens, which is why we recommend DNA testing. According to 22 CFR 51.40, applicants for U.S. passports and Consular Reports of the Birth Abroad of a Citizen of the United States have the burden of proving by a preponderance of the evidence that they are citizens of the United States. To establish the evidence of transmission as required by U.S. citizenship law, we ask that all persons who engage in surrogacy in Thailand - regardless of sexual orientation - go through DNA testing to establish the blood relationship between parent and child. Unfortunately, several of our Embassies and Consulates have handled surrogacy cases where DNA tests have revealed that intended parents were not the genetic parent of a child born through a surrogate. Therefore, it is common practice throughout the world for our Embassies and Consulates to ask for DNA testing in surrogacy cases.

Furthermore, 8 U.S.C. 1409 (a)(1) (INA 309(a)(1)) provides that for a person born abroad out of wedlock to a U.S. citizen father, a blood relationship between the person and the father must be established by clear and convincing evidence.

As you may have noted, in recent weeks the surrogacy industry here has undergone substantial government and public scrutiny which has highlighted the lack of regulation. This scrutiny for a time impeded the departure from Thailand of parents and their U.S. citizen children born through surrogacy. We engaged with

Thai authorities at high levels to seek an interim solution, which has been successful so far.

Please be assured that recommending DNA testing is not a form of discrimination but a means of discouraging fraud and ensuring that U.S. citizenship transmission requirements are met given the unregulated surrogacy environment that prevails in Thailand. I apologize if this was not sufficiently explained to you during your first interview and subsequent meetings.

Thank you as well for sharing your experiences and I am sorry for the inconvenience you experienced. We are always looking for ways to improve our services and your insights are helpful. We wish you and your family all the best.

Regards,



signature

Elizabeth Susie Pratt
Consul General
U.S. Embassy Bangkok